

RAS 10497

September 15, 2005

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**DOCKETED
USNRC**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD September 15, 2005 (3:10pm)

In the Matter of

Docket No. 70-3103

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

Louisiana Energy Services, L.P.

ASLBP No. 04-826-01-ML

**MOTION ON BEHALF OF INTERVENORS
NUCLEAR INFORMATION AND RESOURCE SERVICE
AND PUBLIC CITIZEN
TO COMPEL DISCLOSURE BY APPLICANT LOUISIANA ENERGY SERVICES, L.P.
CONCERNING COSTS OF DECONVERSION
UNDER URENCO'S CONTRACT WITH COGEMA**

Preliminary statement

Intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") move herein to compel the Applicant, Louisiana Energy Services, L.P. ("LES") to disclose the pricing terms of a contract under which Urenco's Almelo enrichment plant obtains deconversion services from Cogema.

Factual Background

LES has applied for a license to construct and operate the National Enrichment Facility ("NEF"), a uranium enrichment facility. In support of its application, LES must show a "plausible strategy" for dispositioning the depleted uranium produced in enrichment. (Hearing Notice, par. IV.A.1.b, Jan. 30, 2004). Further, LES must present a cost estimate for the activities comprised within its plausible strategy, as the basis for calculating financial assurance. (10 CFR 70.25(e)). NIRS/PC have joined issue with LES and assert that the cost estimates that LES has presented are insufficiently supported and inaccurate. (NIRS/PC Contentions EC-5/TC-2, EC-

Template = SECY-041

SECY-02

6/TC-3). The Board, for its part, has stated that NIRS/PC's contentions entitle NIRS/PC to present all relevant evidence concerning the inadequacy of LES's estimates of the cost of dispositioning depleted uranium:

"In other words, to the extent NIRS/PC takes issue with cost estimate information provided by LES since January 7, 2005, having already admitted a contention amendment on this subject, the Board will evaluate any relevant information placed before it on that matter, including material relating to post-January 7, 2005 LES submissions." (Memorandum and Order, June 30, 2005, at 16).

The Board has reemphasized this broad rule of relevancy. (Memorandum and Order, August 4, 2005, at 20 n. 13).

LES has stated in its application that Urenco (a constituent partner of LES) obtains deconversion services in Europe. (Environmental Report at 4.13-19). Urenco has a deconversion contract with Cogema, under which Cogema accepts depleted uranium from the Almelo enrichment plant from Urenco and deconverts it, producing depleted U_3O_8 . (Chater et al. deposition, Oct. 4, 2004, at 11). The base price has been disclosed. (LES-PRO-00018) (Chater et al. deposition, Oct. 4, 2004, at 55). The base price in the Cogema-Urenco agreement is significantly higher than the \$2.67 per kgU cost estimate that LES has put before Commission Staff. The price is subject to escalation from 2003 in accordance with French industrial indices. (id. 27). Ninety percent of the price is escalated. (id. 60). Cogema's invoice to Urenco would show the escalated amount. (id. 33).

In January 2005 LES revised the amount and bases for its cost estimates. (LES submission to NRC Staff, Jan. 7, 2005, April 8, 2005). LES's deconversion cost estimate is now based upon a response by Cogema itself to a request for bids issued by Urenco for a proposed European deconversion plant. LES has, contemporaneously, entered into Memorandum of Understanding with AREVA, the corporate parent of Cogema, concerning the

possible construction of a deconversion plant near the location of the proposed NEF.

(Memorandum of Understanding, January 21, 2005). AREVA has reportedly reviewed the cost estimates presented by LES and found them appropriate. (LES submission to NRC Staff, April 8, 2005). LES's implication is that somehow AREVA, or its subsidiary Cogema, will probably make deconversion services available to LES at approximately the cost reflected in LES's cost estimate.

In depositions addressed to the technical issues to be heard in October 2005, witnesses for Cogema have testified about Cogema's cost estimates. (Deposition of Compton, et al., Sept. 2, 2005). At the deposition, the Cogema witness was asked to state the current price under the contract between Urenco and Cogema. (id. 189). He did not know the answer. (id.). Counsel for NIRS/PC then requested attorneys for LES to identify the indices used to escalate Cogema's price. (id.). LES's attorney stated: "We'll check and if we haven't follow-up on that request, then it's a time that we'll do that." (*sic*; id. 190). However, in a letter dated September 9, 2005, counsel for LES refused to produce the requested data, stating that NIRS/PC had not "challenged" the Urenco/Cogema contract, and asserted that LES had produced all of the relevant information on the commercial cost estimates upon which LES relies. (Letter, Curtiss to Lovejoy, Sept. 9, 2005).

Argument

By this motion NIRS/PC simply request that LES be required to produce documents or information sufficient to identify the French industrial indices by which the price in the Urenco-Cogema contract is escalated, in form sufficient to calculate the most recent (presumably, end of year 2004) price under that deconversion contract. The requested information is directly relevant to the issues in the forthcoming hearing. NIRS/PC wish to show the Board that, in the real

world, deconversion costs more than LES's cost estimate. By this motion NIRS/PC wish to find out *how much* Urenco's payments to Cogema exceed the cost estimate that LES proposes as the limit of its financial assurance.

Under the applicable discovery rules, NIRS/PC is entitled to pursue "discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party . . ." (10 CFR 2.705). NIRS/PC have clearly put in issue the cost estimates presented by LES. (Memorandum and Order, June 30, 2005, at 16). Under applicable rules, LES is required to produce, without additional request, documents relevant to the disputed issues. (10 CFR 2.704(a)(2)). The information requested by NIRS/PC is clearly contained in contractual documents that are relevant to the current proceeding and should be produced.

It is no answer to say that NIRS/PC have not "challenged" the Urenco-Cogema agreement. That agreement is a negotiated contract for deconversion services between Urenco, a member of the LES partnership, and Cogema itself. LES is now putting forward Cogema as the prospective supplier of a deconversion plant for the NEF. But to support its deconversion cost estimate LES has given the Board only theoretical analyses that calculate a cost well below the base price in the Urenco-Cogema contract. To assist the Board in determining the actual future cost of deconversion for the NEF, it would be highly relevant to know the full escalated price that Urenco pays Cogema.

Conclusion

For the reasons set forth herein, the Board should enter its order directing LES to furnish documents or information that identifies the escalation indices applicable to the Urenco-Cogema deconversion contract, sufficiently to show the price in effect in the year 2004. NIRS/PC request

that the materials be furnished by October 2, 2005, to permit inclusion in rebuttal testimony.

Because the existing schedule contemplates completion of discovery by September 6, 2005, the Board's order should also direct that the completion date is extended sufficiently to complete the required disclosure.

Respectfully submitted,



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September 15, 2005

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on September 15, 2005, the foregoing Motion on behalf of Intervenor Nuclear Information and Resource Service and Public Citizen to Compel Disclosure by Applicant Louisiana Energy Services, L.P. concerning Costs of Deconversion under Urenco's Contract with Cogema was served by electronic mail and by first class mail upon the following:

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151

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