RAS 7278
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 01/30/04

COMMISSIONERS:
Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

In the Matter of	)	
	)	
LOUISIANA ENERGY SERVICES, L.P.	)	Docket No. 70-3103
	)	
(National Enrichment Facility)	)	
	)	
	)	

CLI-04-03

NOTICE OF RECEIPT OF APPLICATION FOR LICENSE; NOTICE OF AVAILABILITY OF APPLICANT'S ENVIRONMENTAL REPORT; NOTICE OF CONSIDERATION OF ISSUANCE OF LICENSE; AND NOTICE OF HEARING AND COMMISSION ORDER

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) received on December 15, 2003, an application, safety analysis report, and environmental report from Louisiana Energy Services, L.P. (LES), for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 5 percent U-235 by the gas centrifuge process. The plant, to be known as the National Enrichment Facility (or NEF), would be constructed in Eunice, New Mexico. LES is a limited Partnership whose general Partners are Urenco Investments, Inc. (a subsidiary of Urenco, Ltd.) and Westinghouse Enrichment Company. In addition, there are six limited Partners.

Copies of LES's application, safety analysis report, and environmental report (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390, Availability of Public Records) are available for public inspection at the Commission's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for review and copying using any of the following methods: (1) enter the NRC's Gas Centrifuge Enrichment Facility Licensing website at http://www.nrc.gov/materials/fuel-cycle-fac/gas-centrifuge.html#correspondence ; (2) enter the NRC's Agency wide Document Access and Management System (ADAMS) at http://www.nrc.gov/NRC/ADAMS/index.htm, where the accession number for LES's application (including LES's safety analysis report and LES's environmental report) is ML040020261; or (3) contact the NRC's Public Document Room (PDR) by calling (800) 397-4209, faxing a request to (301) 415-3548, or sending a request by electronic mail to pdr@nrc.gov. Hard copies of the documents are available from the PDR for a fee.

The NRC has now accepted LES's application for docketing and accordingly is providing this notice of hearing and notice of opportunity to intervene on LES's application for a license to construct and operate a centrifuge enrichment facility. Pursuant to the Atomic Energy Act of 1954, as amended, (Act) the NRC staff will prepare a safety evaluation report after reviewing the application and making findings concerning the public health and safety and common defense and security. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR Part 51, NRC will complete an environmental evaluation and prepare an environmental impact statement (EIS) before the hearing on the issuance of a license is completed. The preparation of the EIS will be the subject of a separate notice in the Federal Register.

When available, the NRC staff's safety evaluation and its EIS (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) will also be placed in the PDR and in ADAMS. Copies of correspondence between the NRC and LES, and transcripts of prehearing conferences and hearings (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) will be similarly made available to the public.

If following the hearing, the Commission is satisfied that LES has complied with the Commission's regulations and the requirements of this Notice and Commission Order and the Commission finds that the application satisfies the applicable standards set forth in 10 CFR 30.33, 40.32, and 70.23, a single license will be issued authorizing: (1) the receipt, possession, use, delivery, and transfer of byproduct (e.g., calibration sources), source, and special nuclear material in the National Enrichment Facility; and (2) the construction and operation of the National Enrichment Facility. Prior to commencement of operations of the National Enrichment Facility if it is licensed, in accordance with section 193(c) of the Act and 10 CFR 70.32(k), NRC will verify through inspection that the facility has been constructed in accordance with the requirements of the license for such construction and operation. The inspection findings will be published in the Federal Register.

II. Notice of Hearing

A. Pursuant to 10 CFR 70.23a and Section 193 of the Atomic Energy Act of 1954, as amended (Act), as amended by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575), a hearing will be conducted according to the rules of procedure in new 10 CFR Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I (final rule published at 69 FR 2182, January 14, 2004).[1] The hearing will be held under the authority of sections 53, 63, 189, 191, and 193 of the Act. The applicant and NRC staff shall be parties to the proceeding.

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[1]By its terms, the new 10 CFR Part 2 applies to licensing actions the notice of hearing for which was issued on or after the effective date of the new rule, February 13, 2004. See 69 FR 2182. By this order, the Commission directs the application of the new 10 CFR Part 2 for the LES Proceeding. Accordingly, references in this Notice and Order are to the new 10 CFR Part 2.

B. Pursuant to 10 CFR Part 2, Subpart C, the hearing shall be conducted by an Atomic Safety and Licensing Board (Board) appointed by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel. Notice as to the membership of the Board will be published in the Federal Register at a later date.

