

RAS 9061

December 15, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

December 15, 2004 (3:59pm)

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In the Matter of

Docket No. 70-3103

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Louisiana Energy Services, L.P.  
National Enrichment Facility

ASLBP No. 04-826-01-ML

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**MOTION ON BEHALF OF  
NUCLEAR INFORMATION AND RESOURCE SERVICE  
AND PUBLIC CITIZEN  
TO COMPEL COMMISSION COMPLIANCE WITH  
HEARING RULES AND TO SUSPEND HEARING SCHEDULE  
PENDING RELEASE OF COMMISSION FILES**

**Preliminary statement**

This Motion is submitted on behalf of the Petitioners, Nuclear Information and Resource Service and Public Citizen ("NIRS/PC"), seeking relief from the Nuclear Regulatory Commission's failure to disclose the hearing file in this case as well as other material documents needed for preparation of this case. Counsel for NIRS/PC have discussed this motion with counsel for the Commission Staff, for the Applicant, Louisiana Energy Services, L.P. ("LES"), for the New Mexico Environment Department, and for the New Mexico Attorney General's Office. No agreement was reached in those discussions.

**Factual background**

The Nuclear Regulatory Commission (the "Commission") maintains a computer-accessible document collection on the Agencywide Documents Access and Management System ("ADAMS"); the ADAMS documents include hundreds of thousands of items generated both by

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the Commission and by outside sources. In addition, the hearing file in this case is made available through the Internet on the ADAMS system. Items in the hearing file index, which is maintained and updated by the Commission Staff, are identified by ADAMS accession number for retrieval by the parties and members of the public.

Presumably by Commission decision, on October 25, 2004, documents that were theretofore available by Internet access through the ADAMS, including the hearing file in this case, were rendered unavailable to the public, including the parties to this case. Since that time Commission Staff counsel have regularly reported upon the updating of the hearing file; however the entire file remains unavailable to persons outside the Commission.

As explanation, counsel for the Commission Staff have told counsel for NIRS/PC that a news organization informed the Commission that, using Internet access and ADAMS, the location of radioactive material in licensed facilities could be determined from Commission documents, and ADAMS was thereupon shut down for security reasons. Of course, the present licensing proceeding concerns the proposed National Enrichment Facility, which has not been built and, if built, would employ security systems to protect radioactive materials. Nevertheless, the hearing file in this case has been made unavailable. Counsel for NIRS/PC have requested Commission Staff to produce any written order directing the closure of Commission files. No order has been provided to counsel.

By the Memorandum and Order of the Atomic Safety and Licensing Board ("Board") dated August 16, 2004, parties to this licensing proceeding are scheduled to file prefiled direct testimony on December 30, 2004. Other filings are scheduled in prompt succession thereafter. A hearing is scheduled to begin on February 7, 2004. However, in preparing and presenting their case on the contentions in issue, NIRS/PC are blocked from access to the hearing file and the

ADAMS documents. NIRS/PC require such access sufficiently in advance of deadlines and hearing dates to retrieve, read, and make use of the hearing file and ADAMS materials. The time when such materials could be made available and used to meet the existing deadlines has passed.

NIRS/PC have sought informal solutions to the problem of access to hearing files. Two days after the shutdown of ADAMS, on October 27, 2004, counsel for NIRS/PC requested the Commission Staff to produce to NIRS/PC essential items, such as a copy of the current version of the Application, either in paper copy or electronically. Staff counsel advised NIRS/PC that it would require a direction from the full Commission to release the Application—and the Application has not been released.

Since ADAMS was shut down, Commission Staff counsel have communicated several times concerning their expectations for the restoration of Internet access. In early December Staff advised that restoration of the electronic hearing docket for this proceeding may require an additional three to four weeks. (Commission draft motion for protective order, Dec. 1, 2004). More recently, on December 13, 2004, Commission Staff advised that the hearing file has been screened and that it will be necessary to redact certain material from the Application, the Draft Environmental Impact Statement, and responses to Requests for Additional Information. Commission Staff did not know how long the redaction process may take.

Recently, counsel for the Commission Staff have circulated drafts of a protective order, under which the hearing file would be released to NIRS/PC on terms requiring NIRS/PC to keep the hearing file confidential—contrary to the outstanding orders of the Commission and this Board and the Commission rules calling for public files. Commission Staff have not explained how the Board could conduct a public hearing if the hearing file is to be kept confidential.

