

**RAS 11295**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 03/03/06**

**SERVED 03/03/06**

ATOMIC SAFETY AND LICENSING BOARD

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

March 3, 2006

MEMORANDUM AND ORDER

(Ruling on Motion to Amend Contention NIRS/PC EC-4)

On November 11, 2005, intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) filed a motion with this Licensing Board seeking to amend and supplement NIRS/PC environmental contention (EC)-4, Impacts of Waste Storage and Disposal,<sup>1</sup> relating to the pending application of Louisiana Energy Services, L.P. (LES) for a 10 C.F.R. Part 70 license to possess and use source, byproduct, and special nuclear material to enrich natural uranium at a facility, the National Enrichment Facility (NEF), to be constructed near Eunice, New Mexico. LES and the NRC staff responded, respectively, on November 28 and November 29, 2005, each opposing the admission of the amendment to contention NIRS/PC EC-4.

---

<sup>1</sup> Though the Board modified the title of this contention by deleting the words "and Disposal" from that title in its November 22, 2004 ruling on late-filed contentions, see Licensing Board Memorandum and Order (Ruling on Late-Filed Contentions) (Nov. 22, 2004) at 15 (unpublished), based on the Commission remand of amended contention EC-4 to this Board in CLI-05-20, 62 NRC 523 (2005), and the fact that contention NIRS/PC EC-4 now contains challenges related to the disposal of depleted uranium, the original title of this contention has been reinstated.

For the reasons set forth below, the Board finds that NIRS/PC has not proffered any admissible amendment to contention EC-4, and the proposed amendment is therefore rejected.

## I. BACKGROUND

On December 12, 2003, LES filed with the NRC an application to obtain a license to possess and use source, byproduct, and special nuclear material to enrich natural uranium at the NEF. On April 6, 2004, public interest groups NIRS/PC filed a joint petition to intervene in the proceeding pursuant to 10 C.F.R. § 2.309(a), and the Board subsequently admitted NIRS/PC as parties to the proceeding having demonstrated standing and having proffered at least one admissible contention.<sup>2</sup> See LBP-04-14, 60 NRC 40, 53-54 (2004). Among those admissible contentions was NIRS/PC EC-4 that, as originally admitted, contested the National Environmental Policy Act (NEPA)-related sufficiency of the NEF Environmental Report (ER) in that it allegedly failed to discuss the environmental impacts of the construction and operation of a deconversion plant for the depleted uranium hexafluoride (DUF<sub>6</sub>) waste produced at the NEF. See id. at 78.

The Board discusses at length the procedural background of this proceeding and, in particular, the complex history of contention NIRS/PC EC-4 in a partial initial decision (PID) issued today regarding that portion of EC-4 remanded to this Board by the Commission on October 19, 2005, see CLI-05-20, 62 NRC 523. See LBP-06-08, 63 NRC \_\_, \_\_-\_\_ (slip op. at 2-13) (Mar. 3, 2006). Therefore, we will not provide a lengthy discussion here, but rather

---

<sup>2</sup> Two governmental entities -- the New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM) -- were also admitted as parties to the proceeding. See LBP-04-14, 60 NRC 40, 75 (2004). Subsequently, on August 12, 2005, the Board approved a settlement agreement between NMED, the AGNM, and LES, dismissed the admitted NMED and AGNM contentions, and accepted the withdrawal of NMED and the AGNM from this proceeding. See Licensing Board Memorandum and Order (Approving Settlement Agreement and Accepting Withdrawal of Parties) (Aug. 12, 2005) at 7-8 (unpublished).

summarize the background and focus on recent procedural developments with regard to that contention.

On October 20, 2004, NIRS/PC filed a motion to amend or supplement previously admitted contentions, including EC-4, in accordance with the general schedule set for this proceeding, based on the recent publication of the staff's draft environmental impact statement (DEIS) for the NEF. See id. at \_\_ (slip op. at 3-4); LBP-05-13, 61 NRC 385, 395-96 (2005). In a November 22, 2004 memorandum and order, the Board admitted a portion of the proffered amendment to EC-4 that alleged a failure of the DEIS to discuss the environmental impacts of the construction and operation of a depleted uranium deconversion plant,<sup>3</sup> but declined to admit a supplemental paragraph regarding DEIS treatment of the impacts of disposal of depleted uranium (DU) given that an issue related to that challenge was then pending before the Commission, i.e., whether depleted uranium constitutes low-level waste. See LBP-06-08, 63 NRC at \_\_ (slip op. at 4); LBP-05-13, 61 NRC at 398, 400. In rejecting this latter part of the proffered amendment, the Board did, however, note that the challenges appeared to rest on new information contained in the DEIS, such that the amendment was not precluded by its untimely filing based on the requirements set forth at 10 C.F.R. § 2.309(c), and that it rejected the contention without prejudice to a renewed motion at a later date should a Commission ruling on the low-level waste question indicate the Board should hear that issue.<sup>4</sup> See Licensing