C. The matters of fact and law to be considered are whether the application satisfies the standards set forth in this Notice and Commission Order and the applicable standards in 10 CFR 30.33, 40.32, and 70.23, and whether the requirements of 10 CFR Part 51 have been met.

D. If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4, the Board will determine the following, without conducting a de novo evaluation of the application: (1) whether the application and record of the proceeding contain sufficient information and whether the NRC staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards, with respect to the matters set forth in paragraph C of this section, and (2) whether the review conducted by the NRC staff pursuant to 10 CFR Part 51 has been adequate.

E. Regardless of whether the proceeding is contested or uncontested, the Board will, in its initial decision, in accordance with Subpart A of Part 51: Determine whether the requirements of sections 102(2) (A), (C), and (E) of NEPA and Subpart A of Part 51 have been complied with in the proceeding; independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and determine whether a license should be issued, denied, or conditioned to protect the environment.

F. If the proceeding becomes a contested proceeding, the Board shall make findings of fact and conclusions of law on admitted contentions. With respect to matters set forth in paragraph C of this section but not covered by admitted contentions, the Board will make the determinations set forth in paragraph D without conducting a de novo evaluation of the application.

G. By _____[60 days from the date of publication of this Federal Register notice], any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Petitions for leave to intervene shall be filed in accordance with the provisions of 10 CFR 2.309. Interested persons should consult the new 10 CFR Part 2, section 2.309 (69 FR 2182, 2238), which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD (or call the PDR at (800) 397-4209 or (301) 415-4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site, at http://www.nrc.gov. If a petition for leave to intervene is filed by the above date, the Commission will issue an order determining standing and refer petitions from persons with the requisite standing to the Atomic Safety and Licensing Board for further processing in the proceeding.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act

to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petition must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to LES's application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Board will set the time and place for any prehearing conferences and evidentiary hearings, and the respective notices will be published in the Federal Register.

A petition for leave to intervene and proffered contentions must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Associate General Counsel for Hearings, Enforcement, and Administration, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to James Curtiss, Esq., Winston & Strawn, 1400 L Street, Washington, DC 20005-3502, attorney for the applicant.

Non-timely filings of petitions for leave to intervene, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission or the Atomic Safety

and Licensing Board that the petition should be granted, based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

H. A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as an interested entity under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by _____ [60 days from the date of publication of this Federal Register notice]. The petition must be filed in accordance with the filing instructions in paragraph G, above, for petitions submitted under 10 CFR 2.309, except that State and Federally recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1). The Commission will rule on petitions filed under 10 CFR 2.309(d)(2). The entities listed above could also seek to participate in a hearing as a non-party pursuant to 10 CFR 2.315(c).

I. Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by [60 days from the date of publication of this notice].

III. Commission Guidance

A. Contentions on Environmental Justice

The Commission will make the determination as to whether contentions associated with environmental justice matters will be admitted in this proceeding. Parties responding to such contentions pursuant to 10 CFR 2.309(h) shall submit their answers to the Commission's Secretary as noted above with copies to the other parties and Board. The Commission itself will rule on the admissibility of such contentions and provide appropriate guidance on the litigation of such contentions.

B. Presiding Officer Determination of Contentions

For contentions other than environmental justice (addressed in III.A. above), the presiding officer shall issue a decision on the admissibility of contentions no later than sixty (60) days after the petitions and contentions are referred to the ASLB.

C. Novel Legal Issues

If rulings on the admissibility of contentions or the admitted contentions themselves raise novel legal or policy questions, the Commission will provide early guidance and direction on the treatment and resolution of such issues. Accordingly, the Commission directs the Board to promptly certify to the Commission in accordance with 10 CFR 2.319(l) and 2.323(f) all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in this proceeding.

D. Discovery Management

(1) All parties, except the NRC staff, shall make the mandatory disclosures required by 10 CFR 2.704 within forty-five (45) days of the issuance of the order admitting that contention.

(2) The presiding officer, consistent with fairness to all parties, should narrow the issues requiring discovery and limit discovery to no more than one round for admitted contentions.

