

October 28, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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October 29, 2004 (7:30AM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

RESPONSE OF LOUISIANA ENERGY SERVICES, L.P. TO MOTION TO COMPEL
DISCOVERY CONCERNING NEED FOR THE NATIONAL ENRICHMENT FACILITY

I. INTRODUCTION

On October 21, 2004, Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") filed a motion to compel¹ responses from Louisiana Energy Services, L.P. ("LES") to certain document requests made on September 9, 2004.² LES filed responses and objections to those document requests on October 12, 2004.³ In accordance with the schedule established by the Atomic Safety and Licensing Board ("Licensing Board") by order dated October 22, 2004, LES herein responds to the Motion to Compel. LES withdraws some of its objections and explains and reiterates others.

¹ "Motion to Compel Discovery Concerning Need for the National Enrichment Facility on Behalf of Petitioners Nuclear Information and Resource Service and Public Citizen" (Oct. 21, 2004) ("Motion to Compel").

² "Interrogatories and Document Request on Behalf of Petitioners Nuclear Information and Resource Service and Public Citizen to Applicant Louisiana Energy Services, L.P." (Sept. 9, 2004).

³ "Applicant's Objections and Responses to Document Requests From Nuclear Information and Resource Service and Public Citizen" (Oct. 12, 2004) ("LES Response to NIRS/PC Document Requests").

II. DOCUMENT REQUESTS

17. *Please provide documentation of the current annual output levels of Urenco's European enrichment facilities, including but not limited to those at Gronau, Almelo, and Capenhurst.*

RESPONSE:

LES objected to this document request because (1) it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence; and (2) it seeks information that is outside the scope of the admitted contentions. Apparently intending to cite the Licensing Board's Memorandum and Order (Discovery Rulings) of October 20, 2004, NIRS/PC now argues that the requested documentation on output levels "relates to whether there is a shortage of enrichment capacity 'as LES asserts.'" Motion to Compel, at 2. This is an oblique reference to contention NIRS/PC EC-7/TC-4, Basis A.

Notwithstanding and without waiving the prior objections, LES provides the following response which is reasonable and sufficient given the scope of issues in this case. LES states that the information requested by NIRS/PC is publicly available and has been previously disclosed by LES. To begin with, the only commercial facilities operated by Urenco are at Gronau, Almelo, and Capenhurst. With respect to these facilities, the NEF Environmental Report ("ER") states as follows:

The Urenco centrifuge enrichment capability (Table 1.1-5, Ref. 2) refers to capability from machines that are presently in operation or in the process of being installed at Urenco's three European enrichment plants, which are located in Gronau, Germany, Almelo, Netherlands and Capenhurst, United Kingdom. These plants had a combined production capability of approximately 6.0 million SWU at the end of 2002 (URENCO, 2003) scheduled to increase to 6.5 million SWU per year by the end of 2003. LES estimates that by the end of 2008 the combined Urenco production capability will be approximately 8 million SWU per year.

ER (Rev. 1, Feb. 2004) at 1.1-9. The citation "URENCO, 2003" is a reference to Urenco's publicly available annual report for 2002, entitled "Urenco Limited Annual Report and Accounts: Year to 31 December 2002." LES provided NIRS/PC with a copy of the pertinent excerpt from this report as part of its mandatory initial disclosures. See LES-02423 to LES-02424.

Moreover, in responding to NIRS/PC Document Request No. 3, LES indicated that the Urenco website (<http://www.urengo.com>) contains the company's annual reports for the years 2000 through and including 2003. See LES Response to NIRS/PC Document Requests, at 2-3. The 2003 annual report (at page 15) specifically states that "at the end of 2003 Urenco's capacity had increased by around 10% to around 6.5 million SWU/a," and that "[i]t is expected that Urenco will have 7.5 million SWU/a capacity operational by the end of 2005." The same page of the report provides information about the planned capacity extensions at Almelo and Gronau. See also <http://www.urengo.com/index.php?id=326&pagename=Nuclear+Licence> (regarding the planned capacity extension at Gronau).

