

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 9176

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 01/18/05

SERVED 01/18/05

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Paul B. Abramson
Dr. Charles N. Kelber

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

January 18, 2005

MEMORANDUM AND ORDER

(Regarding NIRS/PC Prefiled Testimony and Exhibits)

In two filings dated January 6 and 7, 2005, intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) did not include as exhibits certain materials they intend to submit and/or rely upon as evidence in the upcoming evidentiary proceedings. In the January 6 filing, entitled "Hearing Exhibits Offered on Behalf of [NIRS/PC]," NIRS/PC submitted a list of documents they intend to offer at the February 2005 evidentiary hearing. In addition to those listed documents, however, NIRS/PC also notes that they have not included as exhibits, or listed, documents to which certain of their witnesses will refer during their respective hearing testimony, namely "conventional textbook references." In the January 7 filing, entitled "Designations on Behalf of [NIRS/PC] of Discovery Materials For Use At Hearing," NIRS/PC provide a list of discovery materials NIRS/PC intend to rely on as evidence in the upcoming hearing, but does not provide copies of those documents.

In the absence of a showing of authority that is not evident from the NIRS/PC January 6 filing, the use of "conventional textbook references" as evidentiary material without providing a copy of that material does not appear to comport with the agency's rules regarding evidentiary

materials. Accordingly, to the extent NIRS/PC intends to rely on such materials as evidentiary backing for the statements and analyses of their witnesses who have provided prefiled direct testimony, those items should be identified in their exhibit list and in the prefiled testimony of their witnesses as supporting those witnesses' testimony. Accordingly, the Board directs that a listing of those textbook materials upon which NIRS/PC witnesses intend to rely at the upcoming evidentiary hearing be provided to the Board and counsel for the other parties on or before Friday, January 21, 2005. Specifically with regard to the "conventional textbook references" noted to in the January 6 filing, in addition to assigning these materials an exhibit number, NIRS/PC should list the textbook title, author, and pages referenced, and specify which of its witnesses the identified text will be utilized with/qualified by. Hard copy versions of the referenced pages of the listed materials should be provided to the Board and the parties by next business day delivery service. Further, at the same time NIRS/PC submits their prefiled rebuttal testimony, they should provide revised copies of their prefiled direct testimony that includes appropriate references to this evidentiary material.

With regard to the "discovery materials for use as evidence" listed in the January 7 filing, on or before Friday, January 21, 2005, NIRS/PC should revise their exhibit list to include those discovery materials they intend to use as evidence, and provide hard copies of the relevant portions of each such document to the Board (and counsel for the other parties if they request copies by close of business on Wednesday, January 19, 2005) by next business day delivery service. By the same token, at the same time NIRS/PC submits their prefiled rebuttal

testimony, they should provide revised copies of their prefiled direct testimony that includes appropriate references to this evidentiary material.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 18, 2005

* Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant Louisiana Energy Services, Inc.; (2) intervenors New Mexico Environment Department, the Attorney General of New Mexico, and NIRS/PC; and (3) the NRC staff.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REGARDING NIRS/PC PREFILED TESTIMONY AND EXHIBITS) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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LB MEMORANDUM AND ORDER
(REGARDING NIRS/PC PREFILED
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[Original signed by Adria T. Byrdsong]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 18th day of January 2005