October 11, 2002

Mr. Michael Lesar
Chief, Rules Review and Directives Branch
Division of Administration Services, Office of Administration,
US Nuclear Regulatory Commission
Washington, DC 20555

10/2/02
67 FR 61932
(35)

Dear Mr. Lesar,

I was disturbed today to hear that the NRC has published white papers in the Federal Register on behalf of Louisiana Energy Services (LES) and asked for public comment by November 1. Here are my comments.

I understand that, in January, LES plans to apply for an NRC license to build and operate a new uranium enrichment plant in Hartsville, Tennessee. I know that LES has asked the NRC to pre-judge, in LES's favor, on key issues which were used by citizens to oppose licensing of a LES facility in a previous case - environmental justice, financial qualifications, and need for the facility - plus a few other issues that are problematic for LES, such as antitrust and foreign ownership. . In my opinion, the NRC should have laughed at LES's inappropriate request that it make a "binding" pre-hearing decision on key licensing issues and tossed LES's white papers in the circular file.

IF THE NRC LETS LES HIJACK THE HEARING PROCESS, CITIZENS WILL NOT GET A HEARING ON THE LES PLANT (OR IF A HEARING IS HELD, IT WON'T MEAN ANYTHING AS THE REAL DECISIONS WILL HAVE ALREADY BEEN MADE VIA THE "WHITE PAPERS"). THIS WILL SET A TERRIBLE PRECEDENT FOR ALL FUTURE NRC LICENSING CASES.

1. I understand that there are only two ways the NRC can make decisions that bind interested members of the public: through the hearing process or through rulemakings. This Federal Register notice does not comply with NRC procedures or basic concepts of fairness for either a hearing or a rulemaking.

a. LES is trying to avoid the hearing process, by asking the Commission to pre-judge the outcome of a hearing before the case has even started. At this point, no opportunity for a hearing has been noticed in the Federal Register. Thus, local residents have not been notified that the Commission is considering decisions that would affect their welfare. To grant LES' request to make binding decisions based on the white papers would completely violate NRC hearing procedures.

b. Where there is no licensing case pending, the NRC can use the rulemaking process to make decisions that affect the interests of people who reside near nuclear facilities. But the NRC has to comply with basic procedural requirements of the Federal Administrative Procedures Act and NRC regulations. In particular, the NRC must present a specific proposed action by the agency and a justification for the action. The October 2 Federal Register violates this requirement because it just asks for comments on LES's white papers and does not say what the NRC proposes to do

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with them. Thus, it completely fails to meet the requirements of the federal Administrative Procedures Act and basic concepts of fairness in agency decisionmaking.

2. The white papers are totally inadequate to resolve the issues they address. The only fair way these six issues can be addressed is through the licensing process. If the NRC decides that it can resolve them through a rulemaking, then it should propose a specific resolution of the issues and explain why it is not necessary to use the hearing process to get at the specific facts of the case.

3. The publication of the white papers raises serious questions about whether the NRC can act as a dispassionate appellate judge in any licensing case involving the proposed LES plant. The NRC appears to be going along with an LES proposal that it pre-judge every significant issue in the licensing case. How can an agency that departs from its own well-established procedures, for the purpose of pre-judging virtually all the important issues in a case, be considered to be objective as the ultimate appellate tribunal in the case?

At the present time, there does not appear to be the opportunity to submit comments electronically. Therefore, I would like to request an extended comment period--there is no need for the NRC to rush on this issue (except to throw it away entirely) and a 90-day comment period would be more appropriate--and the ability to submit electronic comments. Thank you for your time.

Sincerely,

Marcella Guerriero
37A Cleveland Street
Charleston, SC 29403

CC: NIRS