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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

May 24, 2005 (7:37am)

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))	

JOINT REPORT IN RESPONSE TO THE LICENSING
BOARD'S MAY 3, 2005 ADMINISTRATIVE DIRECTIVES

I. INTRODUCTION

This joint report is in response to the administrative directives set forth in the Atomic Safety and Licensing Board's (the "Board") May 3, 2005 Memorandum and Order.¹ In Section III of that issuance, the Board directed the parties to address a number of issues relating principally to the conduct of discovery and evidentiary hearings on the remaining admitted contentions, particularly those contentions relating to the applicant's cost estimates for facility decommissioning and disposition of depleted uranium. Counsel for Louisiana Energy Services, L.P. ("LES"), the Nuclear Regulatory Commission ("NRC") Staff, Nuclear Information and Resource Service and Public Citizen ("NIRS/PC"), the Attorney General of New Mexico ("AGNM"), and the New Mexico Environment Department ("NMED") (collectively, "the Parties") conducted teleconferences on May 11 and 17, 2005 to discuss the Board's specific

¹ Memorandum and Order (Ruling on NIRS/PC Late-Filed Contentions and Providing Administrative Directives) (May 3, 2005) (unpublished).

requests. Based on those discussions, the Parties intend to proceed in the manner described below.²

A. Baseline Matters

To facilitate conduct of the October 2005 hearings, the Board first requested that the Parties provide (1) appropriate specific time intervals at which decommissioning and/or waste disposal cost and funding assessments should be made; and (2) the appropriate constant dollar and waste disposal amounts associated with such assessments. In response, the Parties would first note that they intend to present their prefiled testimony principally in terms of the unit cost of dispositioning NEF-generated depleted uranium, stated in year 2004 dollars per kilogram of depleted uranium (kgU), without specific reference to any prescribed time intervals. The Parties believe that this is an appropriate approach given the scope of the admitted contentions. Specifically, the contentions at issue relate primarily to the amount of funding necessary for depleted uranium dispositioning (expressed as an estimated unit cost for dispositioning), as opposed to the specific financial mechanism and/or schedule by which LES will assure such funding.

Accordingly, the Parties do not perceive the need to calculate and compare cost estimates at specific time intervals over the life of the facility. Indeed, the Parties view such an approach to be largely a matter of arithmetic, insofar as the incremental cost at any point during the facility's operational life would be equal to the unit cost (in dollars per kgU) multiplied by the quantity (in kgU) of depleted uranium that exists at that time (subject to any necessary adjustments, e.g., for inflation). Likewise, to the extent that Contention NIRS/PC EC-5/TC-2 –

² All parties have authorized counsel for LES to submit this joint report.

AGNM TC-i raises concerns relative to general facility decommissioning, those concerns relate to the estimated cost of decommissioning, not to the proposed financial assurance mechanism.

Notwithstanding, to the extent that the Board still views consideration of specific time intervals and waste quantities as necessary to its resolution of the admitted contentions, the Parties suggest the use of a time interval of 10 years (*i.e.*, 10, 20 and 30 years). As reflected in the NEF Safety Analysis Report ("SAR"), LES has conservatively estimated that the NEF will generate 132,942 metric tons U (132,942,000 kgU) of depleted uranium over a nominal 30-year operational period. *See* NEF SAR, Revision 4 (Apr. 2005), at 10.3-1. This estimate assumes continuous production of depleted uranium over 30 years of operation, even though actual depleted uranium production will cease prior to the end of the 30-year license term. LES has estimated the quantities of depleted uranium to be generated after 10 years and 20 years of operation to be 39,603 metric tons U (39,603,000 kgU) and 92,604 metric tons U (92,604,000 kgU), respectively, with the total quantity generated over 30 years of operation estimated to be 132,942 metric tons U (132,942,000 kgU).³

³ In view of the Board's interest in the financial assurance schedule, LES hereby apprises the Board of a recent revision to the NEF license application that pertains to that schedule. Specifically, in its initial executed financial assurance instrument, LES now intends to provide funding assurance in the amount required: (1) to decontaminate and decommission the entire facility (*i.e.*, including the three Separation Building Modules) and (2) to disposition the amount of depleted uranium byproduct that would be produced at the end of the first three-year period. After the first triennial period, LES may opt to provide decommissioning funding assurance for the facility on an incremental basis (*i.e.*, prior to the operation of a given Separations Building Module, and as proposed in the original NEF application), in the event that LES encounters any significant changes in the facility construction or initial operation schedules during the first three-year period. Further, after the initial three-year period, LES intends to provide updated cost estimates and revised funding instruments for the disposition of depleted uranium byproduct on an annual, forward-looking basis to reflect current projections of depleted uranium byproduct generation. *See* NEF-05-024, "Subject: Conforming Changes to the License Application Resulting from a Request for Exemption Regarding Decommissioning Funding Assurance" (May 16, 2005).

