

relates to an application filed by LES on December 12, 2003, seeking NRC authorization to construct and operate a gas centrifuge uranium enrichment facility – designated the National Enrichment Facility (“NEF”) – near Eunice, New Mexico.

On January 30, 2004, the Commission provided notice of the receipt and availability of the LES application and of the opportunity for a hearing on the application.³ That notice was published in the *Federal Register* on February 6, 2004.⁴ In response to the February 2004 notice, several entities, including NIRS/PC, filed intervention petitions in accordance with 10 C.F.R. § 2.309. Subsequently, an NRC Licensing Board was constituted to consider the intervention petitions and preside over the LES adjudicatory proceeding.⁵

On May 20, 2004, the Commission, in accordance with its hearing order for this proceeding, found that all of the petitioners had established standing to intervene.⁶ On June 15, 2004, the Licensing Board conducted an initial prehearing conference in Hobbs, New Mexico, during which it heard oral presentations regarding the admissibility of the proposed contentions proffered by NIRS/PC and the other petitioners. Thereafter, on July 19, 2004, the Licensing Board found that each petitioner had submitted at least one admissible contention so as to be admitted as a party to this proceeding.⁷

³ See *Louisiana Energy Servs., L.P. (National Enrichment Facility)*, CLI-04-3, 59 NRC 10 (2004).

⁴ See 69 Fed. Reg. 5873 (Feb. 6, 2004).

⁵ See 69 Fed. Reg. 22,100 (Apr. 23, 2004).

⁶ See *Louisiana Energy Servs., L.P. (National Enrichment Facility)*, CLI-04-15, 59 NRC 256 (2004)

⁷ See *Louisiana Energy Servs., L.P. (National Enrichment Facility)*, LBP-04-14, 60 NRC 40, 54-58 (2004). The Attorney General of New Mexico and the New Mexico Environmental Department are the other parties to this proceeding.

The ten contentions admitted by the Licensing Board included four environmental contentions proffered by NIRS/PC relating to matters discussed or referenced in LES's Environmental Report ("ER") for the proposed facility. These four contentions were NIRS/PC EC-1 ("Impacts Upon Ground and Surface Water"), EC-2 ("Impact Upon Water Supplies"), EC-4 ("Impacts of Waste Storage"), and EC-7 ("Need for the Facility").

On November 22, 2004, the Licensing Board modified environmental contentions NIRS/PC EC-1, EC-2, and EC-4 in response to an October 20, 2004 motion⁸ submitted by NIRS/PC.⁹ The contention amendments admitted by the Licensing Board principally involved NIRS/PC challenges to information contained in the NRC Staff's Draft Environmental Impact Statement ("DEIS").¹⁰ Contention NIRS/PC EC-7 remained unmodified.

In accordance with the general schedule set forth in its memorandum and order of August 16, 2004,¹¹ the Licensing Board held evidentiary hearings on contentions NIRS/PC EC-1, EC-2, EC-4, and EC-7 from February 7-10, 2005, in Hobbs, New Mexico. On June 8, 2005, the Licensing Board issued its partial initial decision, resolving all four contentions in favor of LES and/or the NRC Staff. Specifically, the Board found that LES and/or the Staff "have carried their respective burdens of proof to demonstrate the adequacy of the ER and/or DEIS in

⁸ See "Motion on Behalf of [NIRS/PC] to Amend and Supplement Contentions" (Oct. 20, 2004).

⁹ Memorandum and Order (Ruling on Late-Filed Contentions) (Nov. 22, 2005) (unpublished), at 7-15, App. A ("November 2004 Ruling on Late-Filed Contentions").

¹⁰ See NUREG-1790, *Environmental Impact Statement for the Proposed National Enrichment Facility – Draft Report for Comment*, Lea County, New Mexico, Docket No. 70-3103, Louisiana Energy Services L.P., NRC/NMSS (Sept. 2004) ("DEIS") The Staff issued its Final Environmental Impact Statement ("FEIS") in June 2005.