Finally, information about the respective capacities of Urenco's individual European enrichment plants can be obtained from publicly available sources. For example, LES directs NIRS/PC to the International Atomic Energy Agency's ("IAEA's") "Nuclear Fuel Cycle Information System," which is located on the web at <http://www-nfcis.iaea.org/>. Indeed, an October 15, 2004 report published by the Institute for Energy and Environmental Research ("IEER"), and authored in part by NIRS/PC witness Arjun Makhijani, contains nominal capacity information for Urenco's European plants at Gronau, Almelo, and Capenhurst. The IEER obtained that information from the IAEA's "Nuclear Fuel Cycle Information System" and Urenco's website. See *Uranium Enrichment: Just Plain Facts to Fuel an Informed Debate on*

Nuclear Proliferation and Nuclear Power, Institute for Energy and Environmental Research, A. Makhijani, L. Chalmers, and B. Smith (Oct. 15, 2004), at 17, 23-24, & nn. 33, 34, 92, 100 (citing the IAEA's "Nuclear Fuel Cycle Information System" and Urenco's website). This paper is available on the IEER website at <http://www.ieer.org/reports/uranium/enrichment.pdf>.

22. *Please refer to ER p. 1.1-1, paragraph 1 ("The enriched uranium will be used primarily in . . ."). Please provide documentation showing the planned sales of the product of the proposed plant outside the United States as forecasted for each year of the plant's operating life.*

RESPONSE:

LES objected to this document request as irrelevant to the "need" justification in the NEF Environmental Report. The document request seeks projected sales information similar to the business information discussed by the Licensing Board in its October 20, 2004 Memorandum and Order. NIRS/PC now argues that the documents "go the question of shortage, which has been admitted by the Board." Motion to Compel, at 3. Again, this is an oblique reference to contention NIRS/PC EC-7/TC-4, Basis A. NIRS/PC argue that the requested documents "would tend to show that LES doubts its ability to enter the market in the face of existing competitors if LES in fact plans to make significant export sales." *Id.* These arguments are specious.

LES amplifies its relevancy objection as follows. As stated in Section 1.1.2 of the ER, the asserted "need" for the NEF is premised primarily on the need for an additional secure and reliable domestic supplier of enrichment services to U.S. utilities. Documentation on any planned sales outside the U.S. would be irrelevant to this "need" showing. In fact, as stated previously and as recognized by the Licensing Board, LES will demonstrate the market need (the ability to enter the market) by specific contracts to purchase enrichment services. October 20, 2004 Memorandum and Order, at 17. Notably, the commitments secured by LES to date for the

purchase of NEF enrichment services are from U.S. utilities only. NIRS/PC latch on to the modifier “primarily” in LES’s statements regarding U.S. sales, to attempt to create an issue. However, the NRC Staff’s draft environmental impact statement for the NEF indicates that the domestic enrichment services to be provided by the NEF would be used for the production of nuclear fuel for commercial nuclear power reactors in the United States. *See* NUREG-1790, *Environmental Impact Statement for the Proposed National Enrichment Facility – Draft Report for Comment*, Lea County, New Mexico, Docket No. 70-3103, Louisiana Energy Services L.P., NRC/NMSS (Sept. 2004), at 1-2, 1-4 to 1-5.

Regardless of the possibility of any future sales outside the U.S., the need for an additional domestic supplier would continue to exist — to support national policy objectives for a secure and diverse supply. Basis A of contention NIRS/PC EC-7/TC-4 raises only a factual question of whether a “shortage of enrichment capacity” is relevant to the asserted “need” for the NEF. It does not necessitate a broad inquiry into world supply and demand and the international market. The asserted need for additional secure and reliable domestic enrichment capacity exists independent of the global market for enrichment services.

24. *Please refer to ER p. 1.1-3 paragraph beginning “Notwithstanding . . . “. Please provide documentation of the claim that the Urenco centrifuge technology uses “approximately 50 times less energy” than the gas diffusion technology currently in use in the U.S.*

RESPONSE:

LES withdraws its prior objection. LES refers NIRS/PC to NUREG-1484, *Final Environmental Impact Statement for the Construction and Operation of Claiborne Enrichment Center, Homer Louisiana*, Docket No. 70-3070, Louisiana Energy Services L.P., NRC/NMSS (Aug. 1994), Vol. 1, at 1-5, 2-1, which states: “The amount of electrical energy required [by the gaseous diffusion technology used in the U.S.] to produce one separative work unit (SWU) is approximately 50 times higher than the energy required for centrifuge technology.” *See also* EEI

Enrichment Handbook, Report NFC-90-001, Edison Electric Institute (Nov. 1990) [LES-04419 to LES-04668], at 3-16 [LES-04467]. As stated in the NEF Environmental Report, "the NEF design is, in effect, an enhancement of the design of the Claiborne Enrichment Center formerly proposed by LES" and considered in NUREG-1484. ER at 2.1-21.

