

RAS 8752

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

DOCKETED 11/03/04

SERVED 11/03/04

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

November 3, 2004

MEMORANDUM AND ORDER
(Additional Discovery Ruling)

Pending with the Licensing Board is the October 21, 2004 motion of intervenors Nuclear Information and Resource Service/Public Citizen (NIRS/PC) to compel applicant Louisiana Energy Services, L.P., (LES) to provide documents requested by NIRS/PC in its September 23, 2004 interrogatories answers and document production request. See Motion to Compel Discovery Concerning Need for the National Enrichment Facility [(NEF)] on Behalf of Petitioners [NIRS/PC] (Oct. 21, 2004) [hereinafter NIRS/PC Motion to Compel]. In an October 28 response, LES withdraws some of its previous objections to the NIRS/PC document requests and maintains its opposition to others. See Response of [LES] to Motion to Compel Discovery Concerning Need for the [NEF] (Oct. 28, 2004) [hereinafter LES Response]. We deal with each of the disputed matters below.

1. Document Request 17. See NIRS/PC Motion at 2. Although stating that it is not waiving its prior objections, in addressing this request regarding the current annual output levels of several Urenco European facilities, LES provides a response that identifies several documents it has previously provided to NIRS/PC or that are publically available. See LES

Response at 2-4. Under the circumstances, we deny this portion of the NIRS/PC motion as moot.

2. Document Request 22. Citing an LES environmental report statement that NEF enriched uranium will be used “primarily” in the United States, this request seeks documentation regarding forecast yearly sales outside the United States in an effort to obtain information NIRS/PC asserts could show LES doubts about its ability to enter the existing domestic market. See NIRS/PC Motion at 2-3. LES responds that this request is irrelevant and outside the scope of the admitted contentions in that, regardless of the possibility of future sales outside the United States, the need for an additional domestic supplier would continue to exist to support national policy objectives for a secure and diverse supply. See LES Response at 4-5.

In seeking detailed information regarding the “planned sales” outside the United States as “forecasted” for each year, this production request seeks information that concerns the “business plan” or that goes to establishing the “profitability” of the plant, not to the “need” that we have found to be a legitimate subject of inquiry under contention NIRS/PC EC-7/TC-4 and which LES has proposed to demonstrate with binding contracts for a substantial portion of the plant’s output. To whatever extent a NIRS/PC request for LES documentation relative to the issue of how LES defines the term “primarily” as used in the ER might be relevant, this particular document request as framed is not, and we thus deny the NIRS/PC motion to compel on this matter.

3. Document Request 24. LES in its response indicates it has withdrawn its objection to this document request regarding documentation for an LES claim that Urenco centrifuge technology uses fifty percent less energy than current gas diffusion technology and provides a

response that identifies several documents as responsive to the NIRS/PC request. See LES Response at 5-6. As a consequence, we deny this portion of the NIRS/PC motion as moot.

4. Document Requests 25 and 26. With these two document requests, NIRS/PC seeks documentation showing the cost of energy used at the existing Paducah, Ohio enrichment facility compared to the NEF and the NEF cost of production relative to the proposed United States Enrichment Corporation (USEC) centrifuge Portsmouth, Ohio facility, including the cost of waste disposal at each facility. See NIRS/PC Motion at 3-4. In its response, LES declares that while these requests are nothing more than an additional attempt to introduce the already excluded issue of NEF profitability into the proceeding, it also notes that the August 2004 USEC application to construct and operate a new enrichment facility indicates that the gaseous diffusion process such as that used at Paducah requires significantly more electricity than a centrifuge plant.

Once again, NIRS/PC seeks information regarding the “business plan” or that goes to establishing the “profitability” of the plant, not to the “need” that we have found to be a

legitimate subject of inquiry under contention NIRS/PC EC-7/TC-4. Accordingly, we deny the motion to compel relative to this request as well.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 3, 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 NRC 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 (ADDITIONAL DISCOVERY RULING) 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 (ADDITIONAL
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of November 2004