¹¹ See Memorandum and Order (Memorializing and Ruling on Matters Raised in Conjunction with August 3, 2004 Conference Call and Setting General Schedule for Proceeding), App. A (General Schedule – Louisiana Energy Services, L.P. Proceeding) (Aug. 16, 2004).

accordance with 10 C.F.R. §§ 51.20, 51.45, 51.71,” and that “the NIRS/PC claims in those contentions regarding the sufficiency of the ER and/or DEIS cannot be sustained.”¹² NIRS/PC now seek Commission review of the Board’s decision.

III. ARGUMENT

Under 10 C.F.R. § 2.341(b)(4), the Commission may, in its discretion, grant a petition for review, giving due weight to the existence of a “substantial question” with respect to the following considerations:

- (i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
- (ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
- (iii) A substantial and important question of law, policy or discretion has been raised;
- (iv) The conduct of the proceeding involved a prejudicial procedural error; or
- (v) Any other consideration which the Commission may deem to be in the public interest.¹³

Petitioners’ arguments are addressed below in connection with the pertinent contentions. Petitioners have not set forth any issue that raises a *substantial question* with respect to any of specified considerations. Petitioners largely re-argue the merits of their earlier positions, without showing “clearly erroneous” fact findings or prejudicial procedural errors. Nor do Petitioners raise a “substantial and important question of law” or demonstrate that any of the Board’s legal conclusions are “without governing precedent or . . . a departure from or contrary to established law.” Indeed, Petitioners fail to address with specificity any of the considerations set forth in

¹² LBP-05-13, slip op. at 2.

¹³ 10 C.F.R. § 2.341(b)(4); *see also See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Facility)*, CLI-03-08, 58 NRC 11, 17 (2003) (stating that “[r]eview of an initial decision such as [LBP-05-13] is purely discretionary with the Commission”).

Section 2.341(b)(4), thereby leaving the Commission to surmise the pertinent ground(s), if any, for Petitioners' request for review. This fact alone supports rejection of the petition for review.¹⁴

A. Contention NIRS/PC EC-1 ("Impacts Upon Ground and Surface Water")

With respect to Contention NIRS/PC EC-1, Petitioners assert that the Board erred in three respects. *See* Petition at 22-23. Specifically, Petitioners claim that the Board erroneously determined that: (1) no scientifically sound method exists to estimate the probability and frequency of liner leakage from the proposed lined basins; (2) the presence of moisture in two of the 14 boring samples does not indicate recharge; and (3) fast-flow paths do not exist within the Chinle Formation. As set forth below, however, the record indisputably supports the Board's findings on these three technical, fact-intensive issues.

To invoke discretionary Commission review of Board fact findings, Petitioners must demonstrate that those findings were "clearly erroneous," *i.e.*, "not even 'plausible in light of the record viewed in its entirety.'"¹⁵ Thus, the Commission's standard of "clear error" for overturning a Board decision "is quite high,"¹⁶ While the Commission has authority to make its own *de novo* findings of fact, it "generally do[es] not exercise that authority where a Licensing Board has issued a plausible decision that rests on carefully rendered findings of fact."¹⁷

¹⁴ *See Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-03-17, 58 NRC 419, 422 (2003) (stating that the Commission will "grant petitions for review, of course, only where the petitioner raises a 'substantial question' about [the] specified matters" set forth in Section 2.341(b)(4)).

¹⁵ *See Kenneth G. Piece* (Shorewood, Illinois), CLI-95-6, 41 NRC 381, 382 (1995) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573-76 (1985)).

¹⁶ *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-03-8, 58 NRC 11, 26 (2003).

