

UNITED STATES OF AMERICA

DOCKETED 08/02/04

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO BOARD QUESTIONS
REGARDING THE LES HEARING FILE

As requested in the Board’s Memorandum and Order of July 19, 2004¹ (“Board Order”), the Staff herein offers its proposal for the LES Hearing File. The Staff proposes to comply with the mandatory disclosures outlined in 10 C.F.R. § 2.336(b) by creating an electronic hearing file as specified in option 2 of footnote 19 of the Board Order. The Staff will have the hearing file completed by August 18, 2004. However, because creating an electronic hearing file will necessitate adding a potentially large number of documents into ADAMS, the Staff will not be able to complete the hearing file sooner than the 30 day requirement.

In creating the electronic hearing file, the Staff will comply with the instructions from the Board and create a folder in ADAMS entitled, “Louisiana Energy Services - 70-3103-ML Hearing File” with viewer rights as specified. See Board Order, fn. 19. The Staff will place within that hearing file all the documents which satisfy 10 C.F.R. § 2.336(b)(1)-(4). Upon completion of the initial population of the hearing file, and upon subsequent updates, the Staff will serve upon all

¹ Memorandum and Order (Rulings Regarding Standing, Contentions, and Procedural/Administrative Matters), July 19, 2004.

parties a "Hearing File Index" which will include a numbered list of each item in the hearing file with the documents' titles, dates, and ADAMS Accession Numbers.

Some sections of the disclosure requirements outlined in 10 C.F.R. § 2.336(b) are new additions to the recently revised Part 2 of the Commission's regulations.² Thus, in order to minimize the potential for issues to arise later in this adjudicatory process, the Staff is providing details of its hearing file proposal, specifically regarding satisfaction of 10 C.F.R. §§ 2.336(b)(3)&(5).

First, in order to satisfy 10 C.F.R. § 2.336(b)(3), the Staff proposes to include in the initial population of the hearing file the documents currently known to support the Staff's review of the application (whether in support of or in opposition to the application) at this point in the Staff's review process, rather than waiting until the Staff's review is complete. Because the Staff's review is continuing, future updates of the hearing file will include additional references to information supporting the Staff's review. See 10 C.F.R. § 2.336(d).

Second, because the documents required to be disclosed under 10 C.F.R. § 2.336(b)(3) are anticipated to be numerous, and in some cases, voluminous; and because many of these documents are not currently contained in ADAMS, the Staff proposes two paths depending upon the accessibility of the document. Documents not currently in ADAMS, and not publically available on the internet, would be added to ADAMS and to the hearing file. However, documents not currently in ADAMS that are publically available on the internet would be provided in a reference list by title and internet citation. The documents would not, however, be entered into ADAMS.³

² See "Changes to Adjudicatory Process; Final Rule," 69 Fed. Reg. 2,182 (January 14, 2004).

³ For example, the Staff anticipates relying upon several Department of Energy ("DOE") Environmental Impact Statements ("EIS") in the Staff's EIS regarding the LES application. The Staff proposes that, rather than attempting to enter such large documents into ADAMS, the Staff would instead provide a reference list identifying a publically available internet site where the
(continued...)

For documents satisfying 10 C.F.R. § 2.336(b)(3) which are not presently in ADAMS, but are available on the internet, the Staff proposes the creation of a document entitled “Documents Supporting Staff’s Review - 1.” This document will be placed in ADAMS and will be part of the hearing file. The document will contain a reference list which will provide identifying information for the documents and the publically available website locations where the documents can be accessed. The Staff believes that providing a publically available address for these reference items rather than attempting to have these documents entered into ADAMS will prevent unnecessary delays while maintaining public accessibility of the items. Creating a reference list in a single document will also avoid further expansion of what is sure to be a large hearing file.

Subsequently, upon every update of the hearing file, the Staff will create a new document which will be a new reference list including titles and web addresses of any additional material supporting the Staff’s review. The title of the document will remain the same, with only the number referenced in the title changing. Thus, the first update of the hearing file will include, if necessary, a new document in the hearing file entitled “Documents Supporting Staff’s Review - 2”, which will contain a reference list of any new information supporting the Staff’s review. Again, this list will only contain a reference and citation to those documents which are already publically available on the internet.

For documents satisfying 10 C.F.R. § 2.336(b)(3) which are not currently in ADAMS, and are not available on the internet, the Staff will enter each of these items into ADAMS and into the hearing file. Each of these documents will thus have a separate ADAMS identifier.

Finally, in order to satisfy 10 C.F.R. § 2.336(b)(5), the Staff proposes to create a “Privilege Log” which will provide a list of documents for which a claim or privilege is asserted, with sufficient information for assessing the claim of privilege or protected status of the document. The Privilege

³(...continued)
parties (and members of the public) could access the documents.

Log will identify documents which, although potentially relevant to the matters in controversy, will not be added to the hearing file and the rationale for their nondisclosure. The Privilege Log will be a separate document, but will be served with the Hearing File Index and will be updated, as necessary, upon each update of the hearing file. This proposal should avoid the necessity of placing any non-public documents into the hearing file. Should the need arise, however, to place non-public documents into the hearing file, the Staff will first alert the Board and await the Board's instructions, as outlined in the Board Order. See Board Order at 35, fn. 19.

The Staff circulated this document in advance of filing and received no substantive comments or objections.

Respectfully submitted,

/RA/

Angela B. Coggins
Counsel for NRC Staff

Dated at Rockville, Maryland
this 29th day of July, 2004

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In the Matter of)	
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LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
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(National Enrichment Facility))	ASLBP No. 04-826-01-ML
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO BOARD QUESTIONS REGARDING THE LES HEARING FILE" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 29th day of July, 2004.

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