

October 5, 2004 (4:06PM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.
National Enrichment Facility

ASLBP No. 04-826-01-ML

**MOTION FOR MODIFICATION OF
DEPOSITION SCHEDULE
ON BEHALF OF
PETITIONERS
NUCLEAR INFORMATION AND RESOURCE SERVICE
AND PUBLIC CITIZEN**

Preliminary statement

By this motion Petitioners Nuclear Information and Resource Service and Public Citizen ("NIRS/PC"), seek an extension of the existing deadline for deposition discovery to accommodate a personal emergency affecting a key witness, Dr. Arjun Makhijani.

The Atomic Safety and Licensing Board (the "Board") adopted a schedule in its Memorandum and Order dated August 16, 2004, based upon submissions by the parties. In that order the Board advised the parties that any extension of a period for conducting discovery must be sought from the Board. (Memorandum and Order, Aug. 16, 2004, at 5 note 5). Therefore, this Motion is made to the Board. Counsel for NIRS/PC have discussed this motion with counsel for Applicant Louisiana Energy Services, L.P., who does not concur in an extension of time.

Factual background

Dr. Arjun Makhijani is an essential witness for Petitioners NIRS/PC. He assisted in preparation of the Petition filed by NIRS/PC and in answering interrogatories propounded to

NIRS/PC and has been scheduled to testify in support of several contentions that were admitted by the Board. Originally, Dr. Makhijani's deposition was scheduled to be taken on October 5 and 6, 2004, in Washington, D.C. Under the Board's Order dated August 16, 2004, depositions are scheduled to be completed by October 18, 2004. However, circumstances have arisen that, to our regret, require NIRS/PC to request the rescheduling of Dr. Makhijani's deposition at a time after the existing deadline of October 18. The situation is as follows:

Dr. Makhijani had planned to prepare for his deposition on September 27 through October 4, so that he could be prepared to support and explain his opinions when his testimony is taken. He has estimated that his preparation time will be about 40 hours, which would also have left him some time for his other deadlines in that week (given that he works from 60 to 80 hours per week during hectic times, such as the present phase of his commitments). He had made plans to do that preparation and to testify on October 5 and 6, 2004. However, during the week before last Dr. Makhijani learned that his mother, who is quite elderly and lives in Mumbai, India, had taken a turn for the worse and that she was seriously ill. He was so advised by his sister, Dr. Puspa Mehta, who is a physician and was then visiting India from her home in Denver, Colorado. Dr. Mehta was also in close consultation with the local physician who is attending Dr. Makhijani's mother. Dr. Makhijani promptly flew to Mumbai to be at his mother's side when his sister was scheduled to leave. He arrived on September 27, and his sister left Mumbai for the U.S. on September 28. Dr. Makhijani was at his mother's home and by her side while in Mumbai and could not work there. He could not even connect with the Internet while at her home. Thus, by reason of his mother's illness, the time that Dr. Makhijani had set aside to prepare for his deposition was not available for that purpose.

Dr. Makhijani left Mumbai on the morning of October 4. The responsibilities for attending to his mother for the weeks to come have been taken over by other members of the family. Dr. Makhijani arrived in the U.S. on the afternoon of October 4, suffering from jet lag and having a heavy set of responsibilities, including the following:

- a. Dr. Makhijani must work for a few hours on the litigation brought by offsite residents against General Electric and DuPont Chemical Co. involving the Hanford, Washington Department of Energy Site.
- b. Dr. Makhijani is a member of the audit team that is advising the Presidential Advisory Committee on the Energy Employees Compensation Act. This week Dr. Makhijani must prepare a draft report on his worker audit work (referred to as Item #1 below). He is the principal author of this report. In addition, he is assisting as a co-author on another report about this work. The preliminary work on this report must be completed by approximately October 10 (Item #2, below). In addition, this week Dr. Makhijani must help prepare a presentation to the Presidential Advisory Committee based on a report that is in its final stages. Some review comments need to be incorporated into this report as well. He is one of the two principal authors of this report, which is scheduled to be delivered to the Presidential Advisory board on October 11.
- c. Dr. Makhijani is also required to finalize a written paper that he will be presenting in Chicago on October 15 (see below).
- d. He will also attend to matters involving several proposals and scheduling for work in December 2004 and in 2005, so that the Institute for Energy and Environmental

Research staff have the needed guidance to continue their work as he goes on an extended period of travel.

