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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Louisiana Energy Services, L.P.
National Enrichment Facility

Docket No. 70-3103

ASLBP No. 04-826-01-ML

MOTION TO COMPEL DISCOVERY CONCERNING MARKET FOR URANIUM ENRICHMENT ON BEHALF OF PETITIONERS NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN

Preliminary statement

This Motion is filed on behalf of Petitioners Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") pursuant to the Order of the Atomic Safety and Licensing Board (the "Board"), authorizing the filing of motions related to the discovery obligations of the parties (Memorandum and Order, Aug. 16, 2004, at 5 note 3).

By this motion NIRS/PC seek an order requiring the witnesses presented by Applicant, Louisiana Energy Services, L.P. ("LES"), to testify on the issue of the "need" for the proposed National Enrichment Facility ("NEF"), as part of the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* ("NEPA"), cost-benefit analysis, to answer questions about the market for enrichment services.

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Factual background

NIRS/PC have attempted to examine the economic impact of the proposed NEF in depositions of LES experts. However, counsel for LES have directed the witnesses not to answer any questions about the price at which enrichment would be sold or the cost of enriching uranium. NIRS/PC seek an order directing that such questions be answered, since they are critical to determination of the costs and benefits of the proposed new facility.

"NEPA is generally regarded as calling for some sort of weighing of the environmental costs against the economic, technical, or other public benefits of a proposal." In re *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 88 (1998). Moreover, the environmental impact statement must "to the fullest extent practicable, quantify the various factors considered." 10 CFR § 51.71(d). Such analysis of "public benefits" goes even beyond economic impacts and should account for a range of benefits sought by national policy. (*LES,* 47 NRC at 95-96).

In the Claiborne Enrichment Center ("CEC") case, in which LES was a party, the Commission determined that the "need" for an enrichment facility will be judged on the basis, among other things, of its projected impact on the enrichment market. In that case, LES's expert witness, Michael H. Schwartz of Energy Resources International, Inc. ("ERI"), testified that enrichment customers choose their supplier based on price and security of supply:

> "Recognizing that the objectives of the utilities that must purchase uranium enrichment services are to minimize their costs for nuclear fuel supply, while at the same time maximizing security of that supply, there is no question that another domestic supplier of enrichment services that could offer such services on a commercially competitive basis would be welcome. Consequently, I do not believe that the fact that there is excess supply capacity in the enrichment services market is pertinent to a determination of the need for the CEC." (Testimony of Michael H. Schwartz and Peter G. LeRoy on behalf of Louisiana Energy Services, L.P., addressing contention J.4, "need" for facility, and contention K, no discussion of "no action" alternative, Feb. 24, 1995, at 28).

Mr. Schwartz explained that, in advising utilities concerning enrichment supply, his firm "consistently weigh[ed] security of supply and minimization of cost as being of paramount importance." (id. 29). Further, he laid out for the Atomic Safety and Licensing Board (the "CEC Board") how his firm, ERI, develops projections of the price of enrichment supply:

> "Market price projections for uranium enrichment services are developed using a methodology that combines uncommitted requirements with uncommitted supply in accord with clearing price economic considerations to obtain long-term, cost-based prices. The individual enrichment supply centers are broken into production capacity increments, where appropriate. Production-cost-based prices for each of the individual increments of commercial enrichment supply are estimated in separate discounted cash flow ("DCF") analyses that account for all production costs and assume a return on capital investment. Initial capital costs for plant and equipment, debt financing arrangements, depreciation life, power usage, cost of electricity, tails disposal costs, other operating costs, facility D&D costs, plant upgrades, R&D costs, royalty payments, taxes, and country specific inflation and exchange rates are all considered.
>
> "The DCF analyses results in the production costs employed in the production-cost-based clearing price model for the enrichment facilities of the USEC, Eurodif, Urenco, and the proposed new facility of LES in the U.S. The Russian Federation production costs for enrichment services exports are assumed to be equal to the currently prevailing unrestricted spot market price."

Mr. Schwartz explained, further, how ERI's model of the enrichment market identifies uncommitted demand and matches it with available supply to develop the market price:

> "The production-cost-based price of the last block of supply used to fill requirements is then the production-cost-based clearing price. This clearing price is then adjusted to reflect the anticipated level of competition among sources of supply at this point in the supply price curve." (id. 32).