B. Proposed Discovery Schedule⁴

The Board also directed the parties to report on what, if any, additional discovery may be needed, and the proposed time frame for completing that discovery consistent with the existing general schedule for the proceeding. Based on their consultations, the Parties anticipate that some additional discovery will be necessary on the existing decommissioning/depleted uranium disposal strategy and cost-related contentions, and on any late-filed contentions that might be admitted by the Board.⁵ To comport with the existing schedule, which contemplates completion of all discovery by September 6, 2005, the Parties agree that any interrogatories on admitted and proposed late-filed contentions shall be submitted by July 8, 2005.⁶ The Parties have agreed to a limit of fifteen (15) interrogatories per contention. The parties will endeavor to focus any such interrogatories on new information or newly admitted contentions/bases that have not been the subject of previous discovery. The Parties will file responses to all relevant interrogatories (including those directed at an already-admitted contention/basis) no later than seven (7) days after the Board rules on the admissibility of any outstanding late-filed contentions.⁷

⁴ The discussion in this section is based on the current schedule for publication of the FEIS and SER on June 15, 2005.

⁵ NIRS/PC filed a total of three motions for the admission of late-filed contentions on May 16 and 20, 2005, relating to LES's proposed strategy and cost estimates for the disposition of depleted uranium, respectively. In addition, NIRS/PC have indicated that they may submit late-filed contentions in response to information contained in the NRC Staff's forthcoming Safety Evaluation Report and/or Final Environmental Impact Statement.

⁶ Any discovery against the NRC Staff will proceed in accordance with the Board's general schedule for this proceeding.

⁷ This approach is intended to allow the Parties to commence the discovery process more expeditiously, while still giving the Parties an opportunity to review the Board's admissibility ruling before they draft their final interrogatory responses.

The Parties agree that some additional depositions of LES and NIRS/PC expert witnesses will be necessary.⁸ The Parties anticipate that these additional depositions will require, at most, eight (8) days to complete. At present, the Parties plan to conduct those depositions during the August 15 to September 6 time frame to comport with the Board's general schedule.⁹

C. Evidentiary Hearing Schedule

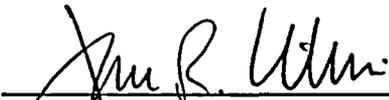
The Parties agree that, at this early stage, it is difficult to predict with full confidence the length of time that will be required to complete the October evidentiary hearings. In particular, the Board's rulings on late-filed contentions and any potential summary disposition motions may impact the duration of those hearings. As suggested by the Board, the Parties intend to consolidate their testimony on the technical/financial contentions to the extent practicable. Further, Counsel for NIRS/PC hereby notifies the Board that NIRS/PC are withdrawing Contention NIRS/PC TC-6 (Natural Gas-Related Accident Risks), which will further reduce the time required for hearings. In this regard, the Parties' present expectation is that they can complete the fall hearings in about six days, and thus will not require the full two weeks allotted by the Board in the General Schedule. After the Board has ruled on all late-filed

⁸ Counsel for the AGNM and NMED do not anticipate the need to conduct any further depositions of LES witnesses at this time, though they expressly reserve the right to do so should any new information become available.

⁹ With respect to the schedule for interrogatories and deposition(s) related to the testimony of NIRS/PC witness Arjun Makhijani, the Parties are evaluating alternate dates for such discovery in view of Dr. Makhijani's schedule. In any event, such discovery will be completed by September 6, 2005. In the event that significant new information becomes available, additional discovery may be necessary.

contentions and any summary disposition motions, the Parties will update the Board as to the projected duration of the fall evidentiary hearings.

Respectfully submitted,



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Dated at Washington, District of Columbia
this 23rd day of May 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)	
Louisiana Energy Services, L.P.)	ASLBP No. 04-826-01-ML
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "JOINT REPORT IN RESPONSE TO THE LICENSING BOARD'S MAY 3, 2005 ADMINISTRATIVE DIRECTIVES" in the captioned proceeding have been served on the following by e-mail service, designated by **, on May 23, 2005 as shown below. Additional service has been made by deposit in the United States mail, first class, this 23rd day of May 2005.

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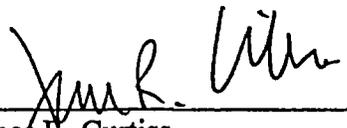
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