February 3, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO MOTION ON BEHALF OF NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN TO STRIKE TESTIMONY OF COMMISSION STAFF WITNESS CONCERNING NIRS/PC CONTENTION EC-2

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the Nuclear Regulatory Commission Staff hereby responds to the motion filed by Nuclear Information and Resource Service and Public Citizen ("NIRS/PC")[1] to strike direct prefiled testimony submitted on behalf of the Staff regarding contention EC-2. As discussed below, contrary to the allegations of NIRS/PC, this testimony was properly served on NIRS/PC. Accordingly, the NIRS/PC motion should be denied.

DISCUSSION

Prefiled direct testimony was due, as NIRS/PC notes, on January 7, 2005. In order to ensure proper service of the testimony on that date, the Staff took the following actions:

1) On January 6, 2005, the Staff sent copies of all Staff prefiled exhibits for its direct testimony to all parties, including Mr. Lovejoy. Each set of exhibits was organized by contention. The cover page for the three exhibits for Staff testimony for EC-2 was captioned "A. Toblin Staff

[1] "Motion on Behalf of Nuclear Information and Resource Service and Public Citizen to Strike Testimony of Commission Staff Witness Concerning NIRS/PC Contention EC-2", February 3, 2005.

Exhibits NIRS/PC EC-2." A copy of the Staff cover letter transmitting the exhibits is enclosed as Attachment 1.

2) On January 7, 2005, the Staff transmitted all of its prefiled testimony and exhibits by e-mail. The e-mail to Mr. Lovejoy was sent to the following addresses: Lindsay@lindsaylovejoy.com and Lovejoy@cybermesa.com.

3) Also on January 7, 2005, the Staff sent hard copies of its prefiled direct testimony to all parties, including Mr. Lovejoy, by first class mail. The cover letter transmitting the testimony is enclosed as Attachment 2. Counsel for LES has confirmed that the cover letter and the attached testimony was received.

4) On January 29, 2005, Mr. Lovejoy notified Staff counsel that he had not previously seen the Staff's prefiled testimony on EC-2. Accordingly, Staff forwarded its January 7, 2005, e-mail and checked the records concerning the e-mail transmissions. These show that an error occurred in the transmission to Mr. Lovejoy's cybermesa e-mail account. However, the transmissions to his other e-mail account were transmitted without error. The records of the e-mail transmission are enclosed as Attachment 3. Note that when e-mails are sent outside the NRC, they are shown to have been transferred. If the transmission is not completed the sender receives an automatic response showing an error.

5) Counsel for Staff notified Mr. Lovejoy of the foregoing information in an e-mail transmission of February 2, 2005. A copy of that e-mail is enclosed as Attachment 4.

Given the foregoing, it is incredible that Mr. Lovejoy now seeks to strike Staff's testimony. He was timely provided the testimony in hard copy and by e-mail. The e-mail address to which it was successfully sent (Lindsay@lindsaylovejoy.com) is the very address he provided in his notice of appearance in this case, enclosed as Attachment 5. This issue here is not whether proper service was made - it was. Mr. Lovejoy's office practices are not a matter which requires the attention of this Board. It is his responsibility to obtain documents which are properly filed.

CONCLUSION

For the reasons stated above, the Staff prefiled direct testimony on EC-2 was properly filed. The motion by NIRS/PC to strike should therefore be denied.

Respectfully submitted,

/RA/

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of February, 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION ON BEHALF OF NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN TO STRIKE TESTIMONY OF COMMISSION STAFF WITNESS CONCERNING NIRS/PC CONTENTION EC-2" 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 3rd day of February, 2005.

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