

October 18, 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 RESPONSE TO MOTION ON BEHALF OF INTERVENORS  
NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN ("NIRS/PC")  
FOR EXTENSION OF TIME TO COMPLY WITH ORDER DATED OCTOBER 17, 2005

INTRODUCTION

On October 13, 2005, the Licensing Board ("Board") issued a Memorandum and Order (Regarding Motions to Exclude Certain NIRS/PC Exhibits). (October 13 Order). The October 13 Order directing the parties to revise their prefiled direct and rebuttal testimony so that "each reference provided in the prefiled direct or rebuttal testimony of any of the witnesses/panels providing testimony . . . to a prefiled exhibit with a length greater than five (5) pages shall be modified to refer . . . the specific pages or other distinct portion of that exhibit that directly support the specific testimony." October 13 Order at 3. In addition, the Board ordered intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") to "revise the prefiled direct and rebuttal testimony of [witness] Dr. [Arjun] Makhijani to reference those specific portions of the Makhijani and Smith November 2004 and July 2005 reports on which they intend to rely." *Id.* at 4, fn. 4. The Board directed the parties to comply with the October 13 Order by noon on October 18, 2005. *Id.* at 4. On October 17, 2005, the Board issued an additional Memorandum and Order (Regarding October 13, 2005 Memorandum and Order) clarifying the October 13 Order. ("October 17 Order"). The October 17 Order

emphasized “that incorporation by reference of a document or documents as purported testimony or as evidentiary exhibits, including the incorporation by reference of documents cited in another document is not an acceptable practice.” October 17 Order at 1-2. The Board reminded the parties to cite such documents “by specific reference in the prefiled testimony to the relevant exhibit, and to the particular pages within that exhibit . . . that support the applicable portions of the proffered prefiled testimony.” *Id.* at 2. The October 17 Order did not change the date on which the parties were to comply with the October 13 Order. On October 18, NIRS/PC filed a Motion for Extension of Time to Comply with Order Dated October 17, 2005. (“Motion”) For the reasons discussed below, the NRC Staff (“Staff”) hereby opposes the Motion.

#### DISCUSSION

The October 17 Order does not place any new burdens on the parties. Instead, it clarifies the requirements set out in the October 13 Order. Nevertheless, NIRS/PC claims that complying with the October 17 Order will require a “drastic revision of the testimony heretofore filed” not required to comply with the October 13 Order. Motion at 5. Therefore, NIRS/PC argues, an extension of time to file revised testimony for Dr. Makhijani until October 24, 2005 (the first day of the forthcoming hearing) is warranted. *Id.* Under NIRS/PC’s proposed schedule, Dr. Makhijani could then be cross-examined later on October 24, 2005 or on the following day. *Id.*

Such a schedule is highly prejudicial to both the Staff and the applicant, Louisiana Energy Services, LP (“LES”). NIRS/PC objects to preparing a “drastic revision” of Dr. Makhijani’s prefiled testimony in a time-period described as “less than 24 hours” after the October 17 Order was issued. *Id.* However, as the October 17 Order does not change or augment the requirements of the October 13 Order, but merely offers clarification of the October 13 Order, NIRS/PC has had nearly five (5) days, the same amount of time given to

LES and the Staff, to comply with the Board's requirements. In contrast, if NIRS/PC's Motion is granted, the Staff, LES, and the Board would be expected to review a "drastic revision" of the NIRS/PC prefiled and prepare for cross-examination either the same day or the next day. This proposed schedule is untenable and the Motion should not be granted.

CONCLUSION

For the reasons discussed above, the NRC Staff submits that NIRS/PC's Motion should not be granted.

Respectfully Submitted,

***/RA/***

Margaret J. Bupp  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 18<sup>th</sup> day of October, 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION ON BEHALF OF INTERVENORS NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN ("NIRS/PC") FOR EXTENSION OF TIME TO COMPLY WITH ORDER DATED OCTOBER 17, 2005" 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 18<sup>th</sup> day of October, 2005.

Administrative Judge \* \*\*

G. Paul Bollwerk, III

Atomic Safety and Licensing Board Panel

U.S. Nuclear Regulatory Commission

Mail Stop: T-3F23

Washington, D.C. 20555

E-Mail: [gpb@nrc.gov](mailto:gpb@nrc.gov)

Administrative Judge \* \*\*

Charles Kelber

Atomic Safety and Licensing Board Panel

U.S. Nuclear Regulatory Commission

Mail Stop: T-3F23

Washington, D.C. 20555

E-Mail: [cnkelber@aol.com](mailto:cnkelber@aol.com)

Administrative Judge \* \*\*

Paul Abramson

Atomic Safety and Licensing Board Panel

U.S. Nuclear Regulatory Commission

Mail Stop: T-3F23

Washington, D.C. 20555

E-Mail: [pba@nrc.gov](mailto:pba@nrc.gov)

Office of Commission Appellate Adjudication\*

U.S. Nuclear Regulatory Commission

Mail Stop: O-16C1

Washington, D.C. 20555

Mr. Rod Krich, Vice President

Licensing, Safety and Nuclear Engineering

Louisiana Energy Services

2600 Virginia Avenue NW.

Suite 610

Washington, D.C. 20037

Office of the Secretary \* \*\*

ATTN: Rulemakings and Adjudication Staff

U.S. Nuclear Regulatory Commission

Mail Stop: O-16C1

Washington, D.C. 20555

E-mail: [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov)

James. R. Curtiss, Esq. \*\*  
Dave Repka, Esq. \*\*  
Martin O'Neill, Esq. \*\*  
Amy C. Roma, Esq. \*\*  
Tyson R. Smith, Esq. \*\*  
Winston & Strawn  
1700 K Street, N.W.  
Washington, D.C. 20006  
E-mail: [jcurtiss@winston.com](mailto:jcurtiss@winston.com)  
[drepka@winston.com](mailto:drepka@winston.com)  
[moneill@winston.com](mailto:moneill@winston.com)  
[aroma@winston.com](mailto:aroma@winston.com)  
[trsmith@winston.com](mailto:trsmith@winston.com)

Lindsay A. Lovejoy, Jr. \*\*  
Nuclear Information and Resource Service  
1424 16<sup>th</sup> Street, NW.  
Suite 404  
Washington, D.C. 20036  
E-mail: [lindsay@lindsaylovejoy.com](mailto:lindsay@lindsaylovejoy.com)  
[llovejoy@cybermesa.com](mailto:llovejoy@cybermesa.com)

**/RA/**

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Margaret J. Bupp  
Counsel for NRC Staff