

18326

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION



\_\_\_\_\_  
In the Matter of )

) Docket No. 70-3070-ML

)  
LOUISIANA ENERGY SERVICES, L.P. )

) ASLBP No. 91-641-02-ML

)  
(Claiborne Enrichment Center) )  
\_\_\_\_\_ )

) May 23, 1997

OPPOSITION OF APPLICANT LOUISIANA ENERGY SERVICES  
TO INTERVENOR'S PETITION FOR REVIEW OF LBP-97-3

Introduction

Applicant Louisiana Energy Services, L.P. ("LES") opposes, pursuant to 10 C.F.R. § 2.786(b)(3), the petition of Intervenor Citizens Against Nuclear Trash ("CANT") for review of the Licensing Board's third partial initial decision ("Third PID"). In the Third PID, the Licensing Board held that LES has satisfied the Commission's requirement that it present a "plausible strategy" for disposition of depleted uranium hexafluoride tails ("DUF<sub>6</sub>") to be produced as a byproduct of the enrichment process at the Claiborne Enrichment Center ("CEC"). Third PID at 17, 20-22. The Licensing Board also ruled that LES's estimates of the cost of transportation and disposal of DUF<sub>6</sub> — two elements of LES's tails disposition cost estimate — are reasonable. Third PID at 31, 35.<sup>1/</sup>

<sup>1/</sup> The Board found that the third element of LES's tails disposition cost estimate — the cost of conversion of DUF<sub>6</sub> to DU<sub>3</sub>O<sub>8</sub> prior to disposal — is not reasonable. Third PID at 39-50. LES has petitioned the Commission for review of that aspect of the Third PID.

CANT seeks review of those aspects of the Board's decision which approve LES's DUF<sub>6</sub> disposal cost estimate, advancing essentially three arguments:

- LES's options for disposition of DUF<sub>6</sub> are limited to (a) disposal in a licensed geologic repository, or (b) demonstration of the existence and safety of a specific disposal site for DUF<sub>6</sub> and licensing by the NRC of such a site (Petition at 5-6),
- The Board ignored or wrongly discounted CANT's arguments that the FEIS is deficient in its analysis of the environmental impacts of deeper-than-surface burial of U<sub>3</sub>O<sub>8</sub> (Petition at 6-8); and
- Review is warranted because the proceeding is the first of its kind and because no DUF<sub>6</sub> disposal sites currently exist (Petition at 8-9).

In addition, CANT seeks to expand its fully adjudicated contentions by arguing that LES's corporate parents should be required to accept LES's decommissioning funding obligations (Petition at 9-10). None of these arguments has merit and none raises a substantial question with respect to any factor in 10 C.F.R. § 2.786(b)(4), or otherwise warrants Commission review. Accordingly, the petition should be denied.

#### Argument

- I. **The Board properly found that LES has presented a plausible strategy for the disposition of DUF<sub>6</sub>. The Board's decision is consistent with 10 C.F.R. § 61.55(a)(2)(iv).**

CANT asserts that, pursuant to 10 C.F.R. § 61.55(a)(2)(iv), "plausible strategies" for disposal of DUF<sub>6</sub> are "limited to (a) disposal in a licensed geologic repository, or (b) demonstration of the existence and safety of a specific disposal site for the tails and licensing by the NRC of such a site" (Petition at 5-6) (*emphasis in original*). CANT's position contradicts the plain language of 10 C.F.R. § 61.55(a)(2)(iv) and is directly at odds with the legal standards established by the Commission for this proceeding.

10 C.F.R. § 61.55(a)(2)(iv) contemplates that a licensee may dispose of waste not subject to near-surface disposal (assuming DUF<sub>6</sub> were to be deemed such a waste<sup>2/</sup>) other than in a deep geologic repository, *i.e.*, pursuant to Commission approval of a specific site.<sup>3/</sup> The regulation certainly does not "presume" disposal in a repository as CANT suggests. Petition at 2. In view of the Commission's detailed consideration of the licensing criteria in its Hearing Order to govern this proceeding,<sup>4/</sup> one may plausibly reason that the Commission will approve a site-specific disposal arrangement when necessary, as it will for DOE and USEC. The Commission has noted that a "wide variety of disposal methods, including all those currently proposed as 'intermediate' disposal methods,