---

<sup>3</sup> In the Board's first PID on environmental contentions, we decided NIRS/PC's contention EC-4 challenges to the discussion of the environmental impacts relative to the construction and operation of a deconversion facility in favor of LES and the staff. See LBP-05-13, 61 NRC at 434-36. The Commission declined NIRS/PC's petition for review of that portion of the Board's decision. See CLI-05-28, 62 NRC 721, 726-31 (2005). Therefore, contention NIRS/PC EC-4 deconversion issues are no longer before this Board.

<sup>4</sup> In addition, to further clarify the scope of EC-4 as then admitted, the Board modified the title of the contention to delete the words "and Disposal." See LBP-05-13, 61 NRC at 398.

Board Memorandum and Order (Ruling on Late-Filed Contentions) (Nov. 22, 2004) at 14-15 (unpublished) [hereinafter November Contention Ruling].

On January 18, 2005, the Commission issued a ruling concluding that depleted uranium from an enrichment facility is properly considered low-level waste, see CLI-05-5, 61 NRC 22, 34 (2005), but cautioned that “low-level radioactive waste can encompass both those wastes suitable for near-surface disposal and those that may require greater isolation,” id. at 32. The Commission also noted that contentions challenging LES’s waste disposal cost estimates were pending before the Board, and that additional environmental or safety analysis might be required to resolve the issues raised by those contentions. See id. at 35.

Following the Commission’s ruling on the low-level waste issue, on February 2, 2005, NIRS/PC filed with the Board a second motion for the admission of an amendment to contention EC-4, among others. See Motion on Behalf of Intervenors [NIRS/PC] For Admission of Late-Filed Contentions (Feb. 2, 2005). With regard to EC-4, NIRS/PC referred to the Board’s previous statement concerning the possibility of a renewed contention amendment motion based on the Commission’s ruling on the low-level waste issue, and averred that the Commission ruling in CLI-05-5 raised new information on which the proposed amendment to EC-4 appropriately was based. See id. at 1-5. Specifically, as relevant here, NIRS/PC once again disputed the analysis in the DEIS of the environmental impacts of near-surface disposal methods, as well as the DEIS analysis of estimated radiation doses from geologic disposal of depleted uranium.<sup>5</sup> See id. at 8, 9-12, 16-17.

---

<sup>5</sup> As the Commission noted in its remand of this contention to the Board, the February 2005 NIRS/PC motion also raised a host of new issues purportedly related to disposal of depleted uranium that had not previously been brought before the Board in the October 2004 motion. See CLI-05-20, 62 NRC at 530.

On May 3, 2005, the Board issued a ruling in which it again declined to admit the proposed amendment/supplement to contention NIRS/PC EC-4 regarding the environmental impacts of disposal of depleted uranium. See Licensing Board Memorandum and Order (Ruling on NIRS/PC Late-Filed Contentions and Providing Administrative Directives) (May 3, 2005) at 9-11 (unpublished). Specifically, the Board found that the proffered amendment failed to meet both the standard for nontimely amendment of contentions and the general contention admissibility requirements, set forth in 10 C.F.R. § 2.309(c) and § 2.309(f), respectively, in that NIRS/PC did not demonstrate good cause for the untimely amendment and, in any event, raised issues that were outside the scope of the admitted contention and that did not have sufficient factual or expert opinion support. See id. at 10-11.