25. *Please refer to ER p. 1.1-3 paragraph beginning "Notwithstanding . . . ". Please provide documentation showing the cost of the energy used by the GDP plant at Paducah compared to the cost of the energy to be used at the Lea County facility.*
26. *Please provide documentation showing the estimated cost of production of the Lea County facility relative to the estimated cost of production at the proposed USEC centrifuge facility at Portsmouth, Ohio, such costs to include the cost of disposing of each plant's waste products.*

RESPONSE (to Document Request Nos. 25 and 26):

LES has objected to these requests on the grounds that they (1) are not reasonably calculated to lead to the discovery of admissible evidence; (2) seek information beyond the scope of the admitted contentions; and (3) are unduly broad and burdensome. LES continues to object and opposes the Motion to Compel because the document requests at issue specifically seek information on the cost of production of a type specifically addressed by the Licensing Board in its October 20, 2004 Memorandum and Order. The Licensing Board there reiterated that the admitted bases for NIRS/PC EC-7/TC-4 excluded bases addressing the business case for the NEF and profitability issues, which include, *inter alia*, costs of production. October 20, 2004 Memorandum and Order, at 2, 16-17.

NIRS/PC attempt in their Motion to Compel to end-run the decision already made by the Licensing Board. NIRS/PC now claim that LES has introduced the cost issue in its ER by describing the centrifuge facilities as "low cost" and reliable sources of uranium enrichment services. Certainly these ER statements preceded the Licensing Board's earlier decision and do not now provide a basis to reverse that decision as it relates to production costs. More to the

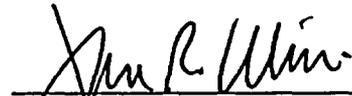
point, however, the ER simply establishes that the centrifuge plants are low-cost relative to other enrichment technologies; this statement has nothing to do with the ability of LES to enter the market. This does not invite an inquiry into the production costs at either the NEF or USEC's proposed centrifuge facility. Further, the information requested by NIRS/PC relative to production costs at the Paducah and proposed American Centrifuge plants is likely to be either publicly available (e.g., in USEC financial statements submitted to the SEC) or proprietary to USEC. In either case, LES is under no obligation to produce the requested information, particularly if it requires additional research or analytical work beyond that which is needed to support LES's position on any particular matter. *See* 10 C.F.R. § 2.705(b)(5)(ii).

Notwithstanding and without waiving these objections, LES states as follows. USEC itself has recognized the significant differences in the electrical requirements and production costs of a gaseous diffusion plant relative to a gas centrifuge plant. In its August 2004 NRC license application for the American Centrifuge Plant, USEC's proposed commercial-scale gas centrifuge enrichment facility, USEC states that "a plant utilizing the gaseous diffusion process requires significantly more electricity than a corresponding centrifuge plant." *Environmental Report for the American Centrifuge Plant in Piketon, Ohio* (Rev. 0), United States Enrichment Corporation (Aug. 2004), at 2-1. With respect to the existing gaseous diffusion plant at Paducah, USEC observes: "The [Paducah plant] is over 50 years old and the power costs to produce SWU are significant. Electricity at the Paducah plant represents about 60 percent of production cost." *Id.* at 1-11. In this regard, USEC adds that "it is also important for meeting the commercial needs of the corporation to replace higher cost and aging production with new lower cost production," *i.e.*, a gas centrifuge plant. *Id.* at 1-10.

III. CONCLUSION

For the reasons discussed above, the Motion to Compel should be denied with respect to Document Requests Nos. 22, 25, and 26. With respect to the remaining document requests (Nos. 17 and 24), the Motion to Compel is moot because LES has identified previously disclosed and/or publicly available documents that are responsive to those requests.

Respectfully submitted,



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Dated at Washington, District of Columbia
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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.) Docket No. 70-3103-ML
) ASLBP No. 04-826-01-ML
(National Enrichment Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "RESPONSE OF LOUISIANA ENERGY SERVICES, L.P. TO MOTION TO COMPEL DISCOVERY CONCERNING NEED FOR THE NATIONAL ENRICHMENT FACILITY" in the captioned proceeding have been served on the following by e-mail service, designated by **, on October 28, 2004 as shown below. Additional service has been made by deposit in the United States mail, first class, this 28th day of October 2004.

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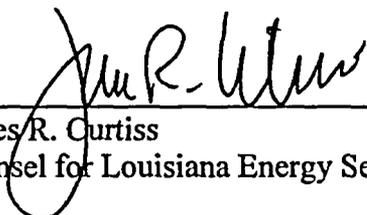
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