

RAS 10458

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

DOCKETED 09/14/05

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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

September 14, 2005

MEMORANDUM AND ORDER
(Regarding Administrative Matters
Relative to October 2005 Evidentiary Hearing)

Upon consideration of the September 12, 2005 joint report submitted on behalf of applicant Louisiana Energy Services, L.P. (LES), intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC), and the NRC staff, see Joint Report of Parties Regarding - (i) Proposed Schedule for Evidentiary Presentations on Remaining NIRS/PC Contentions; And (ii) Identification and Submission of Exhibits (Sept. 12, 2005), the Licensing Board provides the following clarification and guidance relative to those matters discussed in the joint report as well as additional administrative matters related to the upcoming evidentiary hearing in this proceeding:

A. Prefiled Testimony, Exhibits, and Related Matters

1. Order and Manner of Presentation of Evidence. The Board will follow the manner and order of presentation of testimony and exhibits suggested by the parties in their joint report. Specifically, the parties' evidentiary presentations should utilize a topical approach, with issues to be addressed in the following order: (1) plausibility and estimated cost of deconversion of

depleted uranium (DU); (2) estimated cost of transportation of DU; (3) plausibility and estimated cost of disposal of DU; and (4) the contingency factor applied by LES to its overall DU dispositioning cost estimate. As to the order of presentation relative to each topic area, as the party with the burden of proof under 10 C.F.R. § 2.325, LES will present its testimony and evidence first, followed by the staff, followed by NIRS/PC.

The parties have also indicated they anticipate the evidentiary hearing sessions can be completed in three or four days. Because of the uncertainties inherent in attempting to predict the time required for litigation, relative to the availability of witnesses, the parties should be prepared both to accelerate the hearing schedule as well as to accommodate any extensions. In addition, the parties should plan for the possibility that a particular daily hearing schedule might be extended into the early evening if such an extension would facilitate completing a particular topic area. The Board notes that its expectation is that, to the extent practicable, it will begin the evidentiary session hearing regarding an issue topic at the conclusion of all presentations regarding the previous topic. Party counsel and witnesses should bear this in mind when scheduling their availability and making any travel arrangements to the Washington, DC area.

As a related matter, the parties have previously indicated that approximately 75 percent of the hearing sessions will contain proprietary information and thus would be closed to the public. The Board therefore requests that the parties file a joint report on or before Tuesday, September 20, 2005, informing the Board as to which topical areas, or portions thereof, that are delineated above can be held in open session. In this regard, the Board's preference would be to begin with an open session on the first day of the evidentiary hearing, i.e., October 24, 2005, with any opening statements made by counsel for the parties in accordance with section C.6. below, which should not contain references to proprietary or other protected information.

Thereafter, assuming it is not practicable to conduct a single open session that would cover all four topic areas, the Board's preference would be to have an open session at the beginning of a particular topic area to cover any information that can be provided publically, with a closed session to follow. To the degree the Board's ability to conduct an open hearing session conflicts with the schedule/order set forth above for the presentation of testimony and evidence, the Board may reevaluate that schedule/order to the extent practicable.

2. Service, Form, and Quantity of Documentary Materials. All prefiled testimony and exhibits should be served on the Board, the Office of the Secretary, and other parties to the proceeding in accordance with the Board's April 15, 2004 initial prehearing order, see Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 15, 2004) at 4-6 (unpublished), and, as applicable, the Board's May 21, 2004 protective order relative to proprietary materials, see Licensing Board Memorandum and Order (Protective Order Governing Disclosure of Protected Materials) (May 21, 2004) at 7 (unpublished). This includes providing each member of the Board with hard copies of all prefiled exhibits.¹ Upon consideration of the schedule proposed in the parties' September 12 joint report for filing prefiled exhibits, the Board directs the parties file exhibits as follows: (1) exhibits proffered in connection with the parties' prefiled direct testimony must be received by the Board on or before noon Eastern Time, Friday, September 23, 2005; and (2) exhibits proffered in connection with prefiled rebuttal testimony

¹ The parties are reminded to produce all evidentiary material they intent to rely on at the evidentiary hearing, including textbook references, discovery materials, and portions of the LES application. See Licensing Board Memorandum and Order (Additional Administrative Matters) (Feb. 1, 2005) at 1-2 (unpublished); Licensing Board Memorandum and Order (Regarding NIRS/PC Prefiled Testimony and Exhibits) (Jan. 18, 2005) (unpublished).

must be received by the Board within three business days of the parties' filing of prefiled rebuttal testimony.²

In this regard, however, to cut down on the volume of paper produced in this proceeding, the Board strongly encourages that for all prefiled testimony and exhibits the parties provide hard copy versions to the Board in a double-sided format. It is the Board's understanding that the Office of the Secretary will accept a double-sided format for hard copy submissions as well.

3. Filing of Prefiled Exhibits

a. Duplicate Exhibits. Only one copy of each item of documentary material should be offered as evidence in this proceeding. For example, if LES offers (and has admitted) a certain portion of a staff report regarding the LES facility, the staff should not then offer into evidence the same portion of the report. Instead, the staff would rely on the document already proffered by LES.