---

<sup>2/</sup> Contrary to CANT's assertion, the NRC Staff has not found that DUF<sub>6</sub> is "not suitable for burial according to the methods provided by NRC regulations for near-surface disposal of either Class A, B, or C waste" (Petition at 3-4) or that tails "may not be disposed of safely in a low-level waste facility" (Petition at 8). CANT misconstrues the FEIS, which merely states that, for the near-surface disposal arrangement considered by the NRC Staff (*i.e.*, an earth-mounded bunker subject to environmental conditions of a humid southeastern site), doses would exceed 10 C.F.R. Part 61 limits, "making it likely that a deep disposal site will be selected." FEIS at pp. 4-66 to 4-67. There is no basis in the record for CANT's conclusion (Petition at 4) that DUF<sub>6</sub> constitutes waste "that is not generally acceptable for near-surface disposal" within the meaning of 10 C.F.R. § 61.55(a)(2)(iv), given the use of appropriate measures to assure compliance with Part 61 Performance Objectives.

<sup>3/</sup> 10 C.F.R. § 61.55(a)(2)(iv) states:

Waste that is not generally acceptable for near-surface disposal is waste for which form and disposal methods must be different, and in general more stringent, than those specified for Class C waste. In the absence of specific requirements in this part, such waste must be disposed of in a geologic repository as defined in Part 60 of this chapter unless proposals for disposal of such waste in a disposal site licensed pursuant to this part are approved by the Commission. (Emphasis added.)

<sup>4/</sup> See 56 Fed. Reg. 23310 (1991).

could be licensed under Part 61." 54 Fed. Reg. 22578, 22581 (1989) (Statements of Consideration accompanying amendment of 10 C.F.R. § 61.55(a)(2)(iv)) (emphasis added).

CANT reads Section 61.55(a)(2)(iv) to require that, unless the Commission has already approved a specific licensed site,  $U_3O_8$  from the CEC must be disposed of in a geologic repository. But the Board rejected that argument in denying CANT's petition for waiver of 10 C.F.R. §§ 61.55(a)(3) and (a)(6). See Memorandum and Order (Ruling on Intervenor's Petition to Waive Certain Regulations) at 19, Docket No. 70-3070-ML (March 2, 1995). As the Board noted, the Commission has specified licensing criteria for this proceeding, and did not require LES to identify a specific licensed site with its actual disposal costs prior to licensing. Rather, a "plausible strategy" for tails disposal is required. 56 Fed. Reg. 13313 (1991). See Memorandum and Order at 19; Louisiana Energy Services, L.P. (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 337-38 (1991). The Commission also stated in the Hearing Order that Part 61 is applicable to this proceeding. 56 Fed. Reg. 23313. CANT's reading of Section 61.55(a)(2)(iv) simply cannot be reconciled with the Commission's unambiguous directives in this proceeding that Part 61 shall apply and that a specific disposal site need not be identified at this time.

CANT's assertion that deeper-than-near-surface disposal pursuant to Part 61 is "presumptively implausible and lacks any technical basis" also ignores the proof at hearing that licensing of a deeper-than-surface facility is indeed plausible. The Board ruled that LES's plan for deep subsurface burial constitutes an acceptable plausible strategy. Third PID at 18, 20. The Board found specifically that "in light of the numerous existing uranium and other mines in the United States, it is reasonable to assume an appropriate site for deep burial of  $U_3O_8$  will be available in the future." Id. 21-22. Moreover, the NRC Staff's analysis in Appendix A of the FEIS demonstrates that deeper-than-near-surface disposal of tails can meet the performance objectives of Part 61. FEIS at A-14. As discussed

below, the Board considered and rejected the testimony of CANT's witness to the effect that  $U_3O_8$  cannot be safely disposed of under 10 C.F.R. Part 61. Third PID at 22-23. The Board's Order denying CANT's Waiver Petition additionally illustrates that CEC tails can be disposed of in accordance with Part 61. See Memorandum and Order (Ruling on Intervenor's Petition to Waive Certain Regulations), Docket No. 70-3070-ML (March 2, 1995).

