

RAS 10823

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 12/13/05

SERVED 12/13/05

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Paul B. Abramson
Dr. Charles N. Kelber

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

December 13, 2005

MEMORANDUM AND ORDER
(Ruling on Motion to Supplement Record)

By motion dated November 29, 2005, applicant Louisiana Energy Services, L.P., (LES) requests that the Licensing Board permit it to supplement the record developed relative to that portion of the October 24-27, 2005 evidentiary hearings regarding (1) the potential costs of washing and recertifying empty depleted uranium hexafluoride cylinders for reuse or, alternatively, disposing of those cylinders; and (2) the cost of capital associated with the construction of a private deconversion facility in the LES estimate for constructing such a facility. Specifically, LES seeks to have admitted into evidence Exhibit LES 118,¹ which is a November 23, 2005 letter memorializing LES commitments to (1) an additional \$0.60 per kilogram uranium (kgU) for the cost of cylinder washing; and (2) an additional \$0.40 per kgU to account for the cost of capital. Although the NRC staff does not object to this supplementation request, see NRC Staff Motion for Extension of Time for Filing Proposed Findings of Fact and Conclusions of Law (Nov. 29, 2005) at 2 n.2, in their December 6, 2005 response, intervenors

¹ Although LES in its motion seeks to have this letter admitted as LES Exhibit 117, that exhibit number already has been utilized. See Tr. at 2382, 2388-A.

Nuclear Information and Resource Service and Public Citizen (NIRS/PC) assert that the LES motion should not be granted because they have had no opportunity to contest the sufficiency or validity of the information LES seeks to have admitted, see Response on Behalf of Intervenor [NIRS/PC] to Motion by [LES] to Supplement the Record (Dec. 6, 2005) at 1-2.

While on its face the supplementary LES information would appear to provide an additional conservatism relative to the two items it addresses to the degree LES commits to increase its fund to cover the cost of these items, we agree with NIRS/PC that this LES evidentiary record supplementation attempt, in the procedural posture chosen by LES,² does not afford NIRS/PC an adequate opportunity to contest the validity/sufficiency of that evidentiary information. Although the record relative to these and other matters that were the subject of the October 2005 evidentiary hearing has not yet been closed,³ as LES seeks to introduce material upon which it can rely to support a merits resolution of a contested issue in its favor, fairness dictates that NIRS/PC have an opportunity to challenge that material, via its own testamentary and documentary information and cross-examination of LES and staff witnesses who are

² LES seemingly could have sought to have this material adopted as part of the record and utilized as a basis for resolving the merits of one or more of the contested issues before the Board by seeking to include it as the basis for a partial summary disposition request, which NIRS/PC would have had an opportunity to contest. Given the LES election not to proceed by dispositive motion, at this point, as outlined in the text below, we will afford LES an opportunity to gain the admission of, and NIRS/PC to contest, the LES evidentiary proffer in the context of an additional, albeit highly focused, evidentiary hearing session.

³ As the Board noted at the close of the October evidentiary hearing sessions, see Tr. at 3162-63, 3178-79, the record was left open principally to afford the parties and the Board an opportunity to obtain transcript corrections and rectify any problems with the status of the numerous exhibits provided by the parties. Although this was done shortly after the filing of the LES motion to supplement, see Licensing Board Memorandum and Order (Adopting Transcript Corrections and Addressing Other Administrative Matters) (November 29, 2005) (unpublished), given the pendency of the LES supplementation motion and the ruling we make today that likely will result in additional evidentiary material being introduced, at this juncture we will not close the record associated with the October 2005 hearing.

proffered to support or assess the evidentiary material that is the subject of the LES supplementation motion.⁴

To that end, the Board establishes the following schedule relative to the supplementary material LES seeks to introduce into the evidentiary record:

Prefiled Direct Testimony and Supporting Evidentiary Materials	Friday, December 30, 2005
In Limine Motions Regarding Prefiled Direct Testimony and Supporting Evidentiary Materials	Wednesday, January 4, 2006
Responses to In Limine Motions Regarding Prefiled Direct Testimony and Supporting Evidentiary Materials	Monday, January 9, 2006
Board Ruling on In Limine Motions	Wednesday, January 11, 2006
Prefiled Rebuttal Testimony and Supporting Evidentiary Materials	Friday, January 13, 2006
In Limine Motions Regarding Prefiled Direct Testimony and Supporting Evidentiary Materials	Tuesday, January 17, 2006

