

RAS 10538

Corrected Page 12 to the LES  
"Motion In Limine and Renewed Motion to Dismiss  
on Behalf of Louisiana Energy Services, L.P. Concerning the  
Direct Testimony of Arjun Makhijani and Contentions  
NIRS/PC EC-3/TC-1 and EC-5/TC-2"  
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to its earlier motion for a discussion of the applicable legal standards, and incorporates by reference the pertinent factual assertions and legal arguments set forth therein.

LES maintains that dismissal of the foregoing NIRS/PC issues is still warranted. With respect to Contention NIRS/PC EC-3/TC-1, even assuming, *arguendo*, that Dr. Makhijani's testimony regarding the "track records" of third party commercial entities is admissible, NIRS/PC have failed to furnish any testimony or affirmative evidence demonstrating that COGEMA is not "technologically and scientifically competent" or capable of "meeting its obligations." See Makhijani Deconversion Testimony at 7-8. Indeed, as to the technical plausibility of deploying COGEMA deconversion technology in the U.S. (*i.e.*, the sole issue raised in Contention NIRS/PC EC-3/TC-1), Dr. Makhijani testifies only as follows:

Based on Cogema's experience operating a similar deconversion plant in France (*i.e.*, the Pierrelatte plant) to that which would be required to handle the material from the proposed LES facility, reliance on Cogema for the deconversion option would be considered technologically plausible *once a siting process for the deconversion facility is specified by the NRC and provided that the final deconversion form chosen is U<sub>3</sub>O<sub>8</sub> and not UO<sub>2</sub>.*

Makhijani Deconversion Testimony at 10-11 (emphasis added).

This scant testimony hardly suffices to establish, or even to suggest, the existence of a genuine factual dispute, particularly in view of Dr. Makhijani's recent deposition testimony that he "would accept Cogema for deconversion as a plausible strategy."<sup>20</sup> Dr. Makhijani provides no basis -- regulatory or otherwise -- for his assertion that the technical plausibility of the COGEMA deconversion option somehow hinges on the existence of an NRC-approved "siting process." Indeed, there is no regulatory requirement that LES now obtain NRC or state approval of a siting process for any future deconversion facility. Further, implicit in the statement "provided that the final deconversion form chosen is U<sub>3</sub>O<sub>8</sub> and not UO<sub>2</sub>" is the *inadmissible* argument that DU from the

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<sup>20</sup> See LES Dismissal Motion, at 7 (quoting Arjun Makhijani July 21, 2005 Deposition, Tr. at 49-50).