LES projected its own costs and determined that the CEC could successfully sell enrichment at the anticipated market price. (id. 37-38).

After hearing the presentation by Mr. Schwartz and other evidence, the CEC Board determined the likely economic impact of the new plant upon the enrichment market. It explained:

> "The fundamental case for the CEC is that it can and will compete on economic grounds, allowing U.S. electric utilities a competitive source of supply so that they can in

> turn achieve the lowest cost reliable supply of electricity to their rate payers." In re *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBR-96-25, 44 NRC 331, 350 (Dec. 3, 1996).

Based upon the supply and demand for enrichment services and the projected costs and prices of enrichment suppliers, the CEC Board found that the CEC's production costs would be approximately the same as costs of existing producers, so that entry of the CEC into the market probably would not lead to lower prices:

> "Specifically, we find that contrary to the conclusion of the ER and the FEIS, the CEC merely will be a fifth producer whose total costs of producing SWUs are comparable to the other market competitors in an already very highly competitive market where the current and future supply of SWUs far exceeds current and future demand. Consequently, rather than bringing the benefit of significant price competition to the enrichment services market as an additional domestic supplier, the evidence before us clearly shows that, when quantified, the CEC will have little, if any, effect on price competition in the enrichment services market." (id. 369).

On review, the full Commission expressly did "not disturb the Board's core factual finding that the CEC is unlikely to have a major beneficial price effect." In re *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 90 (Apr. 3, 1998). The Commission expressly stated:

> "In sum, we hold that the Board had sufficient reason to examine the likely competitive price effects of the CEC, that the Board's price-effects finding should be added to the environmental record of decision, and that the Board, in performing its ultimate cost-benefit balancing under NEPA, must consider, in addition to price effects, the other benefits of the CEC." (id. 97).

Earlier this year, the Commission specifically stated, for the purpose of licensing review of the NEF, that that Commission decision "resolves[s] a number of issues concerning uranium enrichment licensing and may be relied upon as precedent." (Hearing Order, 69 Fed. Reg. 5873, 5877)(Feb. 6, 2004).

Argument

In this case about the NEF, NIRS/PC likewise question the sufficiency of LES's NEPA analysis of need—*i.e.*, the "environmental, social, and economic impacts and costs"—of opening the NEF. NIRS/PC phrased the contention, in part, as follows:

> "**5. Need for the facility; impact on national security**
> **5.1 Contention:** Petitioners contend that the Environmental Report ("ER") does not adequately describe or weigh the environmental, social, and economic impacts and costs of operating the National Enrichment Facility ("NEF") (See ER 1.1.1 et seq.).
> The ER contains LES's statement of the asserted purpose and need pursuant to 10 CFR 51.45, but the supposed benefit-cost analysis fails to demonstrate that there is a need for the facility. "To assist the NEPA cost-benefit analysis, the NRC ordinarily examines the need a facility will meet and the benefits it will create." In re Louisiana Energy Services, CLI-98-3, 47 NRC 77, 89 (1998). . . . .
> **A. Basis:** LES's presentation erroneously assumes that there is a shortage of enrichment capacity. . . . .
> **F. Basis:** . . . LES has not provided the Commission with any information regarding the current costs of SWUs to present and expected market participants; the cost of the proposed NEF SWU production—including all costs related to construction, operation, decommissioning and UF_6 waste disposal—nor market projections; and thus has not demonstrated how construction of the proposed facility would satisfy any alleged need. . . ." (NIRS/PC Pet. at 39-41) (Apr. 6, 2004).

NIRS/PC argued for contention NIRS/PC EC-7, using the CEC precedent to show that it is important, under NEPA, to explore the production costs of the proposed NEF plant and of other enrichment suppliers to determine the market impact of the NEF:

> "Before seeking a license, LES presumably studied the costs of other suppliers and the responsiveness of customers to price and other factors, to satisfy itself that utilities would buy SWUs from the NEF. The NEPA analysis underlies NRC's decision whether to license this plant. If NRC is to make an informed decision, it must know the benefits of this project, viz: whether the project will produce SWUs better, faster, or cheaper—with the benefits quantified—than others can do. There is no benefit to another domestic enrichment plant if it cannot compete." (NIRS/PC Reply 20, May 10, 2004).

