

RAS 11264

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

DOCKETED 02/27/06

SERVED 02/27/06

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

February 27, 2006

MEMORANDUM AND ORDER

(Additional Administrative Matters for Mandatory Hearing)

Upon consideration of (1) the February 24, 2006 prefiled testimony of applicant Louisiana Energy Services, L.P., and the NRC staff relative to the upcoming mandatory hearing; (2) the prefiled exhibits submitted by the staff in connection with its prefiled testimony; and (3) the February 24, 2006 joint report from LES and the staff regarding the mandatory hearing sessions, the Board provides the following additional information and directives relative to the March 6-8, 2006 mandatory hearing sessions in Hobbs, New Mexico:

1. Need for Closed Hearing Sessions. The Board indicated in its February 8, 2006 memorandum and order regarding administrative matters for the mandatory hearing that it would defer making any determinations regarding the need for closed/nonpublic sessions at that hearing pending receipt of the LES and staff prefiled testimony for that hearing, and also requested that the staff provide the Board with a joint report indicating the need for such closed sessions, if any. See Licensing Board Memorandum and Order (Administrative Matters Relative to Mandatory Hearing) (Feb. 8, 2006) at 2-3 (unpublished) [hereinafter Administrative Order]. Based on the February 24 joint report by LES and the staff, and the Board's review of

the prefiled testimony and exhibits for the mandatory hearing, we find that the entirety of the March 6-8 evidentiary hearing can be conducted in open sessions.

2. Regarding Staff Exhibits and Testimony. In its February 8 memorandum and order, the Board also directed that the parties submit prefiled exhibits associated with their respective prefiled testimony, and indicated that duplicate exhibits should not be proffered by the parties, and that, to the extent any party wished to rely on any exhibit previously identified and admitted as part of the contested portion of this proceeding, that exhibit should retain the same number it was given when previously identified. The Board intended that, to the extent any of documents/materials the parties wish to rely on in the context of the mandatory hearing had previously been admitted in connection with any of the evidentiary hearing sessions in this proceeding, the parties rely on those previously-admitted exhibits. In that connection, the Board has identified three prefiled exhibits submitted by the staff on February 24 that appear to be duplicates of exhibits previously identified and admitted in the February 2005 or October 2005 evidentiary hearings in this proceeding. Specifically, Staff Exh. 60-M, Staff Exh. 71-M, and Staff Exh. 72-M, appear to duplicate Staff Exh. 47, Nuclear Information and Resource Service/Public Citizen (NIRS/PC) Exh. 65, and LES Exh. 31, respectively.

Accordingly, the staff and LES are directed to rely on those previously-admitted exhibits in support of their respective mandatory hearing testimony, and, to the extent necessary, to submit revised versions of their prefiled testimony on or before Wednesday, March 1, 2006 incorporating citations/references to the proper exhibit numbers. In addition, with its revised testimony the staff should provide an updated exhibit list with the above-identified duplicate exhibits removed; the remainder of the prefiled staff exhibits submitted on February 24 should not, however, be renumbered to reflect the deletion of Staff Exhs. 60-M, 71-M, and 72-M.

3. Presentation of Testimony and Evidence. Based on the manner in which the staff and LES have organized their respective presentations in the prefiled testimony relative to the mandatory hearing, the Board believes it will be most efficient to empanel concurrently the staff and LES witnesses/panels testifying as to a particular subject matter area. For example, the staff and LES each have prefiled testimony concerning electrical cabinet fires, and the Board would envision empaneling the staff and LES witnesses as to this subject area at the same time. In responding orally to Board questions, however, witnesses for the staff should respond first, followed by witnesses for LES, followed by any reply by the staff, unless the Board directs otherwise. While this approach modifies that identified by the Board in section A.1 of its February 8 administrative order, see Administrative Order at 1, it is consistent with the concept that the focus of the mandatory hearing and related Board findings is on the staff's safety and environmental review with regard to the LES application.