Staff's protective order, however, has not been presented to the Board, and no other proposal has been advanced by Commission Staff to alleviate the problem of nondisclosure.

On December 14 and 15, 2004, the parties held lengthy conference calls to address the Commission Staff's concerns about information contained in documents that may be used in this case. Much was unclear in these discussions. As best NIRS/PC understand it, this is the case:

1. Commission Staff have circulated a draft protective order. Under this order any documents in the hearing file that Staff has not "screened" and found to contain no "sensitive" information are deemed "Protected Information." In addition, any documents originating with the Commission (e.g., items from ADAMS, the Claiborne Enrichment Center file, Commission decisions) upon which a party relies are deemed "Protected Information." (After screening and redaction, a redacted version of a document is no longer Protected Information.) Protected Information may not be disclosed to the public. Therefore, Protected Information may not be disclosed at a public hearing, and if it is to be mentioned, the hearing must be closed.
2. Staff are only willing to provide "Protected Information" to NIRS/PC if the protective order is entered. Thus, full (i.e., "unredacted") versions of documents from the hearing file that Staff deems "sensitive" are not now available to NIRS/PC. Neither are documents from other Commission sources available to NIRS/PC unless the protective order is entered, unless they are first screened and sensitive portions redacted.
3. NIRS/PC do not know the criteria for determining whether information is "sensitive," requiring it to be classed as Protected Information, nor how quickly determinations of "sensitivity" can be made, nor how quickly "redactions" can be accomplished. It

appears that any prospective use of information from the hearing file or from any Commission source, which has not been "screened" by Staff and found not "sensitive," will require that the hearing be closed to the public. NIRS/PC cannot agree to such terms, since they seem likely to result in a closed-door hearing and, in addition, delays in the use of evidence that has not been screened.

4. Thus, it seems that Commission Staff require an opportunity to "screen" any documents that may become public in this case to determine whether they contain information deemed "sensitive." Such "screening" requirement applies to documents filed in this case and made available electronically through the Internet and also to testimony given in public hearings.
5. Staff intend to apply "screening" criteria not only to materials in the hearing file but also to any documents generated by the Commission that may be used publicly by any party. This "screening" would encompass materials from files of other proceedings, such as the Claiborne Enrichment Center proceeding; Commission and Board opinions; any documents obtained from ADAMS in the past; and Commission publications, such as environmental impact statements. Staff have said that testimony to be offered in this case, both prefiled and oral, will need to be "screened."
6. Staff are not at present authorized to disclose the criteria used in "screening," although they are seeking such authority. Staff wish to "redact" any "sensitive" material from documents filed in this case and made public. It is not clear how other parties might contest Staff's determinations to "screen" or to "redact" a document.
7. Staff have not identified the source of their legal authority to perform such "screening" and "redaction." There is no written order directing such activities.

8. Staff have "screened" the existing hearing file in this case and found 66 documents with "sensitive" information. Staff expect to "redact" the "sensitive" information within a few weeks, possibly by the end of December 2004, so that "redacted" versions of these documents can be made public somehow. It is not known whether or when a hearing file or other Internet access is or can be made operable to make public the file in this case.
9. As to the documents that have been placed in the hearing file since the October 25, 2004 shutdown of ADAMS, Staff are willing to supply copies of such items to the parties, provided that they have been "screened" and not found "sensitive." Staff state that only two items are "sensitive"; however, counsel for NIRS/PC note several more items on the list of 66 "sensitive" documents that have not been available to NIRS/PC, such as portions of Revision 3 of the Application.
10. Staff object to the Applicant supplying to NIRS/PC copies of document that have been identified as "sensitive" and not "redacted" and request that such action be limited. For its part, the Applicant may assert that it has a legal right to supply such documents (such as Revision 3 of the Application).

Therefore, several issues need to be settled by the Board before this proceeding may go forward.

In contrast with Staff's screening procedures, Commission rules direct public access to Commission files and records. Under 10 CFR 2.336, the Commission Staff has discovery obligations that cover all materials considered in connection with a license application, as follows:

"(b) Except for proceedings conducted under Subpart J of this part or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC Staff shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without

further order or request from any party, disclose and/or provide, to the extent available (but excluding those documents for which there is a claim of privilege or protected status):

- (1) the application and/or applicant/licensee requests associated with the application or proposed action that is the subject of the proceeding;
- (2) NRC correspondence with the applicant or licensee associated with the application or proposed action that is the subject of the proceeding;
- (3) All documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding;
- (4) Any NRC staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC staff's determination on the application or proposal that is the subject of the proceeding; and
- (5) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents."