- e. On Friday, October 8, Dr. Makhijani is scheduled to fly to Milwaukee to deliver a talk to the American Society for Engineering Education. He still must review the draft paper and work with his co-author Lisa Ledwidge to finalize it.
- f. On Sunday, October 10, Dr. Makhijani is scheduled to fly to Charleston, South Carolina, for several days of meetings with local residents and officials concerning his report on water pollution associated with the Savannah River Site.
- g. On Thursday evening, October 14, Dr. Makhijani is scheduled to fly to Chicago. He will deliver a paper on uranium enrichment at a meeting of the Nuclear Policy Research Institute there on Friday, October 15. On the evening of the same day he is scheduled to fly to San Francisco, where the Presidential Advisory Committee is scheduled to meet on Tuesday and Wednesday, October 19 and 20. He will be helping to deliver the presentation to the Committee, scheduled for October 20.
- h. On the afternoon of Wednesday, October 20, Dr. Makhijani is scheduled to fly back to Washington, arriving just before midnight. In the period October 21-29 he has a number of already scheduled commitments, as noted in the following paragraphs.
- i. Dr. Makhijani will finalize his draft report on worker dose reconstruction procedures (Item #1) and also help finalize a draft of Item #2, of which he is a co-author.
- j. On October 25 and 26 there is a meeting in Virginia about Dr. Makhijani's work relating to the audit of worker dose reconstruction being done for the Presidential Advisory Committee, as previously mentioned.

- k. On Wednesday, October 27, Dr. Makhijani is scheduled to attend a meeting at the United Nations in New York, where he will give a talk at a meeting sponsored by the Institute for Energy and Environmental Research.
- l. Dr. Makhijani is also obligated to complete by Friday, October 29, a detailed review of documents relating to the Cotter Corp. uranium mill pursuant to a Superfund technical assistance grant.
- m. On Friday, October 29, Dr. Makhijani is scheduled to fly to Colorado to present his findings about the Cotter mill at a public meeting on Saturday, October 30. He may also be meeting with State of Colorado officials at the time. His client has indicated that such meetings are being organized.
- n. Thereafter, on Monday, November 1, Dr. Makhijani is scheduled to travel to Santa Fe, New Mexico, pursuant Institute for Energy and Environmental Research work. The main work relates to a project investigating long-term stewardship of nuclear weapons. He is scheduled to conduct investigations relating to certain waste disposal sites at Los Alamos. He will be working with local citizen groups and with a geologist, Dr. Ron Scrudato, who is a consultant to Institute for Energy and Environmental Research and who will meet him in Santa Fe on November 3.
- o. On Friday, November 5, Dr. Makhijani will deliver a talk in Santa Fe about the work of the Institute for Energy and Environmental Research.
- p. On Saturday, November 6, Dr. Makhijani will fly to Boise, Idaho, to attend a meeting of a National Academy of Sciences panel concerning fallout from weapons testing. He is also scheduled to deliver a talk on November 6 in Boise on the same subject. The Institute for Energy and Environmental Research has long been involved in the

study of the health effects of nuclear testing. He is attending the meeting at the invitation of the Snake River Alliance, a local group with which Institute for Energy and Environmental Research had a long working relationship on this and other subjects. The NAS meeting will be, among other things, about whether fallout victims were harmed enough to be considered for compensation, and if so what the scientific criteria might be.