**II. The Board did not err in discounting the testimony of CANT's witness on FEIS discussion of deeper-than-near-surface disposal of  $U_3O_8$ .**

CANT asserts that the Board "ignored or wrongly discounted" its allegations that the NRC Staff's dose calculations for  $U_3O_8$  disposal in the FEIS are deficient. Petition at 6-8. CANT does no more than repeat its witnesses's assertions questioning whether the NRC Staff employed the appropriate values in its calculations, whether the Staff should have considered disposal in a form other than  $U_3O_8$ , and whether it should have performed an uncertainty analysis. To the contrary, the Board reasonably explained why it rejected each alleged deficiency. See Third PID at 50-58. However, CANT articulates no reason why the Board's findings on these matters are clearly erroneous,<sup>5/</sup> or, more generally, why the Board erred in finding that the NRC's Staff's technical assumptions are reasonable and support the plausibility of LES's  $DUF_6$  disposition strategy.<sup>6/</sup>

---

<sup>5/</sup> Even CANT's witness admitted that he would not "represent [his questioning the Staff's dose calculations] as scientific work." Tr. 1181. He explained that "this is strictly very back-of-the-envelope" and that he had neither the resources nor the time to perform a complete review. Tr. 1180-1181. The Board appropriately discounted this "back-of-the-envelope" analysis in favor of the more thorough analyses and testimony of the NRC Staff and the corroborating testimony of LES's experts.

<sup>6/</sup> The Board did not, as CANT claims (Petition at 7), interpret plausible to mean "conceivable" rather than "credible." The Board read "plausible" to mean "reasonable" or "credible" (Third PID at 14), and specifically held that LES's deeper than near-surface burial strategy "is a reasonable and credible plan for tails disposal." Third PID at 21.



In fact, the Board gave more consideration to CANT's testimony than it deserved, inasmuch as CANT's arguments merely attempted to reintroduce Contention W, which the Board had eliminated by summary disposition before the hearing. See Memorandum and Order (Ruling on NRC Staff's Motion for Summary Disposition of Contention W), Docket No. 70-3070-ML (March 3, 1995). Contention W had alleged that the draft EIS for the CEC did not address the environmental impacts of DUF<sub>6</sub> disposition. Five months after the FEIS was issued with this information, the Staff sought and was granted summary disposition. Opposing summary disposition, CANT had argued that the FEIS was too vague about the location of the U<sub>3</sub>O<sub>8</sub> disposal site, did not explain classification of tails as Class A waste, lacked discussion of whether U<sub>3</sub>O<sub>8</sub> is the most stable form of uranium for long-term storage, and failed to disclose the basis for the NRC's tails disposal cost estimate. Id. at 3. Because CANT had waited too long after the FEIS had issued before making these new arguments, the Board held that CANT failed to meet the criteria for filing an amended or late-filed contention. Id. at 3-9.

At the hearing, the Board accepted prefiled testimony from CANT relating to the issues raised in Contention W, but only "for the purpose of demonstrating an upper bound to the dollar costs of disposal of depleted uranium tails or otherwise as it may relate to the dollar costs of disposal." Tr. 379 (emphasis added); see also Tr. 309-330. In its Petition, as during the hearing, CANT makes no attempt to relate its witness's testimony to the costs of deeper-than-near-surface tails disposal under Part 61, but seeks to litigate a new contention denied when the Board granted summary disposition of Contention W. CANT did not petition for review of the Board's Order denying leave to amend Contention W, and the time for doing so has long since passed. And even if CANT's arguments were within the scope of Contentions B and J.3, its Petition identifies no reason why the Board's findings are clearly erroneous.

**III. The aspects of the Board's decision as to which CANT seeks review do not raise new issues of law, policy, or discretion.**

CANT suggests that Commission review is warranted because LES's decommissioning cost estimate is the "first of its kind," that tails are a unique waste form that has never been disposed of in large quantities, that no facilities for tails disposal presently exist, and that there are no current cost figures that can be relied upon for a future cost estimate for tails disposal. Petition at 8.