Further, the Commission has adopted a general rule of public availability of Commission records and documents. Under 10 CFR 2.390, Commission records shall be available for inspection and copying at the Commission's Internet site, in the absence of a Commission determination of a compelling reason for nondisclosure:

"(a) Subject to the provisions of paragraphs (b), (d), (e), and (f) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room, except for matters that are:" (10 CFR 2.390(a)).

The rule contains a list of exceptions, none of which would seem to apply to materials contained in the hearing file and none of which have been invoked to withhold the hearing file.

Under 10 CFR 2.4 computer terminals are to be made available in the NRC Public Document Room to give access to the Publicly Available Records System ("PARS") component

of ADAMS, and documents available prior to the adoption of ADAMS are to remain available to the public in the NRC Public Document Room. (See 10 CFR 2.4, *NRC Public Document Room*).

Under 10 CFR 2.327(c), the transcript of a Commission proceeding is required to be available in the agency's public records system, except as limited by Sec. 181 of the Atomic Energy Act or a Commission order. Commission Staff have not contended that the hearing file as a whole, or some part of it, is subject to the terms of Sec. 181 with respect to Restricted Data, defense information, safeguards information, or information covered by Sec. 148. Neither has Commission Staff produced any Commission order calling for protection of the entire hearing file, much less the entire ADAMS.

Section 2.328 of 10 CFR requires that all hearings be public, except as required by Sec. 181 of the Act or Commission order. Again, the Commission Staff has not asserted that Sec. 181 or a Commission order applies in this case.

To the contrary, the Commission has affirmatively directed that the hearing file be public. The Commission's order dated January 30, 2004 sets forth the schedule and requirements for further proceedings and requires the establishment of public files of documents concerning this proceeding:

"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 Pile, 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 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](mailto:pdr@nrc.gov). Hard copies of the documents are available from the PDR for a fee." 69 Fed. Reg. 5873 (Feb. 6, 2004).

The Commission's order continues, describing the means of public access:

“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 similarly be made available to the public.” Id.

Previously, the Board requested and received Commission Staff's proposal for compliance with Staff's 10 CFR 2.336 disclosure obligations. (Memorandum and Order, 38 note 19, July 19, 2004; NRC Staff Response to Board Questions Regarding the LES Hearing File, July 29, 2004). The Board approved the Staff proposal, under which the hearing file is to be publicly available through the Commission web site. (Memorandum and Order, at 5, Aug. 16, 2004). On July 26, 2004, the Board issued its Hearing Notice, announcing the forthcoming hearing in Hobbs, New Mexico, and stating: “The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing.” (Hearing Notice, July 26, 2004).

Since the Board approved the use of an electronic hearing file, the file has been supplemented regularly as 10 CFR 2.336(d) requires. Such updates have continued during the period of file closure. Among the items added to the file since the files were closed are the following potentially relevant items, which have not been available to NIRS/PC:

1. A staff request for additional information about the decommissioning funding plan (item 204).
2. LES's revision to its Safety Analysis Report (item 206).
3. LES's entire license application, Revision 3 (item 207).
4. A report on the integrated safety analysis of accident sequences regarding criticality (item 208).

5. Clarifying information regarding response to NRC request for additional information ISA-61.
6. Revision 3 to the unclassified portion of the FNMCP (item 210).
7. Documents about a review meeting on October 21, 2004 (item 211).
8. A summary of a telephone discussion about instrumentation and controls (item 212).
9. A request for additional information about foreign ownership, control, or influence (item 214).
10. An e-mail from R. Krich of LES to T. Johnson of NRC concerning the EIS for the NEF (item 217).
11. Clarifying information related to items relied on for safety (item 219).
12. E-mail from R. Krich (LES) to J. Mayer, ICF Consulting re LLNL May 1997 cost analysis report, p. 45 (item 224).
13. E-mail from M. Schwartz to T. Johnson re LLNL May 1997 cost analysis report, page 45 (item 225).
14. September 2, 2004 telephone summary (item 227).
15. E-mail from T Johnson re criticality issue list (item 230).
16. E-mail from T. Johnson to B. Fry re LES telecom (item 232).
17. Second e-mail from T. Johnson to B. Fry re LES telecom (item 233).
18. Comment of R.M. Krich regarding draft report NUREG-1790, EIS for the proposed NEF (item 234).
19. Nov. 10, 2004 meeting summary (item 235).
20. Nov. 4, 2004 telephone summary re LES discussion on nuclear criticality safety and integrated safety analysis (item 236).

