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RULEMAKINGS AND
ADJUDICATIONS STAFF

21 February 2006

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Washington, D.C. 20555-0001

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In re Louisiana Energy Services, L.P., Dkt. No. 70-3103; ASLBP No. 04-826-01-ML

Dear Administrative Judges:

The Licensing Board noted during the hearing on February 13, 2006 that it plans to move to close the record after the transcript of that hearing is corrected or redacted, and the same observation appears in the Memorandum and Order dated February 16, 2006 (at 2). During the hearing, counsel for the Commission Staff noted that the record should remain open with regard to contention NIRS/PC EC-4 by reason of the pending cross-motions for summary disposition. On behalf of NIRS/PC we join in that position. In addition, certain other unresolved matters would require that the hearing record remain open as to such items:

1. As the Licensing Board note in its Memorandum and Order dated February 17, 2006 (at 2), Commission Staff have not completed their review of cost information submitted on behalf of the Department of Energy concerning DOE dispositioning of depleted uranium from the proposed National Enrichment Facility. (See Tr. 3270, 618 Paseo de Peralta, Unit B • Santa Fe, NM 87501 • 505-983-1800 505-983-0036 fax • lindsay@lindsaylovejoy.com)

3408). Although the Board has ruled that NIRS/PC may not challenge the cost estimates provided by DOE (See Memorandum and Order, August 4, 2005, at 21-22), still, if the cost estimate for DU dispositioning by DOE increases from the estimates previously provided, NIRS/PC may validly contend that such higher estimate, and not earlier lower estimates, should be used in calculating decommissioning financial assurance. For such reason, the record should remain open as to contentions NIRS/PC EC-5/TC-2 and EC-6/TC-3.

2. NIRS/PC have moved for leave to appear and present evidence concerning matters contained in paragraph A.4 of the Memorandum and Order dated January 30, 2006, which concerns the disposal methods and cost estimates to be used in calculating decommissioning financial assurance and possible “mechanisms” to be proposed to allow an initial cost estimate to be adopted on the assumption that near-surface disposal is authorized, to be increased if LES is directed to plan for deep disposal¹. (NIRS/PC Motion, Feb. 10, 2006). NIRS/PC have asked for leave to examine witnesses for LES and Commission Staff and to present evidence concerning such matters; NIRS/PC contend that inquiry into such matters comes within contentions NIRS/PC EC-5/TC-2 and EC-6/TC-3 and that the record on such contentions should not, therefore, be closed.
3. As counsel for Commission Staff have observed, the pendency of cross-motions for summary disposition involving the NEPA analysis of the impacts of deep disposal leaves the record open as to such matters and subject to the outcome of the Board’s

¹ It should be noted that the form of surety bond proposed by LES states that upon annual periodic adjustment (e.g., pursuant to 10 CFR 70.25(e)), the bonded amount may not “increase by more than 20 percent in any one year” (NEF Safety Analysis Report at 10A2). NIRS/PC have pointed out in their motion that a change from a cost estimate based upon near-surface disposal to one based on deep disposal would increase disposal costs by a factor of five to seven. (NIRS/PC Motion, Feb. 10, 2006, at 2; See Makhijani disposal rebuttal at A.16, Oct. 25, 2005).

ruling on such motions. Thus, the record should not be closed as to contention

NIRS/PC EC-4.

For the foregoing reasons NIRS/PC wish the record to reflect their objection to the closure of the hearing record until the matters referred to herein have been resolved.

Respectfully,

A handwritten signature in cursive script, reading "Lindsay A. Lovejoy, Jr." with a stylized flourish at the end.

Lindsay A. Lovejoy, Jr.

cc: All Counsel
Office of the Secretary