Prior to the Board's May 3 ruling on NIRS/PC's second motion to amend contention NIRS/PC EC-4, the Board held an evidentiary hearing in Hobbs, New Mexico, during which it took testimony and evidence from LES, NIRS/PC, and the staff on several contentions, including the contention NIRS/PC EC-4 challenges to the ER and DEIS discussions of deconversion impacts. See LBP-05-13, 61 NRC at 401-02; Tr. at 873-1168. On June 8, 2005, the Board issued its first PID regarding those contentions, determining, as relevant here, that NIRS/PC's contention EC-4 challenges could not be sustained in that the staff's analysis in the DEIS adequately discussed the impacts of the construction and operation of a DUF<sub>6</sub> deconversion facility. See LBP-05-13, 61 NRC at 436. Because the Board had not admitted any further amendment to contention NIRS/PC EC-4, its PID relative to EC-4 represented its final determination with regard to that contention, see id. at 402 n.3, a determination that was appealable to the Commission, see id. at 446.

On June 23, 2005, NIRS/PC did in fact petition for Commission review of the Board's decision in LBP-05-13 with regard to each of the contentions litigated at the February 2005

hearing. See Petition on Behalf of [NIRS/PC] for Review of First Partial Initial Decision on Environmental Contentions (June 23, 2005). As is relevant here, NIRS/PC averred that “[t]he Board erred in refusing to allow NIRS/PC to show the environmental impacts of waste disposal” when it declined to admit the amendments to contention NIRS/PC EC-4 proffered by NIRS/PC in October 2004 and February 2005.<sup>6</sup> See id. at 14-15.

In an October 19, 2005 issuance, the Commission ruled that “the Board erred in not admitting for hearing an amended contention on the environmental impacts of depleted uranium disposal,” CLI-05-20, 62 NRC at 524, and remanded that aspect of the EC-4 “impacts” contention for the Board’s consideration in conjunction with its upcoming October 24-27 evidentiary hearing on various NIRS/PC contentions, or as the subject of dispositive motions by the parties. See id. at 524-25, 533 n.48. Specifically, the Commission directed the Board to consider the text and bases of the October 2004 amendment, and to address the February 2005 motion only to the extent it legitimately amplified or elaborated upon the arguments made in the October 2004 motion. See id. at 532, 533 n.49. The Commission also stated that if the Board found supplemental evidence necessary to complete the record developed during the October evidentiary hearing, it could request such evidence from the parties following the conclusion of that hearing. See id. at 524.

On October 24-27, 2005, the Board held the scheduled evidentiary hearing on the subject of the remaining admitted NIRS/PC contentions, see Tr. at 1738-3179,<sup>7</sup> and, with the

---

<sup>6</sup> In addition, NIRS/PC alleged two other Board errors with regard to its decision as to contention EC-4 deconversion issues, which, as is discussed above, see supra note 3, the Commission declined to review.

<sup>7</sup> Although the October 2005 evidentiary hearing was conducted as a nonpublic session because of concerns about the use of proprietary information, redacted versions of the transcripts for those proceedings subsequently were placed on the public record and are available via the agency’s Agencywide Documents Access and Management System (ADAMS)  
(continued...)

agreement of the parties, heard testimony and received evidence from each of the parties regarding the sufficiency of the staff's review in the final environmental impact statement (FEIS) of the impacts of disposal of depleted uranium from the NEF. See LBP-06-08, 63 NRC at \_\_-\_\_ (slip op. at 10-11); Tr. at 2607-3083.

Following the conclusion of the October 2005 evidentiary hearing, NIRS/PC filed the instant motion with the Board, once again seeking the admission of an amendment to contention NIRS/PC EC-4. See Motion on Behalf of Intervenors [NIRS/PC] For Admission of Supplemental and Additional Late-Filed Contentions Under 10 CFR 2.309(c) (Nov. 11, 2005) [hereinafter November Contention Motion]. Specifically, NIRS/PC seeks to add two paragraphs challenging as insufficient the FEIS analysis of the impacts of waste disposal, in that (1) the staff's discussion of near-surface disposal of large amounts of depleted uranium from an enrichment facility did not satisfy its obligation to take a "hard look" at the impacts of such disposal, and (2) the FEIS fails adequately to disclose the models and parameter values used in its analysis of the impacts of deep geologic disposal, and the results of that analysis cannot be reproduced by NIRS/PC based on the available information. See id. at 8-14. LES and the staff filed responses to this motion on, respectively, November 28 and 29, 2005, each objecting to the admission of any additional amendment to contention NIRS/PC EC-4 on both timeliness and general admissibility grounds. See NRC Staff Response to Motion on Behalf of Intervenors [NIRS/PC] For Admission of Supplemental and Additional Late-Filed Contentions Under 10 C.F.R. § 2.309(c) (Nov. 29, 2005) [hereinafter Staff Response]; [LES] Response to Intervenors'

---

<sup>7</sup>(...continued)  
electronic document search and retrieval system. See Licensing Board Memorandum (Public Availability of Previously Withheld Transcripts and Exhibits From October 2005 Evidentiary Hearing) (Jan. 9, 2006) (unpublished).