21. Nov. 12, 2004 telephone summary: LES discussions on seismic hazards (item 238).
22. Nov. 10, 2004 meeting documents: meeting with LES (item 239).
23. Nov. 4, 2004 telephone summary: discussion on chemical exposure limits (item 240).
24. Nov. 2, 2004 telephone summary: discussion on seismic hazards (item 241).
25. Clarifying information related to probabilistic seismic hazard analysis (item 242).

Some of the listed items are relevant to the forthcoming proceedings based upon their titles.

Other materials require review for possible relevance. None of them can be ignored by counsel preparing for a licensing hearing.

Attached are statements by three expert witnesses for NIRS/PC, George Rice, Arjun Makhijani and Michael Sheehan, stating that they use the hearing file and ADAMS in preparing expert testimony and, without such access, are significantly handicapped. Clearly, it is unfair to allow the Commission Staff to have access to the hearing file and the huge ADAMS library while witnesses for NIRS/PC are blocked.

Although it is Staff's obligation to comply with the regulations and orders of the Commission and this Board, Staff has been out of compliance with such regulations and orders since October 25, 2004. No motion has been made to seek relief from the requirement that the hearing file contents be disclosed to parties or that the hearing file be available to the public by electronic means, as the Board directed in approving the Staff's submission on August 16, 2004. Staff have not brought to the attention of the Board the present circumstances, which plainly affect the schedule established by the Board.

#### **Argument**

NIRS/PC have waited for several weeks for Commission Staff either (a) to restore the hearing file and ADAMS documents to public access or (b) to propose some solution to this

nondisclosure situation. However, the materials are still unavailable. Commission Staff offer to make the full hearing file, and other Commission documents, available to NIRS/PC only on condition that a protective order is entered on terms that are unacceptable and conflict with Commission rules. Meanwhile, too much time has passed, and the forthcoming deadlines are too close. NIRS/PC are compelled to request that the Board order (a) that the files be restored forthwith to availability and (b) that the Board suspend the schedule for this proceeding until the documents are again available.

The applicable regulations clearly require that the hearing file, and ADAMS material, be available to the public. The Commission's hearing notice, the charter for this proceeding, states that relevant documents will be available. The Board has approved a system of Internet access to the hearing file and ordered it into effect.

Despite these regulations and orders, clearly relevant materials have been filed in the hearing file since the October 25, 2004 curtain fell and are unavailable to the parties. Memoranda of staff action on pertinent issues and communications by the Applicant to Commission Staff have been lodged in the file. It hardly seems necessary to contend that the licensing file must be available to the parties before the Commission may conduct a licensing hearing.

This proceeding is of great interest to the people of New Mexico and to the State Government. It would disregard the legitimate concerns of the people and the State to allow this proceeding to go forward on the basis of incomplete disclosure of the facts on which licensing determinations will be made. Neither would it be proper to conduct a supposed public hearing which is in reality closed to the people of New Mexico.

A delay in proceedings may allow these problems to be resolved in an orderly manner. On the other hand, if NIRS/PC are required to go to hearing without access to relevant materials, at a later time, after the files are restored to access, the Board will undoubtedly have to contend with late-filed contentions based on files tardily made available, with consequent disruption to the schedule. Moreover, in any event it will not be possible to conclude all environmental issues in the February hearing, because under 42 USC 2243(a)(2) and 10 CFR 332(d), the final environmental impact statement must be prepared before the hearing is completed.

In this situation, NIRS/PC request that the Board enter its order, enforcing the Commission regulations and orders that require public access, and that the materials be made available. Specifically, the Commission's hearing notice and this Board's order dated August 16, 2004, enforcing the Commission Staff's proposal to make available the hearing file, should be enforced. In addition, the wholesale withdrawal from ADAMS of relevant materials concerning uranium enrichment should be reversed.

Further (particularly since Commission Staff appear to be unable, at present, to comply with such Commission rules and orders), the Board should direct that the schedule contained in the Memorandum and Order dated August 16, 2004 be suspended. It would be unfair and unlawful to require NIRS/PC to prepare their prefiled testimony without access to the hearing file on which this proceeding is based. Likewise, expert witnesses for NIRS/PC cannot reasonably be required to prepare their presentations without access to the ADAMS files of Commission materials about uranium enrichment.