(3) All discovery against the Staff shall be governed by 10 CFR 2.336(b) and 2.709. The Staff shall comply with 10 CFR 2.336(b) no later than 30 days after the ASLB order admitting contentions and shall update the information at the same time as the issuance of the Safety Evaluation Report (SER) or the Final Environmental Impact Statement (FEIS). Discovery under 10 CFR 2.709 shall not commence until the issuance of the particular document, i.e., SER or EIS, unless the ASLB in its discretion finds that commencing discovery against the Staff on safety issues before the SER is issued, or on environmental issues before the FEIS is issued will expedite the hearing without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

(4) No later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the Staff shall make the pretrial disclosures required by 10 CFR 2.704(c).

E. Hearing Schedule

The Commission believes that a reasonably-achievable schedule would result in a final NRC decision on the pending application within about two and a half years of the date the application was received, and the Commission thus will impose a 30-month milestone schedule for this proceeding. The Commission recognizes, however, that legislation currently being considered would require the NRC to issue decisions on new enrichment facility applications within two years of receipt of the application; consequently, the Commission will endeavor to identify efficiencies, and provide the pertinent resources, to further reduce the time the agency needs to complete reviews and reach decisions in licensing uranium enrichment facilities.

In the interest of providing a fair hearing, avoiding unnecessary delays in the NRC's review and hearing process, and producing an informed adjudicatory record that supports the licensing determination to be made in this proceeding, the Commission directs that both the Atomic Safety and Licensing Board and the NRC staff, as well as the applicant and other parties to this proceeding, follow the applicable requirements contained in the new 10 CFR Part 2 and the guidance in the Commission's Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18 (1998) [63 Fed. Reg. 41872 (August 5, 1998)] to the extent that such guidance is not inconsistent with specific guidance in this Order. The guidance in the Statement of Policy on Conduct of Adjudicatory Proceedings is intended to improve the management and the timely completion of the proceeding and addresses hearing schedules, parties' obligations, contentions, and discovery management. Consistent with that guidance, the Commission directs the Licensing Board to expeditiously decide legal and policy issues that may resolve threshold issues or expedite this proceeding. Threshold environmental legal and policy issues need not await issuance of the final EIS. In addition, the Commission is providing the following direction for this proceeding:

1) The Commission directs the Licensing Board to set a schedule for the hearing in this proceeding consistent with this order that establishes as a goal the issuance of a final Commission decision on the pending application within two and a half years (30 months) from the date that the application was received. Formal discovery against the Staff shall be suspended until after the Staff completes its final SER and EIS in accordance with the direction provided in paragraph D.(3), above.

2) The evidentiary hearing with respect to issues should commence promptly after completion of the final staff documents (SER or EIS) unless the Licensing Board in its discretion finds that starting the hearing with respect to one or more safety issues prior to issuance of the final SER[2] (or one or more environmental contentions directed to the applicant's Environmental Report) will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

3) The Commission also believes that issuing a decision on the pending application within about two and a half years may be reasonably achieved under the rules of practice contained in the new 10 CFR Part 2 and the enhancements directed by this order. We do not expect the Licensing Board to sacrifice fairness and sound decision-making to expedite any hearing granted on this application. We do expect, however, the Licensing Board to use the techniques specified in this order and in the Commission's policy statement on the conduct of adjudicatory proceedings (CLI-98-12, *supra*) to ensure prompt and efficient resolution of contested issues. *See also* Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981).

4) If this is a contested proceeding, the Board should adopt the following milestones, in developing a schedule, for conclusion of significant steps in the adjudicatory proceeding:[3]

-	Within <u>10 days</u> of the Commission's order determining standing and admission of any environmental justice contentions:	Persons found to have standing or entities participating under 10 CFR 2.309(d) may submit a motion for reconsideration (see, below, at Section IV.B).*

[2] The Commission believes that, in the appropriate circumstances, allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final SER is issued will serve to further the Commission's objective, as reflected in the Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12,*supra*, to ensure a fair, prompt, and efficient resolution of contested issues. For example, it may be appropriate for the Licensing Board to permit discovery against the staff and/or the commencement of an evidentiary hearing with respect to safety issues prior to the issuance of the final SER in cases where the applicant has responded to the Staff's "open items" and there is an appreciable lag time until the issuance of the final SER, or in cases where the initial SER identifies only a few open items.

[3] This schedule assumes that the SER and Final EIS are issued essentially at the same time. If these documents are not to be issued very close in time, the Board should adopt separate schedules but concurrently running for the safety and environmental reviews consistent with the time frames herein for each document.