⁴ In its December 6, 2005 response to the supplementation motion, NIRS/PC states that it was unable to complete cross-examination of the staff witnesses relative to cylinder washing and disposal. Given that the burden of proof rests with LES relative to this safety issue, the Board is less concerned with the position of the staff on this issue (which apparently supports the LES position regarding the \$0.60 per KgU cost), and more interested in hearing whether the \$0.60 per kgU cost cited by LES is sufficient to account for cylinder management costs. In this regard, both LES and NIRS/PC state in their respective proposed findings of fact and conclusions of law that NIRS/PC witness Dr. Arjun Makhijani cited in his prefiled testimony on this issue a \$0.59 per kgU cost figure for cylinder management taken from the Urenco business study. See [LES] Proposed Findings of Fact and Conclusions of Law Concerning Contentions NIRS/PC EC-3/TC-1, EC-5/TC-2, EC-6/TC-3, and EC-4 (As Remanded) (Nov. 30, 2005) ¶ 4.49; Proposed Findings of Fact and Conclusions of Law Submitted on Behalf of Intervenor [NIRS/PC] Based Upon Evidence Taken on October 24-27, 2005 (Nov. 30, 2005) ¶ 61. Accordingly, the Board is interested in testimony and evidence from NIRS/PC that might challenge or contradict the approximately \$0.59 per kgU cost figure derived from the Urenco business study and, therefore, the \$0.60 per kgU LES cost estimate. If NIRS/PC is unable to provide any such evidence in its prefiled testimony and supporting evidentiary materials, the Board may find further evidentiary presentations and cross-examination unnecessary as to cost estimates for cylinder management, and direct the parties to address only the LES cost estimate for cost of capital during the January 2006 evidentiary hearing session.

Responses to In Limine Motions Regarding
Prefiled Direct Testimony and Supporting
Evidentiary Materials

Thursday, January 19, 2006

Evidentiary Hearing Session in Licensing
Board Panel's Rockville Hearing Room

Week of January 23, 2006

Relative to the evidentiary hearing session, the parties should confer and, on or before Friday, December 16, 2005, provide the Board with a joint report regarding (1) a proposed schedule during the week of January 23, 2006, for conducting the evidentiary session, which the Board would contemplate would be two days or less and would conclude no later than Thursday, January 26, 2006; and (2) an assessment of whether this evidentiary hearing could be conducted in open session.

Relative to the parties' reply findings of fact and conclusions of law, they still should be filed on Friday, December 23, 2005, as scheduled, with the understanding that the parties will be afforded an opportunity following the completion of the January 2006 evidentiary hearing session to supplement their proposed findings and conclusions relative to the information garnered during that session.

Finally, the scheduled January 2006 session with LES and the staff regarding the mandatory hearing is postponed to the conclusion of the evidentiary hearing session the week of January 23, 2006.⁵

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁶

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 13, 2005

⁵ As was noted at the conclusion of the October 2005 evidentiary hearing sessions, see Tr. at 3176-78, the Board will provide the staff and LES with information regarding the content of such discussions as the date for the session approaches.

⁶ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors NIRS/PC; and (3) the staff.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON MOTION TO SUPPLEMENT RECORD) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lisa B. Clark, Esq.
John T. Hull, Esq.
Margaret J. Bupp, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Tannis L. Fox, Esq.
Deputy General Counsel
Office of General Counsel
Ron Curry, Secretary
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110

Docket No. 70-3103-ML
LB MEMORANDUM AND ORDER (RULING ON MOTION
TO SUPPLEMENT RECORD)

James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
Amy C. Roma, Esq.
Tyson R. Smith, Esq.
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

David M. Pato, Esq.
Stephen R. Farris, Esq.
Christopher D. Coppin, Esq.
Assistant Attorneys General
Glenn R. Smith, Esq.
Deputy Attorney General
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508

Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501

Lisa A. Campagna, Esq.
Assistant General Counsel
Westinghouse Electric Company LLC
P.O. Box 355
Pittsburgh, PA 15230-0355

John W. Lawrence, Esq.
Louisiana Energy Services, L.P.
2600 Virginia Ave., NW, Suite 610
Washington, DC 20037

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of December 2005