

March 24, 2003

Mr. Rod M. Krich
Director, Licensing
Louisiana Energy Services
1133 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

SUBJECT: LOUISIANA ENERGY SERVICES POLICY ISSUES

Dear Mr. Krich:

On April 24, 2002, you provided us with six white papers on environmental and licensing issues applicable to a uranium enrichment facility. On April 30, 2002, staff from Louisiana Energy Services (LES) met with us to discuss the papers. In the public meeting, LES staff stated that it hoped to minimize licensing delays by obtaining definitive and binding guidance, from the Commission, that could be applied to site selection and licensing. LES staff also suggested that the guidance should be set out in a legally binding Commission Order at the outset of the licensing proceeding.

U.S. Nuclear Regulatory Commission (NRC) staff considered your proposal, as well as your additional comments dated November 12, 2002, and comments from the U.S. Enrichment Corporation, the U.S. Department of Energy (DOE), and members of the public. Binding standards can be set by adjudication and rulemaking. However, the staff is providing staff views on how it intends to review the LES application, subject to possible further Commission direction following the receipt of an application.

The first white paper addressed the need for the facility and the no-action alternative that is generally addressed in the preparation of an environmental impact statement (EIS). LES staff suggested that the NRC presume that a need for the enrichment facility exists based on Congress' desire for a reliable and economical domestic source of enrichment services. With this assumption of an inherent need for the facility, LES staff suggested that no evaluation of a no-action alternative would be necessary.

NRC staff considered this recommendation and concluded that it is inconsistent with the NRC's NEPA responsibilities and the requirements of 10 CFR 51.71(b), 10 CFR 51.71(d), and 10 CFR Part 51, Appendix A.4, that an EIS address both the need for the proposed action and alternatives to the proposed action including a no-action alternative. NRC staff, therefore, intends to consider facility need and no-action alternatives in accordance with the existing requirements of 10 CFR Part 51.

The second white paper addressed the environmental justice review. LES staff recommended that the Commission define certain environmental justice criteria and limit the scope of the review in several areas. NRC staff notes that the Commission has received a letter, dated

December 20, 2002, from the Nuclear Energy Institute (NEI) questioning the Commission's prior rulings on the application of the concept of environmental justice in its licensing proceedings. In light of the issues raised in the NEI letter, the Commission has directed the staff to develop and propose for the Commission's consideration a draft policy statement on the treatment of environmental justice matters in NRC licensing, taking into consideration the comments in the NEI letter as appropriate. Accordingly, given these developments, the staff is declining to respond to the second white paper at this time.

The third white paper addressed financial qualifications. LES staff recommended that the 10 CFR Part 70 financial qualifications criteria should be used to review the LES application, and that those criteria could be met by conditioning any LES license to require funding commitments to be in place before construction and operation. NRC staff intends to take this approach as this recommendation is consistent with the Commission's decision in *Louisiana Energy Services (Claiborne Enrichment Center)*, CLI-97-15, 46 NRC 294 (1997). However, this may not be the only way to meet the financial qualification requirements.

The fourth white paper addressed antitrust reviews. LES staff recommended that antitrust reviews should not be required because statutes do not require antitrust reviews for uranium enrichment facilities. NRC staff intends to take this approach as this recommendation is consistent with Sections 105 and 193 of the Atomic Energy Act (AEA).

The fifth white paper addressed foreign ownership. LES staff recommended that the foreign interests of LES should not preclude granting a license to LES for an enrichment facility so long as the NRC finds that the issuance of a license would not be inimical to the common defense or security. USEC objected to this recommendation because it contends the LES recommendation would render the "inimicality" standard in Section 57 of the AEA meaningless and contravene Congressional intent. USEC relies on section 193(f) of the AEA and 10 CFR 70.40 to state that Congress required the sole domestic enrichment facility at the time, USEC, not be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. USEC argues that NRC should apply the same standards for foreign ownership and control to LES. However, the staff notes that section 193(f) only applies to USEC and its successors. NRC staff intends to take the approach recommended as this recommendation is consistent with Section 57 of the AEA. Thus, while the mere presence of foreign ownership would not preclude grant of the application, any foreign relationship must be examined to determine whether it is inimical to the common defense and security.

The sixth white paper addressed depleted uranium tails disposition. LES staff recommended that the Commission consider that the Section 3113 requirements of the U.S. Enrichment Corporation Privatization Act, which mandate, in LES' view, that DOE dispose of depleted uranium tails from a uranium enrichment facility licensed by NRC, constitute a "plausible strategy" for dispositioning these materials. LES staff also recommended that NRC adopt the DOE EIS applicable to depleted uranium tails in its EIS. NRC staff considers that Section 3113 would be a "plausible strategy" for dispositioning depleted uranium tails if NRC determines that depleted uranium is a low-level radioactive waste. In that regard, the staff expects that LES will indicate in its application whether it will treat the tails as a waste or a resource. LES should also demonstrate in its application, given the expected constituents of its depleted tails, that the tails meet the definition of low-level radioactive waste in 10 CFR Part 61. In addition, staff will also need to consider the health and safety, security, and environmental issues associated with the storage of depleted uranium tails on-site pending removal of the tails from the site for disposal.

or DOE dispositioning. LES would also need to address these issues and include storage and disposal impacts in its Environmental Report as well as provide information on disposal and storage costs for the required decommissioning funding plan, as required by 10 CFR 40.36 and 10 CFR 70.25. The NRC staff will also consider the DOE EIS to the extent it is useful to the staff's environmental review.

We hope that this letter provides you with the needed information on how the NRC staff intends to approach the review of a license application for a uranium enrichment facility. If you have any questions, please contact Mr. Timothy C. Johnson at 301-415-7299.

Sincerely,

/RA/

Robert C. Pierson, Director
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

cc: William Szymanski/DOE
George Dials/LES
James Curtiss/W&S
Jerry Clift/Trousdale
Mario Robles/USEC
E. Nanney/State of Tennessee
Michael Marriotte/NIRS

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