

**RAS 8936**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 12/06/04**  
**SERVED 12/06/04**

ATOMIC SAFETY AND LICENSING BOARD

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

December 6, 2004

MEMORANDUM AND ORDER

(Ruling on Motion to Allow Discovery  
Concerning Conversion and Disposal of Depleted Uranium)

Pending before the Licensing Board is a November 12, 2004 request by intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) to conduct discovery of witnesses of applicant Louisiana Energy Services, L.P., (LES) regarding the LES strategy for the conversion and disposal of depleted uranium. In their motion, which they treated as proprietary in serving it upon the Board and the other parties, NIRS/PC maintain this additional discovery is necessary given the LES post-discovery production of certain documents relating to the assessment of the "plausibility" of a disposal strategy that relies upon a conversion process that shows LES has an active program to reach agreement with a conversion supplier. According to NIRS/PC, this information would be relevant to contentions NIRS/PC EC-3/TC-1 and NIRS/PC EC-4 and possibly contentions NIRS/PC EC-5/TC-2 - AGNM TC-i and NIRS/PC EC-6/TC-3. Additionally, NIRS/PC request that the Board award NIRS/PC the costs of October 8, 2004 depositions they conducted without full document production.

In its November 22 response, which it submitted for the public record,<sup>1</sup> LES asserts that its disclosures were timely under the circumstances and do not have implications for contention NIRS/PC EC-4, but at best relate to contention NIRS/PC EC-3/TC-1. As a consequence, any additional discovery on this matter should be conducted in mid-April 2005 following the conduct of the scheduled February 2005 evidentiary hearings on environmental contentions, including NIRS/PC EC-4, and the parties' filing of proposed findings relative to those contentions. LES further declares it is unwilling to pay the costs of the October 8 depositions, citing its own expenditure of time and money deposing what it asserts were ill-prepared NIRS/PC witnesses.

Relative to the NIRS/PC motion, the Board finds no basis for further discovery at this point relative to the matter of the LES conversion and disposal strategy. Putting aside questions about its current "ripeness" in light of the apparent ongoing nature of the negotiations that are involved, the information NIRS/PC seek will be relevant, if at all, only to contention NIRS/PC EC-3/TC-1, which is not scheduled to go to hearing until fall 2005. As such, it can be gathered in the mid-April 2005 time frame following the evidentiary hearing and party findings regarding environmental contentions. This is a matter that we and the parties can revisit at the conclusion of the February evidentiary hearing or sometime shortly thereafter, at which time we can consider the appropriate scope of discovery in connection with the NIRS/PC motion. We thus defer further action on the motion until that time.

Finally, regarding the issue of deposition costs, assuming the Board has the authority to impose such costs, see Hydro Resources, Inc. (2929 Coors Road Suite 101, Albuquerque, NM 87120), CLI-00-08, 51 NRC 227, 244 (2000) (authority to assess costs as sanction is open question), in light of our ruling on the appropriate timing of any further

---

<sup>1</sup> In a November 22, 2004 e-mail to the Board and the parties, the NRC staff indicated that it was taking no position on the NIRS/PC motion and so was not filing any response.

discovery on this matter, we find no basis for imposing costs relative to the October 8 depositions. Accordingly, we deny this aspect of the NIRS/PC request.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>2</sup>

*/RA/*

---

G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 6, 2004

---

<sup>2</sup> 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.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
LOUISIANA ENERGY SERVICES, L.P. ) Docket No. 70-3103-ML  
 )  
 )  
(National Enrichment Facility) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON MOTION TO ALLOW DISCOVERY CONCERNING CONVERSION AND DISPOSAL OF DEPLETED URANIUM) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
G. Paul Bollwerk, III, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Lisa B. Clark, Esq.  
Angela B. Coggins, Esq.  
John T. Hull, Esq.  
Darani M. Reddick, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Tannis L. Fox, Esq.  
Deputy General Counsel  
Office of General Counsel  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87502-6110

Docket No. 70-3103-ML  
LB MEMORANDUM AND ORDER (RULING ON  
MOTION TO ALLOW DISCOVERY CONCERNING  
CONVERSION AND DISPOSAL OF DEPLETED  
URANIUM)

James R. Curtiss, Esq.  
David A. Repka, Esq.  
Martin J. O'Neill, Esq.  
Winston & Strawn LLP  
1400 L Street  
Washington, DC 20005-3502

David M. Pato, Esq.  
Stephen R. Farris, Esq.  
Christopher D. Coppin, Esq.  
Assistant Attorneys General  
Glenn R. Smith, Esq.  
Deputy Attorney General  
Office of the New Mexico Attorney General  
P.O. Box Drawer 1508  
Santa Fe, NM 87504-1508

Lindsay A. Lovejoy, Jr.  
618 Paseo de Peralta, Unit B  
Santa Fe, NM 87501

Lisa A. Campagna, Esq.  
Assistant General Counsel  
Westinghouse Electric Company LLC  
P.O. Box 355  
Pittsburgh, PA 15230-0355

John W. Lawrence, Esq.  
Louisiana Energy Services, L.P.  
2600 Virginia Ave., NW, Suite 610  
Washington, DC 20037

[Original signed by Evangeline S. Ngbea]

---

Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 6<sup>th</sup> day of December 2004