Supplemental and Additional Late-Filed Contentions (Nov. 28, 2005) [hereinafter LES Response].

Relatedly, while this NIRS/PC motion was pending before the Board, the staff and NIRS/PC filed motions for full or partial summary disposition of a portion of remanded contention NIRS/PC EC-4 regarding the impacts of deep geologic disposal. See NRC Staff Motion for Summary Disposition (Nov. 18, 2005); Motion for Partial Summary Disposition Submitted on Behalf of Intervenors [NIRS/PC] (Nov. 18, 2005). In a footnote to its decision in CLI-05-20, the Commission indicated that, though it deemed admissible NIRS/PC's challenge to the analysis in the DEIS of dose estimates for geologic disposal, i.e., paragraph C to the October 2004 NIRS/PC motion, it also viewed the issue as amenable to summary disposition. See CLI-05-20, 62 NRC at 533 n.48. Based on this Commission statement, and the Board's agreement that the geologic disposal challenge could likely be relegated to summary disposition, see, e.g., Tr. at 1817-18, 1823, NIRS/PC and the staff each saw fit to file summary disposition motions as to that issue. The Board issues a separate ruling today on those motions, granting the staff's motion for summary disposition as to the remanded NIRS/PC challenge to the analysis in the NEF DEIS/FEIS of the environmental impacts of geologic disposal of DU. See LBP-06-09, 63 NRC \_\_, \_\_ (slip op. at 31) (Mar. 3, 2006). To the extent that ruling impacts the issues before the Board in the context of NIRS/PC's most recent motion to amend EC-4, we discuss those implications in the context of our below ruling.

## II. ANALYSIS

### A. Standards Governing Admissibility of Late-Filed Contentions

The NRC's procedural rules provide that the question of whether "late-filed" contentions, or untimely amendments to previously-admitted contentions, must be considered is based on a



balancing of five factors:<sup>8</sup> (1) good cause, if any, for failure to file on time;<sup>9</sup> (2) availability of other means to protect the petitioner's interests; (3) extent to which the petitioner's interests will be represented by existing parties; (4) extent to which the petitioner's participation will broaden the issues or delay the proceeding; and (5) extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record. It is well-established that "good cause for failure to file on time" carries the most weight, and that if good cause is lacking, a compelling showing must be made as to the remaining four factors such as would outweigh the lack of good cause. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286, 293 (1998). Because the Board has discussed this balancing test on numerous prior occasions in this proceeding, no further elaboration is needed here. See, e.g., Licensing Board Memorandum and Order (Ruling on Commission-Referred Late-Filed Contentions) (Jan. 26, 2005) at 10 n.11 (unpublished); November Contention Ruling at 6-9.

---

<sup>8</sup> 10 C.F.R. § 2.309(c) actually includes eight factors. Section 2.309(c)(i), (v)-(viii) of the agency's current rules of practice encompass the five late-filing criteria previously found in 10 C.F.R. § 2.714(a)(1) of the agency's now-superseded 10 C.F.R. Part 2 rules. Section 2.309(c)(ii)-(iv), on the other hand, mirror the factors set forth in former section 2.714(d)(1), i.e., the nature of the petitioner's right to be made a party to the proceeding; the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and the possible effect of any order that may be entered in the proceeding on the petitioner's interest. Because these factors address the issue of whether a petitioner has standing to intervene, and NIRS/PC clearly has standing to participate in this proceeding, we will address only section 2.309(c) factors one and five through eight.

<sup>9</sup> In the case of contentions raised under NEPA, such as the contention now before the Board, the provisions of 10 C.F.R. § 2.309(f)(2) provide some guidance relative to the good cause factor, to the degree that they indicate circumstances that trigger the opportunity timely to file an amended or supplemental NEPA contention, i.e., if the data or conclusions in staff's draft or final environmental impact statement (EIS) differ significantly from the data or conclusions in the applicant's environmental report; or if, as between the draft and final EIS, there is information that was not previously available or is materially different from information previously available.