To this end, the parties should consult with one another and determine whether any of the prefiled exhibits a party intends to offer into evidence would otherwise be duplicated by another party in the proceeding. In each instance this is found to be the case, the parties should determine, based on the schedule under which issues will be presented, which party will first offer the exhibit into evidence. The other party intending to use that material as an exhibit should revise its evidentiary submissions to reference the initial submitting party's exhibit

² Nothing in this order alters the schedule for producing documents in connection with the hearing on uncontested issues in this proceeding as set forth in the Board's August 12, 2005 and September 7, 2005 orders relative to those documents. See Licensing Board Memorandum and Order (Response to Joint Motion for Clarification Regarding Mandatory Hearing-Related Materials) (Sept. 7, 2005) (unpublished); Licensing Board Memorandum and Order (Memorializing Results of Prehearing Conference) (Aug. 12, 2005) at 2-3 (unpublished).

number.³ This directive applies inclusively to (1) exhibits prefiled with the Board in relation to the parties' prefiled direct testimony; and (2) any exhibits the parties intend to submit in connection with prefiled rebuttal testimony. Additionally, the parties should follow this practice relative to any exhibits utilized in the first instance during the evidentiary hearing itself (e.g., during cross-examination).

b. Exhibit Order and Numbering. Each party should number their prefiled exhibits consistent with the numbering scheme it utilized in the context of the February 2005 evidentiary hearing. In this regard, exhibit numbers should continue sequentially from each party's last numbered exhibit identified in the context of the February hearing, i.e. parties should not provide exhibits with numbers that duplicate those of exhibits already identified and admitted/rejected in this proceeding. To the extent, however, that any party wishes to rely on any exhibit previously identified and admitted/rejected in the February hearing and the parties agree that there will be no objection to the admissibility of that exhibit in the upcoming evidentiary hearing, that exhibit should retain the same number it was given when previously identified. On the other hand, should any party wish to rely on any exhibit previously identified in the February hearing, but the parties cannot agree that there will be no objection to its admissibility, such exhibit should be numbered alpha-numerically with the number corresponding to the number of the previously-identified exhibit, followed by the letter "A" or other such letter as appropriate (e.g., February 2005 exhibit "Staff 100" becomes "Staff 100A").

³ When duplicate pre-filed party exhibits have been identified, the party that is recognized as the one that initially will offer the document must, if it subsequently decides not to offer the item, provide timely notice of its intent to all other parties who identified the item as a duplicate document or thereafter evidenced an intent to rely upon it in prefiled direct or rebuttal testimony.

In addition, to the extent possible the parties should order and number their prefiled exhibits in the sequence the parties plan to identify, and present testimony referring to, each exhibit.

c. Exhibits in Electronic Format. Certain parties to the February 2005 evidentiary hearing filed several prefiled exhibits in electronic format on compact disc and we can foresee parties to this proceeding will elect to submit exhibits in this format in the context of the upcoming evidentiary hearing. If a party reaches agreement with another party that this an acceptable format for exchanging prefiled exhibits, they can forgo providing additional hard copies to that party.⁴ Moreover, if the parties create electronic versions of their exhibits for service on other parties, those should be provided in that format to the Board as well. Nonetheless, in accord with the Board's April 15, 2004 initial prehearing order, regardless of length, hard copies of each prefiled documentary exhibit must be sent to the Board members and the Office of the Secretary.

4. Exhibit List. At the time they submit the exhibits associated with their prefiled direct testimony, each party should provide Board law clerk Bethany Engel (e-mail address: ble@nrc.gov) with an electronic copy of their prefiled exhibit list for this portion of the proceeding. In addition, concurrent with the filing of prefiled rebuttal testimony and any revised prefiled direct testimony, each party should provide the Board's law clerk with an updated exhibit list. In that regard, to the extent possible the parties should utilize the exhibit list template included in Attachment A to this order, and complete the party exhibit number,

⁴ In this regard, while universal resource locator (URL) citations to evidentiary materials clearly are useful references to show where certain materials can be found (and, with agreement among the relevant parties, might suffice among the parties in lieu of a separate paper or electronic copy), these URL citations cannot be used as a substitute for the hard copy versions of the prefiled exhibit that must be provided to the Board or the Office of the Secretary or submitted to the Court Reporter/Clerk during the hearing when the item is first formally identified for the evidentiary record.

witness/panel, and description fields, including an ADAMS accession number to the extent it is available for the document (or portion of the document) that will be proffered.

B. Document Handling at the Evidentiary Hearing

At the evidentiary hearing, the parties should present their documentary materials in the form and quantities specified below:

1. Testimony. A party should submit two single-sided hard copy versions of both the prefiled direct and rebuttal testimony for a particular witness or witness panel to the Court Reporter/Clerk at the hearing at the time the witness/panel is presented.⁵ Although strongly discouraged, if a party sees a compelling need to make any revisions to the prefiled testimony that were not submitted to the Board and the other parties prior to the hearing, in addition to the copies provided to counsel for the other parties, that party should provide three copies to the Board and two to the Court Reporter/Clerk.