In its Memorandum and Order dated July 19, 2004, the Board expressly allowed NIRS/PC to pursue whether the ER "adequately describe[s] or weigh[s] the environmental, social, and economic impacts and costs of operating the" NEF, including "how LES would effectively enter this market in the face of existing and anticipated competitors and contribute some public benefit." (NIRS/PC contention EC-7). LES claims, in discussing the Purpose and Need for the Proposed Action, that the NEF would have a beneficial effect on the enrichment market, asserting that it would constitute "an additional reliable and economical domestic source of enrichment services." (ER 1.1-2).

Despite the Board's ruling, and in disregard of its own claims about the economic benefits of the NEF, LES has adopted a new strategy for the NEPA need-cost-benefit analysis and has blocked discovery of the economic facts. LES simply advised its expert—who is the same Mr. Schwartz—to assume that the NEF's costs would allow it to sell enrichment in the market. (Tr. 54, Sept. 29, 2004). LES has instructed Mr. Schwartz to judge the "need" for the NEF facility without considering its cost of enriching uranium, the prices customers would be willing to pay, competitors' costs of enriching uranium, or the prices competitors would charge—using an approach totally different from the practice ERI uses in advising its utility clients.

And in depositions, when counsel for NIRS/PC attempted to question witnesses about the price of enrichment services, counsel for LES instructed them not to answer the questions. This exchange took place with Kirk Schnoebelen, marketing manager for Urenco, Inc.:

> "[U.S. utilities] have indicated that in pursuit of security of supply in the future and diversity of supply they are interested in seeing this facility come into being and to purchasing services from the same.
>
> MR. LOVEJOY: And these discussions have also included a price –
>
> MR. CURTISS: Objection to any discussion of price as irrelevant to the contentions made. I instruct the witness not to answer questions about price.
>
> MR. LOVEJOY: You are going to direct the witness not to answer questions about the price at which a competitor can enter the market?
>
> MR. CURTISS: The issue of price is not an issue that's been identified in this proceeding. The view of the Applicant is that the two terms that are relevant to the need for the facility are the length of the contract and the amount to be purchased. The issue of what the price is with contracts that have been executed is irrelevant to the point that

contracts have been entered into, as the witness has explained, for a certain amount of SWU or enrichment services and over a certain term.

The issue of price is irrelevant, whatever the contract might have consisted of in terms of the negotiated rice is irrelevant to the volume of SWU that the customers are permitted to purchase over a certain term from this facility." (Tr. 15-16, Sept. 29, 2004).

Counsel for LES stated on the record that the issue of cost of enrichment was also out of bounds in the deposition:

"MR. LOVEJOY: Yes, we're on the record. Do I understand your objection goes to cost information as well as price information?

MR CURTISS: Yes. Let me expand upon that so you understand the basis for our objection to your costs. . . .

It is that ruling of the Board on the business case the proposed profitability that, in our view, goes squarely to the cost question that you raised in the context of the contract.

We think it is acceptable to talk about the general question that you've raised with Mr. Schwartz as to whether cost in the overall is a consideration.

And we have not objected to Mr. Schwartz or others answering those questions. But the line of inquiry at the offset that sought to ascertain specific pricing information and individual contracts is, in our view, beyond the scope of what's been admitted in this proceeding.

Further, and finally, it is our view that, as to need, indeed as your witness articulated the need, a demand for what's being supplied as the market issue, that is reflected in contracts, copies of which have been provided under proprietary cover, and it is measured by the volume of SWU provided in the term of the contract.

Once that is established, and that is reflected in the contract that you have, beyond that, the price that might be paid, that was paid, that was paid by anyone that entered into those contracts is wholly irrelevant to the question of the demand for contracts that were executed." (Tr. 128-29, Sept. 29, 2004)

Counsel for LES maintained this objection, despite the fact that Mr. Schwartz testified—as is obvious—that price is relevant to whether an enrichment plant will make sales:

"MR LOVEJOY: [quoting] Purchasers of enrichment services view diversity and security in supply is vital from a commercial perspective as well. Do they also consider price to be a vital element of the –

MR. CURTISS: Objection as to relevance. He can answer the question, but objection to the relevance.