Additionally, upon a balancing of the section 2.309(c) factors, should a petitioner show that it has met the standard for late-filing, its proffered contention nevertheless must meet the contention admissibility standards set forth at 10 C.F.R. § 2.309(f). The Board likewise has discussed the general standards for contention admissibility in some detail in a prior decision in this case, and will not elaborate on those here. See LBP-04-14, 60 NRC at 54-58. An assessment of NIRS/PC's late-filed amendments to contention NIRS/PC EC-4 relative to those standards discussed above follows.

B. Contention NIRS/PC EC-4

With its instant motion, NIRS/PC seeks to add the following paragraphs to admitted contention NIRS/PC EC-4:

NIRS/PC EC-4 – IMPACTS OF WASTE STORAGE AND DISPOSAL

\* \* \* \* \*

Further, as to the impacts of waste disposal, the FEIS analysis is insufficient for the following reasons:

- (A) The FEIS contains a narrative description of the near-surface disposal site operated by Envirocare of Utah ("Envirocare") at page 4-63. The discussion contained in the FEIS falls far short of the hard look that NEPA requires at the impacts of near-surface disposal of large amounts of depleted uranium from an enrichment facility. The FEIS states that the Envirocare site is authorized by the State of Utah to dispose of depleted uranium with no volume restrictions and that several site-specific factors contribute to the acceptability of the Envirocare site for disposal of depleted uranium. The FEIS then concludes that the impacts of near-surface disposal at Envirocare would, therefore, be small. In fact, no valid scientific analysis underlies such a conclusion about the acceptability of the Envirocare site for disposal of large quantities of depleted uranium. Neither the State of Utah nor the NRC Staff has presented a valid scientific analysis demonstrating that the disposal of large quantities of bulk depleted uranium at the Envirocare site would meet the performance requirements of 10 CFR Part 61, Subpart C. Such an analysis should include a waste inventory of depleted uranium at the

volumes and concentrations under consideration by LES, scenarios involving the future use and potential occupancy of the site, the consideration of impacts extending to the time of peak dose in compliance with the regulation, and the prospects of the loss of cover of the disposal site through erosion, intrusion, or other processes. Such analyses for “dry” sites have been conducted by the Department of Energy and by experts for NIRS/PC and show violations of the 10 CFR Part 61 dose limits by large margins. Other analyses indicate that near-surface disposal of large quantities of depleted uranium in other environments (i.e., “wet” sites) is likely, over time, to result in doses in violation of 10 CFR Part 61. No valid analyses have been presented in this case that show such near-surface disposal to be able to meet the performance criteria in 10 CFR Part 61, Subpart C at the time of peak dose.

- (B) The FEIS attempts to estimate the impact of disposal of large amounts of depleted uranium from the proposed NEF in its modeling of the releases expected from a generic mine site. (at 4-64, Table 4-19). The FEIS fails to adequately disclose the models used and the parameter values, and such disclosures have never been made by the Commission Staff in this case. The FEIS text suggests that the models used in analyzing generic deep disposal sites in the CEC FEIS were used, and in Table 4-19 of the FEIS certain errors made in generating Table 4-19 of the Draft EIS have been corrected; however, the modeling results shown in FEIS Table 4-19 vary by several orders of magnitude from results obtained in similar studies of depleted uranium disposal (see, e.g., NIRS/PC Ex. 128 at 14, 31; NIRS/PC Ex. 190 at 21-23), remain unsupported by adequate specification of the models and input parameters used, and the results cannot be reproduced using the information contained in the CEC FEIS. The Commission Staff itself has apparently failed to try to reproduce the dose estimates presented in the NEF FEIS from the information presented in the CEC FEIS. The results are quite literally incredibly low and cannot be viewed as scientifically credible. Further, the model addresses only two hypothetical disposal sites and fails to examine any real-world location of potential disposal. Performance of a disposal site is highly site-specific.

November Contention Motion at 8-9.

1. Late-Filing Standards

DISCUSSION: November Contention Motion at 4-7; Staff Response at 4-5, 7-8; LES Response at 3-5, 7-8, 9-11, 13-17.

