

October 11, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
)	
(National Enrichment Facility))	ASLBP No. 04-826-01-ML

NRC STAFF REBUTTAL TESTIMONY REGARDING CONTINGENCY FACTOR

Q.1. Please state your name, occupation and by whom you are employed.

A.1. (TJ) Timothy C. Johnson. I am the U.S. Nuclear Regulatory Commission (NRC) Project Manager overseeing the licensing of the proposed Louisiana Energy Services, L.P. (LES) uranium enrichment facility near Eunice, New Mexico. I have been the PM for the project since its inception in January 2002, when LES initiated discussion with NRC for the project.

A.1. (CD) Craig Dean. I am employed by ICF Consulting. I am providing this testimony under a technical assistance contract with the NRC.

Q.2. Have you previously submitted testimony in this proceeding?

A.2. (TJ, CD) Yes, we provided pre-filed direct testimony in this proceeding on September 15, 2005, on behalf of the NRC Staff. In that testimony, we described our individual responsibilities related to the NRC Staff's review of the application by Louisiana Energy Services, L.P. (LES) to construct and operate a uranium enrichment facility in Lea County, New Mexico, to known as the National Enrichment Facility (NEF). Statements of our professional qualifications were attached to that testimony.

Q.3. What was the purpose of your previous testimony?

A.3. (TJ, CD) The purpose of our joint pre-filed direct testimony was to provide the NRC Staff's views concerning the admitted contentions regarding the contingency factor used by LES in estimating the cost of decommissioning.

Q.4. What is the purpose of this testimony?

A.4. (TJ, CD) To provide our views on NIRS/PC's pre-filed testimony of Dr. Arjun Makhijani regarding the contingency factor used by LES for the decommissioning cost estimate.

Q.5. Have you read Dr. Makhijani's pre-filed direct testimony regarding the contingency factor? If so, what is your opinion of his testimony?

Q.5. (TJ, CD) Yes we have. We disagree with Dr. Makhijani's understanding of the role of the contingency factor and that of the periodic cost estimate adjustments required for decommissioning cost estimates. As Dr. Makhijani correctly notes, NUREG-1757 specifies that the 25 percent contingency factor provides reasonable assurance for *unforeseen* circumstances that could increase decommissioning costs. Factors which affect cost and are foreseeable are expected to be accounted for in the cost estimate. For this reason, LES has accounted for the size of the deconversion facility that will be necessary to handle the output of the proposed enrichment facility. As explained in the Staff's testimony regarding deconversion, LES provided documentation of how the scale of the deconversion facility was accounted for in the decommissioning cost estimate. Thus, the scaling factors cited by Dr. Makhijani, which are already known, are matters which should be addressed in relation to the current cost estimate provided by LES, not as a reason for applying a contingency factor.

In addition, we disagree with Dr. Makhijani's statement that the required, periodic cost estimate adjustments are only designed to address "minor modifications" in the cost.

Indeed, it would undermine the very purpose of this requirement to restrict adjustments

only to minor cost adjustments if more significant adjustments are necessary. As NUREG-1757 clearly states with regard to these periodic adjustments in the cost estimates for decommissioning funding, “[a]djustments should be made to account for inflation, for other changes in the prices of goods and services (e.g., disposal cost increases), *for changes in facility conditions or operations, and for changes in expected decommissioning procedures.*” LES Exhibit 82 at p. A-29 (emphasis added) Changes in facility conditions, operations, or expected decommissioning procedures could cause significant changes in decommissioning costs that would need to be accounted for in the periodic cost updates. For example, a licensee that had submitted a decommissioning cost estimate based on unrestricted release of the site but who later switched to restricted release conditions would need to make extensive revisions to the cost estimate.

We generally agree with Dr. Makhijani’s testimony that factors such as future changes in the euro to dollar exchange rate and possible delays in licensing the deconversion site or disposal plant are adequately covered by the 25 percent contingency factor included in the LES cost estimate should they have any impact decommissioning costs.

Q.6. Does this conclude your testimony?

A.6. (TJ, CD) Yes.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF REBUTTAL TESTIMONY REGARDING CONTINGENCY FACTOR" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 11th day of October, 2005.

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

Party Exh. #	Witness/ Panel	Description
Staff 36	Deconversion	NUREG-1790, "Final Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico" (June 2005), Chapters 2 and 4 ("Alternatives" and "Environmental Impacts")
Staff 37	Deconversion	NUREG-1827, "Safety Evaluation Report for the National Enrichment Facility in Lea County, New Mexico" (June 2005), Chapter 10 ("Decommissioning")
LES 82	Deconversion	NUREG-1757, "Consolidated NMSS Decommissioning Guidance" (Sept. 2003), Volume 3 ("Financial Assurance, Recordkeeping, and Timeliness"), pp. iii, 4-1 to 4-11, A-25 to A-30
Staff 38	Deconversion	NUREG/CR-6477, "Revised Analyses of Decommissioning Reference Non-Fuel-Cycle Facilities" (Jul. 1998)
LES 83	Deconversion	National Enrichment Facility Safety Analysis Report, Chapter 10 ("Decommissioning") (most current version)
Staff 39	Deconversion	In-Office Review Summary: LES Decommissioning Fund (April 19, 2005)
LES 97	Deconversion	E-mail from Rod Krich (LES) to James Curtiss (Winston & Strawn LLP) (Nov. 21, 2004), with Attachment, "CaF ₂ Disposal Option, prepared by George Harper, Framatome-ANP (Nov. 19, 2004)
Staff 40	Deconversion	Letter from Robert C. Pierson, NRC, to Robert A. Williams, Westinghouse Electric Corp., "Subject: Renewal," (Nov. 3, 1995), enclosing "Safety Evaluation Report for the Renewal of Special Nuclear Material License SNM-1107 for the Westinghouse Electric Corporation Columbia Fuel Fabrication Facility, Columbia, South Carolina" (Sept. 1995) (excerpt).