These assertions are simply wrong, and do not support Commission review of any substantial and important issue of law, policy or discretion. Clearly the proceeding itself is the "first of its kind" in many respects, but the issues are not new. The Licensing Board was not writing on a blank slate because the Commission had already considered CANT's supposedly "new" issues in its Hearing Order. Accordingly, CANT errs in claiming "the absence of any regulatory requirements of tails disposal" (Petition at 8) because the Commission's Hearing Order established those regulatory requirements. The Commission was well aware that there were no existing tails disposal sites and no experience with disposal of large quantities of tails. It nonetheless directed that LES need not identify a specific site for tails disposal, but need only provide a reasonable cost estimate for an adequately described disposal plan.<sup>7/</sup> The Board found that LES's DUF<sub>6</sub> disposal strategy and cost estimate satisfy those requirements. Third PID at 20.

To warrant Commission review, it is the Board's decision that must raise a substantial and important question of law, policy or discretion. 10 C.F.R. § 2.786(b)(4). But CANT challenges

---

<sup>7/</sup> Further, contrary to CANT's assertions (Petition at 8), LES's tails disposal cost estimate is not the first of its kind, as the NRC has already certified operation of the U.S. Enrichment Corporation's gaseous diffusion plants based, in part, on essentially the same tails disposal cost estimate and strategy as that of LES. In addition, the record contains two DOE cost studies by which the reasonableness of LES's own cost estimate may be compared. Third PID at 32-35.

aspects of the Board's decision which merely implement and reaffirm the Commission's hearing directives. As these issues have already been carefully considered by the Commission in determining what licensing criteria shall apply to the CEC, the same issues do not merit further Commission review.

**IV. Uncertainties inherent in the decommissioning cost estimate do not warrant Commission review.**

CANT asserts that the Board failed to consider the "tremendous uncertainty" in the estimated cost of DUF<sub>6</sub> disposal and argues that LES's parent corporations must accept liability for LES's decommissioning obligations. These arguments do not merit Commission review because they are untimely, ignore the Board's findings that LES's DUF<sub>6</sub> disposal cost estimate is reasonable, and are contrary to the law governing this proceeding.

CANT's assertion that LES's parent companies should be liable for LES's decommissioning obligations goes beyond the contentions litigated in this proceeding and should not be entertained by the Commission at this late date. Contentions B and J.3, which are the subject of the Third PID, concern only the reasonableness of LES's decommissioning and tails disposal strategy and the associated cost estimate. CANT did not assert in Contention B or J.3 that LES will be financially unable to cover the cost of disposition of CEC tails. CANT's suggestion that LES's parent companies must accept decommissioning liability constitutes a new contention that was never urged before (much less admitted by) the Licensing Board. Thus, CANT's new assertion regarding parent company support is beyond the scope of the proceeding and not a proper subject of Commission review.<sup>8/</sup>

---

<sup>8/</sup> In any event, the parent companies of LES need not be required to accept liability for LES's decommissioning funding obligations. The Commission requires a plausible strategy and  
(continued...)



With respect to CANT's "uncertainty" argument, the Commission has not required LES to consider (or the Board to adjudicate) "uncertainty" associated with the cost of disposal of DUF<sub>6</sub>. LES is required only to provide a reasonable cost estimate for an adequately described plausible strategy. To the extent appropriate, consideration of uncertainty is captured in formulating a reasonable cost estimate, and in regularly updating the estimate and associated funding. In other words, the estimate is meant to provide reasonable assurance, not certainty, of adequate funds for decommissioning. Having found that LES's estimate of the cost of DUF<sub>6</sub> disposal is reasonable, the Board and the NRC Staff have likewise determined that LES has adequately addressed any uncertainty in DUF<sub>6</sub> disposal costs.

In addition, pursuant to 10 C.F.R. § 70.25, LES will be required to provide pre-operational assurances that funds for decommissioning and tails disposal are available through a surety or other form of guarantee and an external trust arrangement. Third PID at 15. Contrary to CANT's suggestion that the facility could constitute an uncovered liability, the cost of decommissioning the facility itself will be covered by these guarantee arrangements before operations commence. In addition, the cost of tails disposal will be covered by amending the guarantee and/or external trust balance as tails are generated annually, as appropriate. By funding decommissioning in accordance with its reasonable cost estimate, LES provides reasonable assurance of the availability of those funds, such that no other source must be contemplated.

