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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**BY ELECTRONIC MAIL**

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

Dear Administrative Judges:

At the evidentiary hearing in October, LES questioned whether NIRS/PC had provided certain documentation, in the form of output files, for two "studies" allegedly performed by Mr. Rice and Dr. Makhijani. In particular, LES was unable to locate the output files from models run by Mr. Rice using the PHREEQC code or models run by Dr. Makhijani (and Mr. Brice Smith) using RESRAD. *See generally*, Tr. at 2030-47. When LES raised its concerns, both counsel for NIRS/PC and their expert witness confirmed that the output files

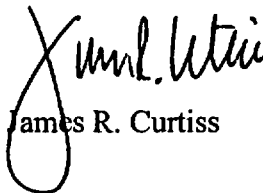
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existed (*see e.g.*, Tr. at 3044-45) and insisted that those files were previously provided to LES and the Staff. The Board also indicated that LES should keep it informed of its efforts to located the missing output files (Tr. at 3049).

At the time of the hearing, LES had no basis upon which to dispute the statements of counsel for NIRS/PC that the files had been provided previously, although undersigned counsel's recollection was that no such files had been provided. After conducting an exhaustive and comprehensive review of its records, it appears that LES never received such files. Indeed, given that the likely size of the output files is on the order of hundreds of pages and that the files were purportedly attached to a "proprietary" submittal, the absence of the files in the LES records strongly suggests that the files were never disclosed—contrary to both the mandatory disclosure requirements and NIRS/PC assertions in the record.

Under 10 C.F.R. § 2.703, NIRS/PC is required to disclose copies of "all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues alleged with particularity in the pleadings" and supplement those disclosures at appropriate intervals. Here, the output files, which include documentation of the input parameters and dose by pathway, are most certainly relevant to the disputed issues in the proceeding. For example, the models run by Mr. Rice using the PHREEQC code were referenced in the November 2004 Report by Makhijani and Smith (NIRS/PC Exh. 190 at 22), at the evidentiary hearing (*see e.g.*, Tr. at 3026-32), and in a recent motion (*see* "Motion for Partial for Summary Disposition Submitted on Behalf of [NIRS/PC]" (November 18, 2005) at 5). Dr. Makhijani's RESRAD analyses were referenced in the November 2004 Report (*see* NIRS/PC Exh. at 23-24) and at the evidentiary hearing (*see e.g.*, Tr. at 3041-49). Despite their obvious relevance, NIRS/PC failed to provide LES with these output files thereby hindering LES's ability to effectively prepare for its presentations and contributing to avoidable delay and confusion during the hearing.

Yours sincerely,



James R. Curtiss

cc: Lisa Clark, Esq.  
Lindsay Lovejoy, Jr., Esq.  
Office of the Secretary