- Within 20 days of the Commission's order determining standing:	Persons found to have standing or entities participating under 10 CFR 2.309(d) may respond to any motion for reconsideration.
- Within 60 days of the Commission's order determining standing and referring the petition and contentions to the ASLB:	ASLB decision on admissibility of remaining contentions.
- Within 30 days of the ASLB decision determining admission of contentions:	Staff prepares hearing file.
- Within 90 days of the ASLB decision determining admission of contentions:	Completion of discovery on admitted contentions, except against the Staff (including contentions on environmental issues arising under NEPA).
- Within 110 days of the ASLB decision determining admission of contentions:	Deadline for summary disposition motions on admitted contentions.**
- Within 150 days of the ASLB decision determining admission of contentions:	ASLB decision on summary disposition motions on admitted contentions.
- Date of issuance of final SER/EIS	Staff updates hearing file.
- Within 20 days of the issuance of final SER/EIS:	Motions to amend contentions; motions for late-filed contentions.
- Within 40 days of the issuance of final SER/EIS:	Completion of answers and replies to motions for amended and late-filed contentions.
- Within 50 days of the issuance of final SER/EIS:	ASLB decision on admissibility of late-filed contentions; deadline for summary disposition motions on remaining admitted contentions.***
- Within 80 days of the issuance of final SER/EIS:	Completion of discovery on late-filed contentions; ASLB decision on summary disposition motions on remaining contentions.

-	Within 90 days of the issuance of final SER/EIS:	Direct testimony filed on remaining contentions and any amended or admitted late-filed contentions.
-	Within 100 days of the issuance of final SER/EIS:	Cross-examination plans filed on remaining contentions and any amended or admitted late-filed contentions.
-	Within 105 days of the issuance of final SER/EIS:	Evidentiary hearing begins on remaining contentions and any amended or admitted late-filed contentions.
-	Within 135 days of the issuance of final SER/EIS:	Completion of evidentiary hearing on remaining contentions and any amended or admitted late-filed contentions.
-	Within 180 days of the issuance of final SER/EIS:	Completion of findings and replies.
-	Within 240 days of the issuance of final SER/EIS:	ASLB's initial decision.

* Motions for reconsideration do not stay this schedule.

** The schedule presumes that a prehearing conference order would establish the deadline for filing of summary disposition motions 20 days after close of discovery consistent with 10 CFR 2.710(a), answers to be filed 10 days after filing of any motion, replies to be filed 10 days after any answer, and the ASLB to issue a decision on any summary disposition motion 20 days thereafter.

*** No summary disposition motions on late-filed contentions are contemplated.

To meet these milestones, the Licensing Board should direct the participants to serve all filings by electronic mail (in order to be considered timely, such filings must be received by the Licensing Board and parties no later than midnight Eastern Time on the date due, unless otherwise designated by the Licensing Board), followed by conforming hard copies that may be sent by regular mail. If participants do not have access to electronic mail, the Licensing Board should adopt other expedited methods of service, such as express mail, which would ensure receipt on the due date ("in-hand"). If pleadings are filed by electronic mail, or other expedited methods of service which would ensure receipt on the due date, the additional period provided in our regulations for responding to filings served by first-class mail or express delivery shall not be applicable. *See* 10 CFR 2.306.

In addition, to avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances. Although summary disposition motions are included in the schedule above, the Licensing Board shall not entertain motions for summary disposition under 10 CFR. 2.710, unless the Licensing Board finds that such motions are likely to expedite the proceeding. Unless otherwise justified, the Licensing Board shall provide for the simultaneous filing of answers to proposed contentions, responsive pleadings, proposed findings of fact, and other similar submittals.

5) Parties are obligated in their filings before the Licensing Board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed from the proceeding.

6) The Commission directs the Licensing Board to inform the Commission promptly, in writing, if the Licensing Board determines that any single milestone could be missed by more than 30 days. The Licensing Board must include an explanation of why the milestone cannot be met and the measures the Licensing Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule.

F. Commission Oversight

As in any proceeding, the Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the Licensing Board and participants and to resolve any matter in controversy itself.

IV. Applicable Requirements

A. The Commission will license and regulate byproduct, source, and special nuclear material at the National Enrichment Facility in accordance with the Atomic Energy Act of 1954, as amended. Section 274c.(1) of the Act was amended by Public Law 102-486 (October 24, 1992) to require the Commission to retain authority and responsibility for the regulation of uranium enrichment facilities. Therefore, in compliance with law, the Commission will be the sole licensing and regulatory agency with respect to byproduct, source, and special nuclear material for the National Enrichment Facility, and with respect to the control and use of any equipment or device in connection therewith.