¹⁷ *Id.* *See, e.g., Dominion Nuclear Connecticut, Inc* (Millstone Power Station, Unit 3), CLI-02-22, 56 NRC 213, 222 (2002); *Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-11, 53 NRC 370, 382 (2001); *Hydro Resources Inc.* (P.O. Box

Petitioners first claim, as they did at the hearing, that neither the ER nor the DEIS estimated the probability that one of the facility's lined basins will leak and release water to the underlying alluvium. Petition at 22. The Board, however, agreed with Staff witness Toblin that a "meaningful quantitative assessment" of the probability, frequency, and rate of any liner leakage could not be made.¹⁸ This conclusion is thus well-supported by the record. Additionally, as reflected in their proposed findings, LES and the Staff presented substantial testimony and evidence to demonstrate that such an estimate is unnecessary. Specifically, they established that a postulated leak would not pose a significant environmental concern given the adequacy of the NEF basin designs, LES's commitment to properly install and maintain the liners, the composition of the liquids that will be discharged into the basins, the favorable hydrological and hydrogeological conditions on the site, and LES's commitment to implement adequate environmental monitoring and measurements programs.¹⁹ The Board cited much of this testimony in its findings.²⁰ Accordingly the Board's decision was not "clearly erroneous."

15910, Rio Rancho, NM 87174), CLI-01-04, 53 NRC 31, 45 (2001); *Louisiana Energy Services, LP* (Claiborne Enrichment Center), CLI-98-03, 47 NRC 77, 93 (1998).

¹⁸ See LBP-05-13, slip. op. at 34, ¶ 4.25 (expressing agreement with Staff witness' view). The EPA computer models cited by Petitioners (*i.e.*, the HELP and EPACMPT models) are simulation tools that rely on the use of *assumed* input parameters (*e.g.*, pinhole density, number of installation defects, hydraulic conductivity, etc.). Their stated purposes are "to assist in the comparison of design alternatives" (NIRS/PC Exhibit 10, at 1) and "to establish regulatory levels for concentrations of constituents in wastes managed in [Resource Conservation and Recovery Act] land-based units" (NIRS/PC Exhibit 12, at 1-1). Thus, they fail to support Petitioners' argument.

¹⁹ See, *e.g.*, "[LES's] Proposed Findings of Fact and Conclusions of Law Regarding Environmental Contentions" (Mar. 14, 2005) at 19-25, ¶¶ 25-42.

²⁰ See LBP-05-13, slip. op. at 32-37, ¶¶ 4.16-4.25. For example, LES established, without challenge from NIRS/PC, that if all of the uranium expected to be discharged to the Treated Effluent Evaporative Basin ("TEEB") were uniformly distributed in the soil below the TEEB over a depth of 20 feet, that uranium concentration would be equivalent to the naturally occurring uranium concentration in NEF site soil. *Id.* at 35, ¶ 4.22.

Petitioners' second argument regarding Contention NIRS/PC EC-1 is that the Board erred in concluding that the presence of moisture in two of the 14 boring samples is not indicative of "precipitation recharge."²¹ Petition at 22. Petitioners argue that the presence of moisture found in the two borings is caused by "episodic" recharge. *Id.* The Board examined Petitioners' argument, as well as the extensive evidence presented by LES and the Staff, and properly rejected Petitioners' claim of "episodic recharge," noting that "the DEIS discusses site and regional hydrology, including the lack of precipitation recharge, and notes that field investigations and computer modeling indicated that no precipitation recharge occurs at sites with thick vadose zones such as the proposed NEF."²² Based on the record before it,²³ the Board further found that the "isolated presence of moisture in borings B-2 and B-9 at the proposed NEF cite could be attributed to a variety of sources and is not, in and of itself, indicative of precipitation recharge and, therefore, such isolated moisture is not inconsistent with a finding that there is no precipitation recharge."²⁴ In short, the Board found the conclusion in the DEIS

²¹ Precipitation recharge occurs when "rainwater seeps into the ground and replenishes or recharges the groundwater, especially an aquifer." Tr. 666. At the NEF, the first continuous saturated zone occurs at a depth of about 220 feet; the first well-defined aquifer occurs at depth exceeding 1,100 feet. LBP-05-13, slip op. at 28-29, ¶4.10.

²² LBP-05-13, slip op. at 38, ¶4.26 (citing NEF DEIS at 3-34 to 3-35).

²³ *See id.* at 38-41, ¶4.27-4.31 (citing extensively to the hearing record).