RULING: To a large degree, the Board finds that the issues and challenges presented in paragraphs A and B are little more than unnecessary iterations of the contention and bases remanded to the Board by the Commission in CLI-05-20. As NIRS/PC notes in its motion, see November Contention Motion at 4, though the remanded contention presented challenges to the DEIS, that contention is construed to address the FEIS without need for modification. Indeed, many of the challenges presented by NIRS/PC were in fact litigated by the parties during the October 2005 evidentiary hearing, or in the context of the staff and NIRS/PC cross-motions for summary disposition. Accordingly, in substantial part the issues raised here by NIRS/PC are addressed by the Board in two separate rulings issued today, a PID on contention EC-4, as remanded, see LBP-06-08, 63 NRC \_\_, and a ruling on the staff and NIRS/PC cross-motions for summary disposition, see LBP-06-09, 63 NRC \_\_. Therefore, the Board addresses here the question of whether certain challenges are precluded by their late filing only with regard to those challenges that the Board views as new or legitimate extensions of the issues already before the Board in the context of contention NIRS/PC EC-4 as remanded.

As this Board has discussed on numerous prior occasions in this proceeding, in evaluating the question of whether good cause exists for late filing, the focus is often on whether new information has recently become available that serves as the basis for the new or amended contention. Of course, if a challenge raised here was litigated by the parties at the October hearing, that challenge is clearly not based on new information. Specifically, as to proposed paragraph A, neither the text of that paragraph or its supporting bases A through K raise any information that has not previously been presented to the Board. NIRS/PC's repeated references to the transcript, testimony, and evidentiary materials from the October 2005

evidentiary hearing indicate as much. Further, NIRS/PC's argument that good cause exists because its petition for review of the Board's decision on contention NIRS/PC EC-4 was pending before the Commission until October 19, 2005, is unavailing as to proposed paragraph A. The Board's ruling at the hearing that it would not necessarily dismiss a portion of NIRS/PC's remanded challenge as it related to the staff's FEIS analysis of the impacts of geologic disposal of DU given a petition for review regarding the DEIS-related aspects of such impacts was before the Commission when the FEIS was issued, see Tr. at 2597-98, cannot be read as a broader grant of time for NIRS/PC to file amended contentions. Finally, NIRS/PC has made no attempt to demonstrate, with regard to the issues raised in paragraph A, how data or conclusions in the FEIS "differ significantly" from data or conclusions in the DEIS so as to indicate good cause for the untimely amendment of contention NIRS/PC EC-4. Accordingly, NIRS/PC has not demonstrated good cause for its untimely filing.

As to proposed paragraph B, the proffered amendment raises many of the same issues already before the Board in the context of paragraph C to contention EC-4 as remanded by the Commission. In fact, several of the sentences included in the proposed amendment here are identical to the text of the admitted contention.<sup>10</sup> To the extent that the amendment proffered here mirrors portions of the remanded contention before us, no amendment of that contention is required. As to the remaining portions of this paragraph, as the Board points out in its summary disposition ruling, given that the only substantive differences between NEF DEIS and FEIS sections 4.2.14.4 are the revisions in FEIS Table 4-19 to reflect the correction of typographical errors, we see no basis for providing any dispensation from the "good cause"

---

<sup>10</sup> For example, both paragraph C to admitted contention EC-4 and proffered paragraph B assert: "Further, the model addresses only two hypothetical disposal sites and fails to examine any real-world location of potential disposal. Performance of a disposal site is highly site-specific." Compare November Contention Motion at 9, with Motion on Behalf of [NIRS/PC] To Amend and Supplement Contentions (Oct. 20, 2004) at 16.

requirement based upon the fact that amendment of this portion of contention EC-4 prior to the Commission's remand in CLI-05-20 would have been procedurally difficult given that the matter was pending on appeal before the Commission. See LBP-06-09, 63 NRC at \_\_ (slip op. at 7). Accordingly, NIRS/PC has failed to demonstrate good cause for its untimely filing as to the remaining portions of this paragraph.

As to the other four section 2.309(c) factors, the Board must look to see whether they provide the compelling showing necessary to outweigh the lack of good cause for late filing as to paragraph A and B. Factors five and six, availability of other means to protect NIRS/PC's interests and the extent to which other parties will protect those interests, weigh in favor of NIRS/PC. These factors, however, carry less significance than factors seven and eight. As to the more weighty delay-to-the-proceeding factor, the Board finds this counts quite heavily against NIRS/PC at this juncture, given that the Board has already heard extensive presentations by the parties as to the matters raised in both paragraphs A and B. Any addition to the existing contention, particularly where a great deal of evidence is already before the Board, would undoubtedly cause substantial delay to the proceeding. In addition, to litigate additional amendments to this contention would clearly broaden the issues now before the Board. Finally, as to factor eight, the extent to which NIRS/PC's participation will assist in developing a sound record in this proceeding, we find this factor provides little support, if any, for NIRS/PC. While NIRS/PC has without doubt contributed greatly to the soundness and completeness of the record in this proceeding on the LES application, its participation as to the proffered amendment would contribute little further substance to the record on these issues. As the Board has previously noted, "the extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record is only meaningful when the proposed participation is on a significant, triable issue." See Long Island Lighting Co.