- q. On Sunday, November 7, Dr. Makhijani is scheduled to return to the Washington area. On Monday, November 8, he is scheduled to attend meetings in Virginia about his work relating to the audit of the worker dose reconstruction being done for the Presidential Advisory Committee, as previously mentioned.
- r. Thereafter, Dr. Makhijani sees the possibility of working on preparation for his deposition in this case. He does not consider it useful to have his deposition taken without sufficient preparation to enable him to present his opinions. As noted above, he estimates that he will need about 40 hours to prepare for his deposition. He also needs to be physically present in his office for those hours, so that he can have the necessary research support of his staff.

The requested extension

In this situation NIRS/PC respectfully request a modification of the discovery schedule so that Dr. Makhijani's deposition may be taken in the week of November 15. There does not seem to be any opening in his schedule, as presently constituted, that would allow him to prepare and testify at an earlier time. NIRS/PC offer the following in support of the requested extension:

First, the need for an extension arose through the unfortunate worsening of the condition of Dr. Makhijani's mother, an event that was quite unpredictable. At the same time, Dr.

Makhijani's decision to go to his mother's side should be deemed entirely appropriate by any person who has experienced the aging of his parents.

Next, NIRS/PC have until this instance sought no extensions of the Commission's and the Board's schedule and have met every applicable date called for by such schedule.

Further, Dr. Makhijani's testimony will concern primarily the contentions that have a wholly or partially technical and safety relevance. His testimony will involve:

- a. NIRS/PC EC-3/TC-1, concerning a "plausible strategy" for disposal of depleted UF₆.
- b. NIRS/PC EC-4, concerning the impacts of waste storage and disposal.
- c. NIRS/PC EC-5/TC-2 and AGNM TC-i, concerning decommissioning costs.
- d. NIRS/PC EC-6/TC-3, concerning costs of management and disposal of depleted UF₆.

Of the listed contentions, only NIRS/PC EC-4 is a solely "environmental" contention, scheduled for hearing in February 2005. The other "technical/safety" contentions are scheduled for hearing in October and November of 2005. Other than the October 18 discovery deadline, there are no deadlines in the Memorandum and Order dated August 16, 2004, with respect to the technical/safety contentions until June 2005. Thus, if Dr. Makhijani's deposition is taken in November 2004, counsel for all parties will have ample opportunity to study his testimony and to incorporate it in their planning for litigation of the technical/safety contentions.

Finally, as for Dr. Makhijani's testimony on NIRS/PC contention EC-4, NIRS/PC suggest that the Board allow other parties to have until a date such as November 24 to file any summary disposition motions as to NIRS/PC contention EC-4, and NIRS/PC will respond to such motions by November 30, 2004. Replies could be scheduled for December 6 without, NIRS/PC trust, impairing the Board's ability to rule on such motions by December 20.

Conclusion

NIRS/PC sincerely regret the circumstances that necessitate this request for a schedule change. At the same time NIRS/PC do not know how such circumstances could have been avoided. Neither do NIRS/PC know of any action that a son can properly take when his parent is ill except to come to her aid. In this present situation, the appropriate action has upset a full but carefully planned schedule. NIRS/PC respectfully request that the Board exercise the fullest consideration in this situation, so that Dr. Makhijani can perform his commitments to numerous parties and organizations that are relying upon his assistance. NIRS/PC request that the Board allow an extension of the discovery deadline to enable Dr. Makhijani's deposition to take place in the week of November 15, 2004, on conditions that allow other parties to make any motions they wish to present at times that fit within the present plans for hearing of both the environmental and the technical/safety contentions.

Respectfully submitted,



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October 5, 2004

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on October 5, 2004, the foregoing Motion to for Modification of Deposition Schedule on behalf of Petitioners Nuclear Information and Resource Service and Public Citizen was served by electronic mail and by first class mail upon the following:

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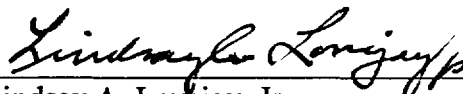
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