²⁴ As reflected in LBP-05-13, LES and Staff experts collectively established, *inter alia*, that the moisture was likely "residual" in nature and attributable to the moisture storage capacity of the soil in the vadose zone; that dry conditions beneath the Chinle/alluvial contact indicate that water does not migrate vertically through the Chinle red bed surface; and that, despite relatively uniform subsurface conditions in the site vicinity, moisture was not observed over a wide area in multiple borings, as would be expected if precipitation recharge were occurring; and that precipitation at the site that does infiltrate into the subsurface is subject to upward hydraulic gradients caused by vaporization and evapotranspiration, both of which draw water upwards toward the surface. LBP-05-13, slip op. at 39-40, ¶¶ 29-30. While Petitioners assert that LES and the Staff did not establish "that the observed moisture was moving upward," Petitioners did not establish that moisture was moving downward and "recharging" any saturated zone or aquifer.

“that there is no precipitation recharge at the proposed NEF site” to be “reasonably supported” by the evidence and testimony.²⁵ The Board’s extensive reliance on the record in reaching this conclusion hardly bespeaks a “clearly erroneous” finding of material fact.

Petitioners’ final argument is that the Board erred in finding that fast flow paths do not exist within the Chinle Formation due to the low permeability and confined nature of the Chinle water-bearing unit at 220 feet below ground surface. In arriving at this conclusion, the Board examined, and found persuasive, the Staff’s explanation in the DEIS, which relied on two *types* of permeability measurements (slug test and laboratory measurements) to show that the Chinle Formation clays are highly impervious.²⁶ The Board expressly rejected, again based on record evidence, Petitioners’ argument that the DEIS failed to describe the permeability of the site.²⁷ In regard to Petitioners’ “fast flow path” argument, the Board concluded that, even though fractures do exist within the Chinle Formation, the evidence clearly showed that “no material faults or fast flow paths ways would permit significant hydraulic connectivity between any of the aquifers at issue or from one or more of those aquifers to the surface.”²⁸ As the Board’s conclusion has extensive support in the record,²⁹ it is not “clearly erroneous.”

B. Contention NIRS/PC EC-2 (“Impact Upon Water Supplies”)

Petitioners contend that the Board’s conclusion that “the NEF will not place any significant additional strain on the region’s water supplies” is without basis. Petition at 23; LBP-

²⁵ LBP-05-13, slip. op. at 40-41, ¶ 4.31.

²⁶ See LBP-05-13, slip op. at 41-43, ¶¶ 4.33-4.35.

²⁷ See *id.* at 45-46, ¶ 4.39.

²⁸ *Id.* at 46, ¶ 4.39; see also *id.* at 43-45, ¶¶ 4.36-4.38.

²⁹ See LBP-05-13, slip op. at 41-46, ¶¶ 4.33-4.39 (containing extensive references to, and discussion of, the hearing record).

05-13, slip op. at 59, ¶ 4.60. The gravamen of Petitioners' claim is that the Board "based its decision on Contention EC-2 upon *current* usage rates," thereby purportedly "ignoring the *future* impact of the NEF over the 30-year term of its license." Petition at 23 (emphasis in original). Petitioners, however, take a myopic view of the record, ignoring contrary evidence and testimony proffered by LES and the Staff and accepted by the Board as persuasive.

The basis for the Board's decision on Contention NIRS/PC EC-2 is explicit and well-supported by the record. Based on extensive LES and Staff testimony regarding current water usage rates in Hobbs and Eunice, New Mexico, the amount of water rights permitted to each city, and the projected water usage needs of the NEF, the Board reasonably concluded that there is no "credible qualitative or quantitative evidence to support the NIRS/PC contention."³⁰ The Board accepted as compelling the testimony of LES witnesses that the small incremental water use expected for the NEF (approximately 71.1 acre-feet per year) falls within the normal variation of the City of Hobbs' annual actual water use (which varies by hundreds of acre-feet from year-to-year), and that such a *de minimis* usage does not justify running a computational simulation of the effects of additional pumpage from the Hobbs well field.³¹ Similarly, the Board was persuaded by testimony that NEF average *annual* water usage would amount to only 0.26 percent of the combined capacity of the Hobbs and Eunice municipal water systems, and NEF *lifetime* water usage would amount to only 0.004 percent of the Ogallala Aquifer reserves (from which both Hobbs and Eunice draw their water supply) within the State of New Mexico.³² Finally, based on LES expert testimony concerning the permitted water rights of Hobbs and

³⁰ See LBP-05-13, slip op. at 57-63, ¶¶ 4.59-4.66.