WITNESS SCHWARTZ: In our experience the economics are always a consideration. But, as was pointed out, it's really the – number that are considered.

MR. LOVEJOY: When you say economics, are you talking about price?

WITNESS SCHWARTZ: It can be reduced to price." (Tr. 60-61, Sept. 29, 2004).

The instructions by LES's counsel impede proper discovery. The decisions by the Board and the Commission itself in the CEC case establish that assessing the "need" for a new enrichment facility requires economic analysis of the market and its buyers and sellers. An enrichment plant is an economic unit, whose impact is measured in economic terms. Depending on the size, costs, and other characteristics of the new plant, existing suppliers and buyers, a new enrichment plant may (a) cause prices to fall, (b) cause prices to rise, (c) cause other competitors to withdraw, (d) attract additional competitors, (e) lead to a monopoly situation, or (f) cause some other market impact. In all situations, the costs and benefits in the market are measured by the science of economics, which examines markets in terms of the production costs and marketing strategies of producers, the needs and purchasing strategies of buyers, and the prices paid when supply and demand are matched. See the affidavit of Michael F. Sheehan, attached.

As Dr. Sheehan explains, it is pointless to try to determine the "need" for a new economic venture—without looking at the economics. (Sheehan aff. par. 6). LES claims in its own papers that the NEF will be an "economical" new source of supply that would lead to a "competitive" market. (ER 1.1-1). Thus, as Dr. Sheehan explains, the Board cannot evaluate LES's claims without price and cost data—because market impact depends upon the costs of the suppliers and the price that the market establishes. (Sheehan aff. par. 15).

More concretely, the uranium enrichment market for U.S. buyers has an identifiable set of suppliers. The current suppliers are (1) USEC, Inc. (formerly the United States Enrichment Corporation), lessee of the huge Department of Energy gaseous diffusion enrichment plants at Paducah, Kentucky, and Piketon, Ohio, and now planning to construct a centrifuge enrichment plant, (2) COGEMA, a French government company that sells the output of the Eurodif gaseous diffusion plant and plans to construct a European centrifuge enrichment plant in a venture with

Urenco, (3) Urenco itself, which operates three centrifuge enrichment plants in Europe and is the majority partner in LES, and (4) Russia, which in the United States markets enriched uranium mostly through USEC (See Sheehan aff. par. 7, 8). Of these firms, at present USEC is the only domestic supplier. Further, USEC has brought "antidumping" cases, alleging below-cost pricing, against Russia, Eurodif, and Urenco—successfully in all three instances, and all three now pay a surcharge on sales in this country. The proposed NEF, controlled by Urenco, would certainly not compete with Urenco's European plants. Eurodif and the Russians remain under the constraints of their antidumping penalties. Thus, competition for the NEF in selling to U.S. utilities would mainly come from USEC. The total U.S. market for enrichment is approximately 11.5 million SWU per year (ER 1.1-17), and in the short term the uncommitted demand is considerably less than that. If, as LES and USEC plan, two new centrifuge enrichment plants begin operations in approximately 2008, the two plants will strongly compete, possibly resulting in the loss of one or the other as a competitor. (Sheehan aff. par. 11, 12).

In this situation, expert witnesses for NIRS/PC are attempting to project the market impact of the introduction of the NEF. They intend to present evidence to the Board on the costs and benefits of this new market entrant—i.e., the "need" for the facility. Their presentation of the market impact of the NEF would be seriously hampered if information about the price of enrichment sales and the cost of enrichment production could be withheld by LES. (Sheehan aff. par. 13, 14). Such information is not generally available, as shown by the diligent efforts by LES to subject such information to a protective order.

Indeed, NIRS/PC anticipate that, when it becomes clear at the hearing that "need" must be demonstrated on economic grounds, LES will attempt to introduce evidence by its own experts on the important economic issues, viz: costs to producers, uncommitted demand, uncommitted supply, projected price, and similar factors. Expecting to see that evidence in February, NIRS/PC request that it be disclosed at this time under the required discovery procedures.