(Shoreham Nuclear Power Station, Unit 1), LBP-84-30, 20 NRC 426, 440 (1984) (quoting Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-30, 17 NRC 1132, 1143 (1983)). As discussed further below, this amendment is outside the scope of this proceeding and/or raises issues that NIRS/PC has already had the opportunity fully to litigate in the context of the October evidentiary hearing or to advance in the context of its motion for partial summary disposition of this contention, and, therefore, presents untriable issues. In sum, to the degree two of the remaining factors weigh in favor of admitting this amendment, they do not provide the compelling showing necessary to outweigh the lack of good cause.

2. Admissibility

DISCUSSION: November Contention Motion at 7-14; Staff Response at 8-11; LES Response at 4-5, 8-9, 12-13, 17-18.

RULING: Inadmissible, as to both paragraphs A and B. Even if proposed paragraph A was not barred by its late filing, it contains no admissible issue for the Board to consider. First, to the extent that NIRS/PC attempts to challenge the studies or analyses underlying the Envirocare license, or, for that matter, the State of Utah's decision to issue a license to Envirocare to accept large quantities of depleted uranium, as the Board had stated on several prior occasions, neither the validity and substance of the Envirocare license nor the State of Utah's decisionmaking as to that license is a matter for the Board. Licensing Boards do not have jurisdiction over matters properly before state regulatory bodies, see Hydro Resources, Inc. (2929 Coors Road, Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 121-22 (1998), and such matters are clearly outside the scope of this proceeding.

The remainder of the text of paragraph A, and the bases offered in support of that amendment, go to issues discussed at length at the October evidentiary hearing, a fact which, as noted above, is demonstrated by NIRS/PC's repeated citation to testimony and evidence

taken in the context of that hearing. Because this proposed amendment fails to raise any issues not already before the Board in the context of EC-4, and because the Board's PID, issued today, regarding that contention addresses the remainder of the issues presented in paragraph A without the need for further testimony and evidence from the parties, we find paragraph A and its supporting bases insufficient to raise any genuine issue of material fact adequate to warrant further Board inquiry.

As to paragraph B, the substance of this proposed amendment is likewise already before the Board, albeit in the context of cross-motions by the staff and NIRS/PC for summary disposition. Because paragraph B fails to present any claim other than those at issue in the summary disposition motions, and because the Board in a decision issued today grants summary disposition in favor of the staff, see LBP-06-09, 63 NRC at \_ (slip op. at 31), this proposed amendment similarly raises no issue of material fact adequate to warrant further inquiry.

### III. CONCLUSION

The Board finds the contention amendments presented by NIRS/PC in its November 11, 2005 motion inadmissible because, based on a balancing of the pertinent section 2.309(c) late-filing factors, the lack of good cause for late filing has not been outweighed by a compelling



showing regarding the other four pertinent factors, and/or the issue statements presented fail to satisfy the substantive admissibility standards of section 2.309(f).

---

For the foregoing reasons, it is this third day of March 2006, ORDERED, that the November 11, 2005 NIRS/PC motion for admission of late-filed issues is denied in that the NIRS/PC modifications to contention NIRS/PC EC-4 are rejected as inadmissible for litigation in this proceeding.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>11</sup>

/RA/

G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

/RA/

Paul B. Abramson  
ADMINISTRATIVE JUDGE

/RA/

Charles N. Kelber  
ADMINISTRATIVE JUDGE

Rockville, Maryland

March 3, 2006

---

<sup>11</sup> 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.

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 (RULING ON MOTION TO AMEND CONTENTION NIRS/PC EC-4) 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.  
Jerry Bonanno, 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 AMEND  
CONTENTION NIRS/PC EC-4)

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 Adria T. Byrdsong]

---

Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 3<sup>rd</sup> day of March 2006