In addition, given the manner in which the testimony is presented, and the specific questions/areas of concern identified by the Board during the October 2005 evidentiary hearing, see Tr. at 3167-76; Administrative Order, attach. A at 2-3, and in its January 30, 2006 memorandum and order, see Licensing Board Memorandum and Order (Memorializing Board Questions/Areas of Concern for Mandatory Hearing) (Jan. 30, 2006) [hereinafter January 30 Order], the Board proposes that staff and LES testimony and presentations be in the following order:

- (a) Application of Standard Review Plan and Regulatory Guides, including Safety Matters 1, 2, and 3, as set forth in the Board's January 30 memorandum and order, see January 30 Order at 2-3 (i.e., staff panel associated with "NRC Staff Pre-Filed Mandatory Hearing Testimony Concerning the Use of NUREG-1520 in the Review of the License Application for the Proposed National Enrichment Facility");
- (b) Financial Assurance, including Safety Matter 4, as set forth in the Board's January 30 memorandum and order, see January 30 Order at 3 (i.e., staff panel associated with "NRC Staff Pre-Filed Mandatory Hearing Testimony Regarding

Financial Assurance,” and LES panel associated with “Applicant’s Prefiled Testimony in Mandatory Hearing Concerning Financial Assurance (Safety Matter No. 4)”);

- (c) Criticality, including Safety Matters 5 through 8, as set forth in the Board’s January 30 memorandum and order, see January 30 Order at 3, and October Hearing Questions 6.b, 6.e, 6.f, and 6.g, see Administrative Order, attach. A at 2 (i.e., staff panel associated with “NRC Staff Pre-Filed Mandatory Hearing Testimony Concerning Criticality,” and LES panel associated with “Applicant’s Prefiled Testimony in Mandatory Hearing Concerning Matters Related to Nuclear Criticality (Safety Matter Nos. 5-8 and October Hearing Questions 6.b, 6.e, 6.f, and 6.g)”);
- (d) Interaction of Hydrogen Fluoride and Plant Components, including October Hearing Questions 6.c and 6.d, see Administrative Order, attach A at 2 (i.e., LES panel associated with “Applicant’s Prefiled Testimony in Mandatory Hearing Concerning the Compatibility of Uranium Hexafluoride and Hydrogen Fluoride with Centrifuge Plant Materials (October Hearing Questions 6.c and 6.d)”);
- (e) Electrical Cabinet Fires, including October Hearing Question 6.h, see Administrative Order, attach. A at 2 (i.e., staff panel associated with “NRC Staff Pre-Filed Mandatory Hearing Testimony Concerning Electrical Cabinet Fires,” and LES panel associated with “Applicant’s Prefiled Testimony in Mandatory Hearing Concerning Fire Protection (October Hearing Question 6.h)”);
- (f) Purpose and Need for the Facility, including Environmental Matter 1, as set forth in the Board’s January 30 memorandum and order, see January 30 Order at 4 (i.e., staff panel associated with “NRC Staff Pre-Filed Mandatory Hearing Testimony Concerning the Purpose and Need Statement in the Final Environmental Impact Statement for the Proposed National Enrichment Facility”); and
- (g) Mitigation of Cylinder Rupture Accident, including Environmental Matter 2, as set forth in the Board’s January 30 memorandum and order, see January 30 Order at 4 (i.e., staff panel associated with “NRC Staff Pre-Filed Mandatory Hearing Testimony Concerning Mitigation of a Cylinder Rupture Accident,” and LES panel associated with “Applicant’s Prefiled Testimony in Mandatory Hearing Concerning Mitigating Actions for Postulated Cylinder Rupture Accident (Environmental Matter 2)”).

If the staff or LES envision the approach contemplated by the Board resulting in any problems or confusion for the Board or parties, or if the parties would like to propose an alternate approach for the Board’s consideration, they should do so in a joint report filed on or before noon Eastern Time on Thursday, March 2, 2006.

Finally, the order for party opening statements will remain as specified in section C.4 of the Board's February 8 administrative order, with the staff going first, followed by LES. See Administrative Order at 9.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 27, 2006

* 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; (3) the New Mexico Environment Department and the Attorney General of New Mexico; and (4) the staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (ADDITIONAL ADMINISTRATIVE MATTERS FOR MANDATORY HEARING) 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 (ADDITIONAL
ADMINISTRATIVE MATTERS FOR MANDATORY
HEARING)

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 27th day of February 2006