Conclusion

The issue of "need" for a new enrichment facility is to be determined on economic grounds; so much is established by the decisions in the CEC case. NIRS/PC request that the Board order that documents be produced, and depositions be conducted, on the understanding that data on costs of production of enrichment services, prices that customers are willing to pay, enrichment supply, enrichment demand, enrichment prices, and related economic issues are "relevant to the subject matter involved in the proceeding" in the sense of 10 CFR Sec. 2.705(b)(1) and that witnesses shall be allowed to answer questions about such matters. NIRS/PC further request that the deadline for completion of discovery be extended so that document production and testimony may be completed on such issues.

Respectfully submitted,

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October 8, 2004

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on October 8, 2004, the foregoing Motion to Compel Discovery Concerning Market for Uranium Enrichment on behalf of Petitioners Nuclear Information and Resource Service and Public Citizen was served by electronic mail and by first class mail upon the following:

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	
	)	Docket No. 70-3103-ML
Louisiana Energy Services, L.P.	)	
	)	ASLBP No. 04-826-01-ML
(National Enrichment Facility)	)	

DECLARATION OF MICHAEL F. SHEEHAN, Ph.D

Michael F. Sheehan states as follows under penalty of perjury:

1. I am a partner in Osterberg & Sheehan, Public Utility Economists, and an expert retained in this case by NIRS to testify on the issue of the "need" for the proposed National Enrichment Facility ("NEF"), cost-benefit analysis, and related aspects of NIRS/PC contention EC-7.

2. I was present at the deposition of a panel that included Mr. Michael Schwartz on September 29, 2004. At that deposition Mr. Schwartz stated that in his opinion there was a need for the NEF as a supplier of uranium enrichment for U.S. domestic utilities. He was then asked at what price he considered that the NEF would fulfill a need, and he was directed not to answer. He was also asked what the NEF's cost of enrichment was expected to be, and his counsel directed him not to answer.

3. It is not possible to determine, as an economic matter, whether there is a need for the NEF and what its impact will be on the market for enrichment without considering the NEF's costs or the price it will be able to charge.

4. In fact, the Applicant, Louisiana Energy Services, L.P. ("LES") has claimed that the

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NEF will contribute (a) an *economical* source of enrichment to U.S. buyers and (b) a reliable source of enrichment *in addition* to existing suppliers. The Environmental Report ("ER") section on "Need and Purpose of the Proposed Action" (ER 1.1.1) connects these claimed benefits to national security concerns:

> "Thus, current U.S. energy security concerns and policy objectives establish a clear need for *additional* domestic enrichment capacity, a need that also has been recognized by Congress for some time ('some domestic enrichment capability is essential for maintaining energy security,' H.R. Rep. No. 102-474, pt.2 at 76 (1992)). ER 1.1-2. (*emphasis supplied*).

LES emphasizes that the NEF would provide an "economical" addition to capacity:

> "National security concerns and policy objectives also underscore the need for an additional reliable and *economical* domestic source of enrichment services. Congress has characterized uranium enrichment as a "strategically important domestic industry of vital national interest essential to the national security and energy security of the United States." H.R. Rep. No. 102-474, pt.2, at 76 (1992)." EC 1.1-2. (*emphasis supplied*).

LES emphasizes and reiterates that the "need" in this case is for enrichment capacity which is "reliable and economical":

> "The Department of State has similarly recognized that "[m]aintaining a reliable and *economical* U.S. uranium enrichment industry is an important U.S. energy security objective." ER 1.1-2. (*emphasis supplied*).

LES also tells us that the "need" to be served if the need for an additional domestic enrichment producer. LES refers to a DOE letter from 2002 which,

> "stressed the importance of promoting and developing additional domestic enrichment capacity" and that '[t]he [DOE] firmly believes that there is sufficient domestic-demand to support *multiple enrichers* and that competition is important to maintain a healthy industry.'" ER 1.1-1 and 2. (*emphasis supplied*).

LES concludes:

> "Because it would deploy commercially viable and advanced centrifuge technology in the near term, the NEF would further important U.S. energy and national security objectives. Specifically, it would provide *additional, reliable,*

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and economical domestic enrichment capacity in a manner that would enhance the diversity and security of the U.S. enriched uranium supply." ER 1.1-3. (*emphasis supplied*).

