

RAS 10061

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 06/08/05

SERVED 06/08/05

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

June 8, 2005

MEMORANDUM

(Notice Regarding Issuance of
Partial Initial Decision on Environmental Contentions)

By memorandum and order issued this date, the Board has ruled on the four environmental contentions (ECs) jointly submitted by intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) -- NIRS/PC EC-1, Impacts Upon Ground and Surface Water; NIRS/PC EC-2, Impact Upon Water Supplies; NIRS/PC EC-4, Impacts of Waste Storage; and NIRS/PC EC-7, Need for the Facility -- that were the subject of the February 2005 evidentiary hearing, finding that these contentions are resolved in favor of applicant Louisiana Energy Service, L.P., (LES) and/or the NRC staff. The Board's decision, however, currently is being treated as not subject to public release pending review of possible proprietary information used in the decision. Accordingly, copies of the decision are being provided at this juncture only to the parties by overnight delivery/express mail (or in the case of the staff, by internal agency mail), and should be handled by those parties in accordance with the May 21, 2004 protective order previously entered in this proceeding.

In crafting its decision, the Board has attempted to minimize the use of possible proprietary information and has requested that on or before Thursday, June 16, 2005, LES, NIRS/PC, and the staff provide a joint report outlining any agreements or disagreements regarding the redaction of specific portions of the opinion that are claimed to contain proprietary information. Once the Board has received this joint report, and any responses challenging claimed redactions, it will make a determination about what portions of the decision must be withheld. The parties will be advised of the Board's ruling in this regard.

Additionally, given the delay in the public availability of this decision, the Board provides the following summary of its partial initial decision rulings, albeit with the caveat that this summary (like the summaries and headnotes that accompany the Board's published decisions) has no legal significance.

With regard to contention EC-1, the Board finds that the Environmental Report (ER) in the LES National Enrichment Facility (NEF) application and the staff's Draft Environmental Impact Statement (DEIS) for the NEF contain an adequate assessment of the potential environmental impacts of the proposed NEF on ground and surface water in that (1) the staff provided explanations for its determinations of flow rates, discharge rates, and the dimensions of potential perched water bodies below the NEF site; (2) there is no scientifically sound means of estimating the probability, frequency, and rate of leakage from lined basins at the NEF, therefore the lack of such staff analysis does not represent a shortcoming in the DEIS; (3) the isolated presence of moisture in certain soil borings at the NEF and neighboring sites is, by itself, not indicative of precipitation recharge, and therefore is not inconsistent with the staff's finding of no recharge at the NEF site; (4) soil permeability measurements and evidence regarding fracture zones at or near the NEF site provide a reliable basis for the staff's determination regarding vertical water transport in the soil below the NEF site; and (5) the staff in the DEIS has disclosed potential contaminants in stormwater runoff and the NEF site and described LES's proposed monitoring for those items, the regulation of which is the responsibility of the State of New Mexico rather than the NRC.

Concerning contention EC-2, the Board finds that no credible evidence supports this NIRS/PC contention that the ER and/or the DEIS inadequately addressed the impact of the NEF on area water supplies in that (1) the ER contains an adequate assessment of potential environmental impacts of the proposed NEF on water supplies in the area; and (2) the staff has shown adequately in the DEIS how NEF projected lifetime water use, which would be

0.004 percent of the relevant aquifer's reserves within the State of New Mexico, would affect water levels and the long-term availability of local water resources.

As to contention EC-4, the Board finds the staff adequately considered and presented the environmental impacts reasonably associated with construction and lifetime operation of a deconversion plant for the depleted uranium hexafluoride waste required in conjunction with the proposed NEF and that none of the other NIRS/PC deconversion facility impact-related claims have any merit.

Regarding contention EC-7, the Board finds that (1) LES has reasonably estimated in the ER a shortage of uranium enrichment capacity; (2) it was both necessary and useful for LES to examine the global market for enrichment services, notwithstanding that a primary need for the NEF is to establish a viable domestic source for enrichment services; and (3) LES has reasonably proven its ability to enter the uranium enrichment market by reason of several executed contracts with utility companies for the purchase of enrichment services.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD*

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

June 8, 2005

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM (NOTICE REGARDING ISSUANCE OF PARTIAL INITIAL DECISION ON ENVIRONMENTAL CONTENTIONS) 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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Docket No. 70-3103-ML
LB MEMORANDUM (NOTICE REGARDING ISSUANCE
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 8th day of June 2005