Many rules and regulations in 10 CFR chapter I are applicable to the licensing of a person to receive, possess, use, transfer, deliver, and process byproduct, source and special nuclear material in the quantities that would be possessed at the National Enrichment Facility. These include 10 CFR Parts 19, 20, 21, 25, 30, 40, 51, 70, 71, 73, 74 , 95, 140, 170, and 171 for the licensing and regulation of byproduct, source, and special nuclear material, including requirements for notices to workers, reporting of defects, radiation protection, waste disposal, decommissioning funding, and insurance.

With respect to these regulations, the Commission notes that this is the second proceeding involving the licensing of an enrichment facility. The Commission issued a number of decisions in an earlier proceeding regarding a proposed site in Homer, Louisiana. These final decisions, *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-92-7, 35 NRC 93 (1992); *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997); and *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998), resolve a number of issues concerning uranium enrichment licensing and may be relied upon as precedent.

Consistent with the Atomic Energy Act of 1954, as amended, and the Commission's regulations, the Commission is providing the following direction for licensing uranium enrichment facilities:

1. Environmental Issues

a) General: 10 CFR Part 51 governs the preparation of an environmental report and an environmental impact statement (EIS) for a materials license. LES's environmental report and the NRC staff's associated EIS are to include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative.

b) Treatment of depleted uranium hexafluoride tails: As to the treatment of the disposition of depleted uranium hexafluoride tails (depleted tails) in these environmental documents, unless LES demonstrates a use for the uranium in the depleted tails as a potential resource, the depleted tails may be considered waste. In addition, if such waste meets the definition of "waste" in 10 CFR 61.2, the depleted tails are to be considered low-level radioactive waste within the meaning of 10 CFR Part 61 in which case an approach by LES to transfer to DOE for disposal by DOE of LES' depleted tails pursuant to Section 3113 of the USEC Privatization Act constitutes a "plausible strategy" for dispositioning the LES depleted tails. The NRC staff may consider the DOE EIS in preparing the staff's EIS. Alternatives for the disposition of depleted uranium tails will need to be addressed in these documents. As part of the licensing process, LES must also address the health, safety, and security issues associated with the storage of depleted uranium tails on site pending removal of the tails from the site for disposal or DOE dispositioning.

c) Environmental Justice: As to environmental justice matters, past Commission decisions are relevant precedent. These include *Louisiana Energy Services* (Claiborne Enrichment center), CLI-98-3, 47 NRC 77 (1998) and *Private Fuel Storage, L.L.C*. (Independent Spent Fuel Storage Installation),CLI-02-20, 56 NRC 147 (2002) that limit treatment of certain issues in NRC proceedings. In addition, the Commission notes that it recently issued for comment a draft Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions, 68 FR 62642 (November 5, 2003). As noted above in Section III, the admissibility of proffered environmental justice contentions will be determined by the Commission.

2. Financial Qualifications

Review of financial qualifications for enrichment facility license applications is governed by 10 CFR Part 70. In *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 309 (1997), the Commission held that the Part 70 financial criteria, 10 CFR 70.22(a)(8) and 70.23(a)(5), could be met by conditioning the LES license to require funding commitments to be in place prior to construction and operation. The specific license condition approved in that proceeding, which addressed a minimum equity contribution of 30 % from the parents and affiliates of LES partners prior to construction of the associated capacity and having in place long term enrichment contracts with prices sufficient to cover both construction and operating costs, including a return on investment, for the entire term of the contracts prior to constructing or operating the facility, is one way to satisfy the requirements of Part 70.

3. Antitrust Review

The LES enrichment facility is subject to licensing pursuant to sections 53 and 63 of the Atomic Energy Act (Act), and is not a production and utilization facility licensed under section 103. Consequently the NRC does not have antitrust responsibilities for LES similar to the antitrust responsibilities under section 105 of the Act. The NRC will not entertain or consider antitrust issues in connection with the LES application in this proceeding.

4. Foreign Ownership

The LES application is governed by sections 53 and 63 of the Act, and consequently issues of foreign involvement shall be determined pursuant to section 57 and not sections 103, 104 or 193(f). Section 57 of the Act requires, among other things, an affirmative finding by the Commission that issuance of a license for NEF will not be “inimical to the common defense and security.”