### **Conclusion**

For the reasons set forth herein, the Board should enter an order directing that the hearing file and all ADAMS documents related to uranium enrichment be made public forthwith and

suspending the effectiveness of the schedule contained in the Memorandum and Order dated August 16, 2004 until further action of the Board. The Board should further direct the Commission Staff to advise the Board and the parties when the hearing file and ADAMS are again available to public users. After access is restored, the Board should allow a reasonable interval, at least 30 days, for the public and NIRS/PC to review materials newly made available, before the schedule is resumed.

Respectfully submitted,



Lindsay A. Lovejoy, Jr.  
618 Paseo de Peralta, Unit B  
Santa Fe, NM 87501  
(505) 983-1800  
(505) 983-0036 (facsimile)  
E-mail: [lindsay@lindsaylovejoy.com](mailto:lindsay@lindsaylovejoy.com)

Counsel for Petitioners  
Nuclear Information and Resource Service  
1424 16<sup>th</sup> St., N.W. Suite 404  
Washington, D.C. 20036  
(202) 328-0002

and

Public Citizen  
1600 20<sup>th</sup> St., N.W.  
Washington, D.C. 20009  
(202) 588-1000

December 15, 2004

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.  
National Enrichment Facility

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ASLBP No. 04-826-01-ML

**AFFIDAVIT OF GEORGE RICE**

State of Texas            )  
                                  :  
County of Bexar         )

George Rice, being duly sworn, deposes and says:

1. I am a professional hydrologist and have been retained on behalf of Nuclear Information and Resource Service and Public Citizen (NIRS/PC) to investigate and present testimony about certain issues in this case. Specifically, I have undertaken to investigate issues involving the impact of the proposed National Enrichment Facility ("NEF") upon ground water and supplies of ground water in the area of the NEF.
2. I filed a report on certain ground water issues in this case on November 24, 2004.
3. At present I understand that public access to the Commission's hearing file and to a major part of the Agencywide Documents Access and Management System ("ADAMS") has been blocked.
4. I have used the ADAMS system to get access to the hearing file in this case several times. I specifically have searched for and found documents relevant to the hydrology of the NEF site and adjacent areas. I now find that access to the hearing



**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.  
National Enrichment Facility

ASLBP No. 04-826-01-ML

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**DECLARATION OF ARJUN MAKHIJANI, Ph D.**

Arjun Makhijani states as follows under penalty of perjury:

1. I am a nuclear engineering expert and co-founder of the Institute for Energy and Environmental Research. I have been retained on behalf of Nuclear Information and Resource Service and Public Citizen to investigate and present testimony about certain issues in this case. Most importantly, I have undertaken to investigate issues involving the management, deconversion, and disposal of depleted uranium hexafluoride.
2. Together with my colleague, Brice Smith, Ph D., I filed a report on certain issues in this case on November 24, 2004.
3. At present I understand that public access to the Commission's Agencywide Documents Access and Management System ("ADAMS") is limited to some power, research, and test reactor documents. Hence, access to documents relevant to my research has been and continues to be blocked.
4. I have directed Lois Chalmers, IEER's research librarian, to use ADAMS in connection with this case to perform various research tasks for me, such as locating

Commission publications on pertinent issues, e.g., the deconversion and disposal of depleted uranium. I find Internet access to be essential, given the much greater efficiency of electronic access to documents. In addition, many Commission documents are unavailable except on the Internet. However, I have learned that the parts of ADAMS that are relevant to my work are blocked from public access. I consider this a significant impediment to my preparation.

5. At present direct testimony is scheduled to be filed in this case on December 30, 2004, and rebuttal testimony is scheduled to be filed on January 13, 2005. I consider it a major handicap to be required to prepare such testimony without access to the ADAMS system.
6. In my view it is completely unfair to require private parties to prepare their case without access to ADAMS. If it is important to make ADAMS unavailable for security reasons, in my view this proceeding must be postponed until ADAMS can again become available.