2. Exhibits. In accord with 10 C.F.R. § 2.711(h), a party should provide the Court Reporter/Clerk with an original and two hard copies of each document it wishes to utilize as evidentiary material at the hearing.⁶ However, as to an exhibit first submitted at the hearing (e.g., a cross-examination item), in addition to the copies provided to counsel for the other parties, a party should submit an original and two copies to the Court Reporter/Clerk and three copies to the Board. Further, when first seeking to have an exhibit identified, the sponsoring party should be prepared to give a brief description of that individual exhibit for the record.

⁵ Board members will rely on the copies of the prefiled testimony they have already received and need not be given an additional copy at the time the testimony is presented at the hearing.

⁶ As with prefiled testimony, Board members will rely on the copies of exhibits already provided to the Board.

Additionally, as it did in the context of the February 2005 evidentiary hearing, the Board will provide each party with a stamp and a black ink pad to use to pre-mark the original and two copies of each exhibit it will submit during the evidentiary hearing. That stamp includes several items the party will need to have completed before providing the exhibit to the Court Reporter/Clerk, specifically case name (Louisiana Energy Services, L.P.); docket number (70-3103-ML); party name (LES and the staff can circle appropriate designations; NIRS/PC should fill in the blank after the designation "Intervenor"); exhibit number (per the sponsoring party's numbering scheme); and the witness/panel sponsoring the exhibit or with whom the exhibit will be used. The stamp should be placed in the upper right-hand corner if possible; if not, any location on the first page is acceptable or, if there is no area on the first page where the stamp would fit without obscuring information, by folding over the bottom right hand corner of the first page sufficiently so the stamp can be placed on the back side of the page. The parties should bring the stamp and pad for use with additional exhibits they may seek to introduce during the October evidentiary sessions and should return them to the Court Reporter/Clerk at the conclusion of those sessions.

C. Miscellaneous Matters

1. Copies of Transcripts. Parties other than the staff (which is covered under the agency's existing court reporting contract) should contact the Court Reporter (Neil R. Gross & Co., 202-234-4433) well before the first day of the evidentiary hearing to arrange for the number of copies of the daily transcript it requires.

2. Audio/Visual Needs. Any party making an evidentiary presentation that has a special audio/visual display equipment requirement (such as an overhead/computer projector and/or screen) should advise the Board's law clerk by Monday, October 17, 2005. To the degree there are similar needs, the Board may attempt to coordinate party use of such equipment.

3. Counsel/Representative Attendance During Evidentiary Hearing. Each party should advise the Board's law clerk by Monday, October 17, 2005, as to who and how many of its counsel/authorized representatives plan to attend the October 24-28, 2005 evidentiary hearing sessions. To this end, should the Board determine that any portion of the evidentiary hearing will be held in open sessions, see supra section A.1, the parties should provide the Board's law clerk with two separate lists: (1) those counsel/authorized representatives that plan to attend the public hearing sessions, if the parties advise that any portions of the hearing can be held in public sessions; and (2) those counsel/authorized representatives that plan to attend the closed hearing sessions. Should the hearing be held wholly in closed sessions, the parties need only provide one such list to the Board's law clerk. Individuals not named on the closed hearing session attendance list may not be admitted to any closed portion of the hearing.

4. Witness Unavailability. Given the potential that the presentation of testimony and evidence will not proceed as set forth in section A.1 above, the Board directs that each party provide a filing on or before Tuesday, September 20, 2005, outlining and providing reasons for the potential unavailability of any witness on a particular hearing day during the October 24-28 period.

5. Submission of Cross-Examination Plans. The Board requests that when counsel submit their cross-examination plans, which should be broken out by the topical areas on which evidence will be presented, as to each witness/panel they provide an estimate of the total amount of time counsel anticipates he/she will need for cross-examination of that witness/panel.

6. Opening Statements By Counsel. To the extent they wish to do so, at the outset of the hearing the Board will afford one counsel for each of the parties making an evidentiary presentation a total of 15 minutes to present a summary of that party's anticipated evidentiary presentations/proof relative to each of the topical areas and associated contentions at issue

during the October 2005 hearing sessions. The order of party opening statements will be the same as that specified in section A.1 above for party evidentiary presentations.

7. Hearing Status Telephone Number. If any events beyond the Board's control (e.g., inclement weather) require that a particular hearing session be delayed or postponed, the Board will provide notice to the parties and the public via recorded message that will be available by calling (800) 368-5642, extension 5036, or (301) 415-5036.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

September 14, 2005

⁷ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors NIRS/PC; and (3) the staff.

ATTACHMENT A

Updated September 15, 2005

**Louisiana Energy Services, L.P., Docket No. 70-3103-ML
October 2005 Evidentiary Hearing on Contested Issues
Hearing Exhibits**

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REGARDING ADMINISTRATIVE MATTERS RELATIVE TO OCTOBER 2005 EVIDENTIARY HEARING) 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 (REGARDING
ADMINISTRATIVE MATTERS RELATIVE TO
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 14th day of September 2005