---

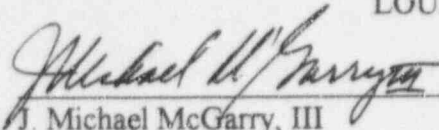
<sup>8/</sup>(...continued)

reasonable cost estimate for decommissioning and tails disposal to provide reasonable assurance that such funds will be available. While a parent company guarantee may be utilized if certain criteria are satisfied (see 10 C.F.R. § 70.25(f)(2)), LES has not elected, and is not required, to use that form of guarantee.

### III. Conclusion

Because there exists no substantial and important question within the scope of 10 C.F.R. § 2.786(b)(4) with respect to any of the matters raised in CANT's petition, the petition should be denied.

LOUISIANA ENERGY SERVICES, L.P.

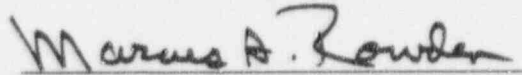


J. Michael McGarry, III

Robert M. Rader

Robert L. Draper

WINSTON & STRAWN



Marcus A. Rowden

FRIED, FRANK, HARRIS, SHRIVER  
& JACOBSON

ATTORNEYS FOR LOUISIANA ENERGY SERVICES, L.P.

Dated at Washington, D.C.  
this 23rd day of May, 1997

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



\_\_\_\_\_  
In the Matter of )

) Docket No. 70-3070-ML

) LOUISIANA ENERGY SERVICES, L.P. )

) May 27, 1997

) (Claiborne Enrichment Center) )  
\_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that copies of "Opposition of Applicant Louisiana Energy Services to Intervenor's Petition for Review of LBP-97-3" were served upon the following by deposit in the United States mail, first-class, postage prepaid, this 23rd day of May, 1997:

Administrative Judge  
Thomas S. Moore, Chairman\*  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
(2 copies)

Administrative Judge  
Richard F. Cole\*  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Administrative Judge  
Frederick J. Shon\*  
Atomic Safety and Licensing  
Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Office of the Secretary \*  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
Attention: Chief, Rulemakings and  
Adjudications Staff  
(Original plus 2 copies)

Office of Commission Appellate  
Adjudication\*  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Eugene Holler, Esq.\*  
Office of the General Counsel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Ronald Wascom, Deputy Assistant  
Secretary\*  
Office of Air Quality &  
Radiation Protection  
P.O. Box 82135  
Baton Rouge, LA 70884-2135

Joseph DiStefano, Esq.  
Quinn, Racusin & Gazzola  
1401 H Street, N.W.  
Suite 510  
Washington, D.C. 20005

Robert G. Morgan - WC26B  
Licensing Manager  
Duke Engineering & Services,  
Inc.  
400 South Tryon Street  
Charlotte, NC 28201-1004

Marcus A. Rowden  
Fried, Frank, Harris, Shriver &  
Jacobsen  
1101 Pennsylvania Avenue, N.W.  
Suite 900 South  
Washington, D.C. 20004

Diane Curran\*  
Harmon, Curran, Gallagher &  
Spielberg  
2001 S Street, N.W.  
Suite 430  
Washington, D.C. 20009-1125

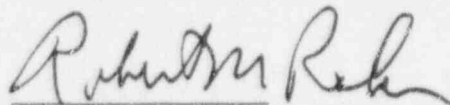
Nathalie Walker\*  
Sierra Club Legal Defense Fund  
400 Magazine St.  
Suite 401  
New Orleans, LA 70130

Adjudicatory File  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Roland J. Jensen  
Louisiana Energy Services, L.P.  
2600 Virginia Avenue, N.W.  
Suite 608  
Washington D.C. 20037

Thomas J. Henderson, Esq.  
David S. Bailey, Esq.  
Lawyers' Committee for  
Civil Rights Under Law  
1450 G Street, N.W.  
Suite 400  
Washington, D.C. 20555

LOUISIANA ENERGY SERVICES, L.P.



Robert M. Rader  
WINSTON & STRAWN,  
ATTORNEY FOR LOUISIANA ENERGY  
SERVICES, L.P.