

RAS 8613

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 10/12/04

SERVED 10/12/04

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Paul B. Abramson
Dr. Charles N. Kelber

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

October 12, 2004

MEMORANDUM AND ORDER

(Ruling on Motion to Modify Deposition Schedule)

Intervenors Nuclear Information and Resource Service/Public Citizen (NIRS/PC) have pending with the Licensing Board an October 5, 2004 motion requesting that the deadline for completing the deposition of its essential expert witness Dr. Arjun Makhijani be extended from October 18, 2004, the current date for the close of discovery on all technical and environmental contentions against all parties other than the NRC staff, to the week of November 15, 2004. In this motion, NIRS/PC cites two principal reasons for the extension: (1) Dr. Makhijani's mother's serious illness in late September that caused him to fly to India to be with her over the period when he anticipated spending approximately forty hours preparing for his deposition (during which time he was without internet access); and (2) his busy schedule on other matters upon his return to the United States, which purportedly will preclude him from preparing for his deposition until sometime after November 7. See Motion for Modification of Deposition Schedule on Behalf of Petitioners [NIRS/PC] (Oct. 5, 2004) at 2-6 [hereinafter Modification Motion].

For its part, in an October 7 response the NRC staff declares that it does not oppose a delay in Dr. Makhijani's deposition beyond October 15, but asserts it should be completed no later than November 12 to permit other parties to comply with remaining deadline schedules relative to the February 2005 evidentiary hearing. See NRC Staff Motion to Compel NIRS/PC Responses to Interrogatories and Establish Deadlines for Supplementary Responses and Response to Motion for Modification of Deposition Schedule on Behalf of NIRS/PC (Oct. 7, 2004) at 3-4. On the other hand, in its October 7 response, applicant Louisiana Energy Services, L.P., (LES) opposes any extension of the existing discovery schedule and proposes that the deposition take place in Chicago, Illinois, on October 15 following a presentation Dr. Makhijani is scheduled to make there that morning. See Answer of [LES] to Motion for Modification of Deposition Schedule on Behalf of Petitioners [NIRS/PC] (Oct. 7, 2004) at 5-10 & n.13.

Under the general schedule set by the Licensing Board on August 16, 2004, following the September 18 close of discovery (other than against the staff) on all admitted technical and environmental contentions, litigation regarding the intervenors' admitted contentions is to proceed in two phases: an adjudicatory hearing in February 2005 regarding the intervenors' environmental contentions and a second proceeding in the fall of 2005 regarding their technical contentions. In the pending motion, NIRS/PC notes that Dr. Makhijani will testify relative to four contentions -- NIRS/PC EC-3/TC-1, NIRS/PC EC-4, NIRS/PC EC-5/TC-2 - AGNM TC-i, and NIRS/PC EC-6/TC3 -- and that only one of these -- NIRS/PC EC-4 -- is scheduled to go to hearing in February 2005. See Modification Motion at 7. Recognizing fully the circumstances that compelled Dr. Makhijani to travel to India during the time he otherwise was scheduled to prepare for his deposition, we nonetheless do not consider it appropriate that this proceeding essentially "go to the back of the line" relative to his apparently crowded schedule. Based on

the representations in the parties' pleadings on this matter, it appears there is time in his schedule between now and October 25, 2004, during which he can prepare for, and the parties can conduct, a deposition regarding his testimony on environmental contention NIRS/PC EC-4 that will be one of the subjects of the February 2005 proceeding. Thereafter, the parties can arrange for another deposition for Dr. Makhijani to deal with the remaining three technical contentions, which should be completed on or before November 17, 2004.

Accordingly, the October 5, 2004 NIRS/PC schedule modification motion is granted in that the deposition of Dr. Arjun Makhijani regarding contention NIRS/PC EC-4 shall be conducted on or before Monday, October 25, 2004, and his deposition regarding contentions NIRS/PC EC-3/TC-1, NIRS/PC EC-5/TC-2 - AGNM TC-i, and NIRS/PC EC-6/TC3 shall be conducted on or before Wednesday, November 17, 2004.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 12, 2004

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors New Mexico Environment Department, the Attorney General of New Mexico, and NIRS/PC; and (3) the staff.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON MOTION TO MODIFY DEPOSITION SCHEDULE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-3103-ML
LB MEMORANDUM AND ORDER
(RULING ON MOTION TO MODIFY
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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 12th day of October 2004