Party Exh. #	Witness/ Panel	Description
Staff 41	Deconversion	Letter from Robert C. Pierson, NRC, to L.J. Maas, Siemens Power Corporation, "Subject: Renewal," (Nov. 15, 1996), enclosing "Safety Evaluation Report for the Renewal of Special Nuclear Material License SNM-1227 for the Siemens Power Corporation Richland Engineering and Manufacturing Facility, Richland, Washington" (Nov. 1996) (excerpt).
Staff 42	Deconversion	Letter from Michael F. Weber, NRC, to Ralph Reda, "Subject: Safety Evaluation Report: Application dated September 19, 1997, Changes to Table 6.0 for the DCP HF Effluent Recovery and Storage Facility," (Sept. 26, 1997), enclosing "Safety Evaluation Report for the Renewal of Special Nuclear Material License SNM-1097 for the General Electric Company, Nuclear Energy Production, Wilmington, North Carolina" (June 1997) (excerpt).
LES 77	Deconversion	Letter from V. Autry, Director of Division of Waste Management, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, to L. Garner, Regulatory Affairs Coordinator, Starmet CMI (Apr. 1, 1999)
LES 78	Deconversion	Letter from V. Autry, Director of Division of Waste Management, Bureau of Land and Waste Management, South Carolina Department of Health and Environmental Control, to L. Garner, Regulatory Affairs Coordinator, Starmet CMI (June 17, 1999)
LES 76	Deconversion	Slide, AREVA-COGEMA, "Defluorination of Depleted UF ₆ – The W defluorination facility" (Sept. 26, 2004)
LES 98	Transportation	E-mail from Rod Fisk (Transportation Logistics International, Inc.) to Rod Krich (LES) (Dec. 2, 2004) [PROPRIETARY]
LES 99	Transportation	E-mail from Rod Fisk (Transportation Logistics International, Inc.) to Rod Krich (LES) (Mar. 23, 2005)
LES 109	Disposal	Section 4.13 of the NEF Environmental Report, "Waste Management Impacts" (most current revision)(nonproprietary)
LES 103	Disposal	Letter from Al Rafati (Envirocare of Utah, LLC) to E. James Ferland (LES) (February 3, 2005)

Party Exh. #	Witness/ Panel	Description
LES 104	Disposal	Memorandum from Matthew Blevins (NRC) to Scott Flanders (NRC), "Subject: Telephone Summary Regarding Depleted Uranium Disposal", with attached Telephone Summary (Apr. 6, 2005)
LES 105	Disposal	Memorandum of Agreement Between Louisiana Energy Services, L.P. and Waste Control Specialists, LLC" (Jan. 14, 2005) [PROPRIETARY]
Staff 43	Disposal	STP-04-003, "NRC Process to Identify Decommissioning Sites with Inadequate Funding for Remediation" (Jan. 2004)
LES 91	Rebuttal Deconversion	Urenco Business Study (Aug. 26, 2004) [PROPRIETARY]
NIRS 56	Rebuttal Deconversion	Hatem Elayat, Julie Zoler, Lisa Szytel. "Cost Analysis Report for the Long-Term Management of Depleted Uranium Hexafluoride," UCRL-AC-127650, Livermore, CA: Lawrence Livermore National Laboratory, May 1997.
LES 16	Rebuttal Disposal	"Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio Site" (DOE/EIS-0360), Vol. 1
LES 17	Rebuttal Disposal	"Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah, Kentucky Site" (DOE-EIS-0359), Vol. 1
NIRS 109	Rebuttal Disposal	US EPA, "Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site for Disposal at the Waste Isolation Pilot Plant," <i>available at</i> http://www.epa.gov/fedrgstr/EPA-WASTE/2001/November/Day-27/f29545.htm
LES 101	Rebuttal Disposal	10 CFR 71, "Licensing Requirements for Land Disposal of Radioactive Waste" (2005)
NIRS 169	Rebuttal Disposal	NUREG-0945, Vol. 1, "Draft Environmental Impact Assessment on 10 CFR 61, 'Licensing Requirements for Land Disposal of Radioactive Waste,'" App. G-Q (Sept. 1981)

Party Exh. #	Witness/ Panel	Description
Staff 44	Rebuttal Disposal	Letter from Dane Finerfrock, State of Utah, Department of Environmental Quality, to Paul Lohaus, NRC, "Subject: Possession Limits of Calibration Source" (Sept. 19, 2005)
Staff 45	Rebuttal Disposal	R.D. Baird, et al., "Evaluation of the Potential Public Health Impacts Associated with Radioactive Waste Disposal at a Site Near Clive, Utah (June 1990)