Signed:



Date:

13 Dec 2004

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3  
4 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD  
5

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

11  
12 **DECLARATION OF MICHAEL F. SHEEHAN, Ph.D**  
13

14 I, Michael F. Sheehan state as follows under penalty of perjury:  
15

16 1. I am a partner in Osterberg & Sheehan, Public Utility Economists, and an  
17 expert retained in this case by NIRS to testify on the issue of the "need" for this plant and  
18 related aspects of EC-7.

19 2. In doing the research in preparation for my testimony I had expected to  
20 have access to and rely on data from ADAMS. This would include data from this case  
21 and related cases. The NRC's withdrawal of the ADAMS resource in the middle of this  
22 case has substantially impaired my ability to complete the research for, and preparation  
23 of, my testimony in this case by December 30, 2004.

24 3. The materials I anticipated being able to research on ADAMS included  
25 information on the demand for nuclear power plant fuel over time, the supply of NPP fuel  
26 over time including enrichment services, the location and economics of existing suppliers,  
27 the planned or potential availability of new suppliers or new capacity of existing  
28 suppliers, the industrial structure of the industry, and data on the expectations of the NPP

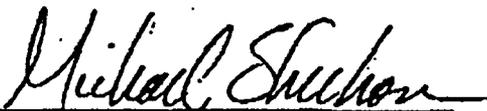
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industry as to the need issue.

4. It is fundamentally unfair to insist on an accelerated time schedule and then in the middle of that schedule remove a central source of information normally relied upon by experts in these proceedings.

5. It is particularly unfair when one of the parties, the NRC Staff, continues to have full access to this comprehensive resource.

DATE: December 12, 2004

  
Michael F. Sheehan, Ph.D

## CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on December 15, 2004, the foregoing Motion on Behalf of Nuclear Information and Resource Service and Public Citizen to Compel Compliance With Hearing Rules and to Suspend Hearing Schedule Pending Release of Commission Files was served by electronic mail and by first class mail upon the following:

G. Paul Bollwerk, III  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [gpb@nrc.gov](mailto:gpb@nrc.gov)

Dr. Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [pba@nrc.gov](mailto:pba@nrc.gov)

Dr. Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [cnk@nrc.gov](mailto:cnk@nrc.gov)

James Curtiss, Esq.  
David A. Repka, Esq.  
Winston & Strawn  
1400 L St.  
Washington, D.C. 20005-3502  
e-mail: [jcurtiss@winston.com](mailto:jcurtiss@winston.com)  
[drepka@winston.com](mailto:drepka@winston.com)  
[moneill@winston.com](mailto:moneill@winston.com)

John W. Lawrence, Esq.  
Louisiana Energy Services, L.P.  
2600 Virginia Ave., N.W.  
Suite 610  
Washington, D.C. 20037  
e-mail: [jlawrence@nefnm.com](mailto:jlawrence@nefnm.com)  
Office of the General Counsel

U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Associate General Counsel for Hearings, Enforcement, and Administration  
e-mail: [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov)  
[lbc@nrc.gov](mailto:lbc@nrc.gov)  
[abc1@nrc.gov](mailto:abc1@nrc.gov)  
[jth@nrc.gov](mailto:jth@nrc.gov)  
[dmr1@nrc.gov](mailto:dmr1@nrc.gov)

Office of Commission Appellate Adjudication  
Mail Stop O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Tannis L. Fox, Esq.  
Deputy General Counsel  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, NM 87502-1031  
e-mail: [tannis\\_fox@nmenv.state.nm.us](mailto:tannis_fox@nmenv.state.nm.us)

Glenn R. Smith, Esq.  
Christopher D. Coppin, Esq.  
Stephen R. Farris, Esq.  
David M. Pato, Esq.  
Assistant Attorneys General  
P.O. Drawer 1508  
Santa Fe, NM 87504-1508  
e-mail: [ccoppin@ago.state.nm.us](mailto:ccoppin@ago.state.nm.us)  
[dpato@ago.state.nm.us](mailto:dpato@ago.state.nm.us)  
[gsmith@ago.state.nm.us](mailto:gsmith@ago.state.nm.us)  
[sfarris@ago.state.nm.us](mailto:sfarris@ago.state.nm.us)

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Rulemakings and Adjudications Staff (original and two copies)  
e-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)



Lindsay A. Lovejoy, Jr.  
618 Paseo de Peralta, Unit B  
Santa Fe, NM 87501  
(505) 983-1800  
(505) 983-0036 (facsimile)

e-mail: [lindsay@lindsaylovejoy.com](mailto:lindsay@lindsaylovejoy.com)