5. Creditor Requirements

Pursuant to section 184 of the Act, the creditor regulations in 10 CFR 50.81 shall apply to the creation of creditor interests in equipment, devices, or important component parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235. In addition, the creditor regulations in 10 CFR 70.44 shall apply to the creation of creditor interests in special nuclear material. These creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements (such as sale and leaseback) not covered by 10 CFR 50.81, provided it can be found that such arrangements are not inimical to the common defense and security of the United States.

6. Classified Information

All matters of classification of information related to the design, construction, operation, and safeguarding of the NEF shall be governed by classification guidance in "Joint NRC/DOE Classification Guide for Louisiana Energy Services Gas Centrifuge Plant (CG-LCP-1)" (1992) (Confidential-- Restricted data) and any later versions. Any person producing such information must adhere to the criteria in CG-LCP-1. All decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC and are not subject to de novo review in this proceeding.

7. Access to Classified Information Pursuant to 10 CFR Part 25

Portions of LES' application for a license are classified Restricted Data or National Security Information. Persons needing access to those portions of the application will be required to have the appropriate security clearance for the level of classified information to which access is required. Access to certain classified Third Agency or Foreign Government Information may be subject to special controls and require the prior approval of the Director, Division of Nuclear Security, NSIR. Access requirements apply equally to intervenors, their witnesses and counsel, employees of the applicant, its witnesses and counsel, NRC personnel, and others. Any person who believes that he or she will have a need for access to classified information for the purpose of this licensing proceeding, including the hearing, should immediately contact the

U.S. Nuclear Regulatory Commission, Division of Facilities and Security, ADM, Washington, DC 20555, for information on the clearance process. Telephone calls may be made to Cheryl M. Stone, Chief, Security Branch. Telephone: (301) 415-7404.

8. Obtaining NRC Security Facility Approval and for Safeguarding Classified Information Received or Developed Pursuant to 10 CFR Part 95

Any person who requires possession of classified information in connection with the licensing proceeding may process, store, reproduce, transmit, or handle classified information only in a location for which facility security approval has been obtained from the NRC's Division of Nuclear Security, NSIR, Washington, D.C. 20555. Telephone calls may be made to A. Lynn Silvious, Chief, Information Security Section. Telephone: (301) 415-2214.

B. Reconsideration:

The above guidance does not foreclose the applicant, any person admitted as a party to the hearing, or an entity participating under 10 CFR 2.315(c) from litigating material factual issues necessary for resolution of contentions in this proceeding. Persons found by the Commission to have standing and entities participating under 10 CFR 2.315(c) as of the date of the Commission's order on standing may also move the Commission to reconsider any portion of Section IV of this Notice and Commission Order where there is no clear Commission precedent or unambiguously governing statutes or regulations. Any motion to reconsider must be filed within 10 days after the Commission's order on standing. The motion must contain all technical or other arguments to support the motion. Other persons granted standing and entities participating under 10 CFR 2.315(c), including the applicant and the NRC staff, may respond to motions for reconsideration within 20 days of the Commission's Order. Motions will be ruled upon by the Commission. A motion for reconsideration does not stay the schedule set out above in section III.E.(4). However, if the Commission grants a motion for reconsideration, it will, as necessary, provide direction on adjusting the hearing schedule.

V. Pending Energy Legislation

The Energy Policy Act of 2003, H.R. 6, is currently pending in Congress. H.R. 6, as currently constituted, contains provisions that address the manner in which certain issues are to be dealt with and a schedule for overall Commission consideration of an application for licensing a uranium enrichment facility. In the event that H.R. 6 is enacted, the Commission may need to issue an additional order to conform guidance and schedules for the LES application to any new statutory requirements.

VI. Notice of Intent Regarding Classified Information

As noted above, a hearing on this application will be governed by the new 10 CFR Part 2, Subparts A, C, G, and to the extent classified material becomes involved, Subpart I. Subpart I requires in accordance with 10 CFR 2.907 that the NRC staff file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the staff to avoid the introduction of Restricted Data or National Security Information into a proceeding. The applicant has submitted portions of its application that are classified. The Commission notes that, since the entire application becomes part of the record of the proceeding, the NRC staff has found it impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding.

IT IS SO ORDERED.

For the Nuclear Regulatory Commission.

/RA/

Annette L. Vietti-Cook,
Secretary of the Commission.

Dated at Rockville, Maryland,
this 30th day of January, 2004