5. Thus, LES rests its case as to need on the argument that its proposed new plant capacity would be "economical," "reliable," and would fill the function of a second "domestic" producer to ensure a "competitive" market.

6. NIRS/PC claim that, to the contrary, the ER does not adequately describe or weigh the environmental, social, and economic impacts and costs of operating the NEF. NIRS/PC contention EC-7. Such contention requires investigation and proof in the context of the market for enrichment services. In other words, the existence of a "need" and any "benefit" from the construction of a new enrichment plant is shown, for the most part, by how the enrichment market would respond to it, and how the new plant would conduct itself in that market. For this purpose, it is essential to study the market in economic terms.

7. At present, the supply of enrichment services worldwide exceeds the demand for such services. In addition, enrichment supply worldwide is an oligopoly market, i.e., there are a few large producers, and competition is far from perfect. Urenco has three centrifuge enrichment plants and is the dominant western European supplier of enrichment services. The other major Western European provider of enrichment services, Eurodif, has a single plant, probably less economical than Urenco's plants, and has entered into a venture with Urenco to obtain Urenco technology. The other major players are the Russians and USEC (formerly U.S. Enrichment Corporation).

8. Urenco and the Russians along with Eurodif have in the last few years been held to be in violation of U.S. anti-dumping rules in their attempts to expand sales in the U.S. market. As a result, all three companies pay a surcharge in connection with sales to U.S. buyers.

9. USEC is currently planning to modernize its production capability by implementing centrifuge technology. This expansion is estimated to cost in excess of $1 billion. Though USEC is moving ahead with its plans for building this new plant, as I understand it at this point financing has not been assured and is not certain. The LES facility, on the other hand, is estimated to cost between $1.2 and $1.8 billion to build, with subsidized financing to be provided by Lea County and the State of New Mexico.

10. USEC's largest single customer (Exelon) is one of the limited partners in the LES partnership.

11. Given the oligopoly structure of the worldwide market for enrichment services, and the very high fixed costs of new gas centrifuge facilities, the enrichment services market in the U.S. may not be capable of supporting two new expensive plants, the NEF and the USEC centrifuge plant, each trying to achieve a level of production and sales at a price that will cover high fixed costs per unit in a divided market. In the present situation, the market facing U.S. competitors may be akin to a natural monopoly. If so, the producer with the deeper pockets–not necessarily the producer with the lower costs–will have the ability to drive out another producer with the less secure financing.

12. Notably, predatory pricing or dumping has often been encountered in this industry. Protective measures have been taken to shield U.S. domestic production from these problems and are in place as to foreign producers. Construction of Urenco's NEF plant would place Urenco in a position to circumvent those protections. NEF would provide a platform within the U.S. with which Urenco could potentially eliminate USEC as a gas centrifuge competitor.

13. LES makes two arguments in ER chapter 1.1.1 as to the need for their plant. First, they argue that the construction of such a plant would be "economical," implying that its full cost

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of production under market conditions would be covered by its sales revenues. In other words, the plant would not have to engage in subsidized or predatory pricing to maintain sales. Second, Urenco maintains that the market is large enough to profitably accommodate *both* USEC's new gas centrifuge technology as well as the LES plant on an ongoing basis, i.e. without below cost sales.

14. By LES's measures of "need," as presented in ER 1.1.1, the NEF would not fulfill a need if its cost and price characteristics are such that it can only survive by engaging in predatory pricing, forcing out or forestalling the construction of USEC's new American centrifuge plant. In that situation, the NEF would wind up as the only domestic producer, not an "additional" producer, and not an "economical" producer either. Such a plant would not meet LES's criteria for "need," and it would not serve U.S. national and energy security goals.

15. These are economic issues. The only way to test whether the proposed NEF facility could produce enrichment at a price that covers its cost of production, at production levels that allow for USEC as a contemporaneous viable gas centrifuge competitor, is to examine price and cost data. It is impossible to test the "need" claims made by LES so long as LES refuses to disclose the relevant data on cost of production and anticipated prices.

DATE: October 7, 2004

Michael Sheehan

Michael F. Sheehan, Ph.D

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