³¹ *Id.* at 60, ¶ 4.62.

³² *Id.* at 62, ¶ 4.65.

Eunice, the Board concluded that the anticipated NEF water usage requirements are, from a regulatory standpoint, already accounted for by the State of New Mexico.³³

Petitioners cast no doubt on the validity of the Board's conclusions, let alone establish "clear error." First, NIRS/PC point to projections of future saturated thicknesses generated by Staff witness Alan Toblin, using a copy of the computer model of Lea County Underground Water Basin that he obtained from the New Mexico Office of the State Engineer ("NMOSE"). Petition at 23. Using that model, Mr. Toblin found that 30 years of water withdrawn for NEF usage would result in only 1.2 feet of additional drawdown locally in the Hobbs well field (with the effect decreasing materially with distance from the withdrawal point, so as to be only about 0.1 feet approximately two miles from that point).³⁴ Notwithstanding, the Board chose not to rely on Mr. Toblin's computations, insofar as "the evidence before [the Board] clearly establishes that the effects of the additional NEF-related water withdrawal are *de minimis* when compared with any relevant water resource, rights, or usage."³⁵ Further, LES witness Roger Peery testified that the NMOSE model used by Mr. Toblin tends to "over-predict" drawdowns in much of Lea County, as is evident from a comparison of historic draw-downs to simulated draw-downs, but that the NMOSE model nonetheless indicated saturated thicknesses of approximately 50 to 150 feet in much of the Hobbs well field.³⁶

Petitioners' reliance on certain statements contained in the *Lea County Regional Water Plan* (Staff Exhibit 21) is similarly misplaced. LES witnesses Peery and Stokes testified that the plan is based on highly conservative, if not worst-case, assumptions that are intended to

³³ *Id.* at 58-59, ¶ 4.60.

³⁴ *Id.* at 60-61, ¶ 4.63.

³⁵ LBP-05-13, slip op. at 61-62, ¶ 4.64.

³⁶ *See* Tr. 1289-1291, 1296.

protect ground water within the Lea County Underground Water Basin from large appropriations by water users outside of the basin.³⁷ Additionally, Petitioners' argument that "the NEF's 30-year uninterruptible demand for water" necessitates analysis of impacts resulting from "possible" water use "curtailments" by other users was explicitly rejected by the Board in LBP-05-13 as "unpersuasive," given (1) that LES has no priority user status with the City of Hobbs or Eunice; and (2) "the *de minimis* nature of the NEF water usage, particularly when compared to what are other much larger, but apparently deferrable, water usages in the local area."³⁸

C. Contention NIRS/PC EC-4 ("Impacts of Waste Storage")

1. The Licensing Board Properly Excluded Litigation of Disposal-Related Issues Under Contention NIRS/PC EC-4

In the first argument of their petition for review, NIRS/PC aver generally that the Board "erred" in allegedly "refusing to allow NIRS/PC to show the environmental impacts of waste disposal." Petition at 14. Petitioners further assert, with great hyperbole, that "unless the Commission intervenes, the issues of the environmental impact of disposal of the [depleted uranium] waste from this facility may be summarily excluded from this process." *Id.* at 16. As set forth below, Petitioners argument is marred by legal and factual infirmities.

a. *Disposal-Related Issues Exceed the Scope of Contention NIRS/PC EC-4*

As an initial matter, NIRS/PC fail to identify the specific contention for which they seek Commission review. Of the four environmental contentions considered by the Licensing Board in LBP-05-13, only one contention – NIRS/PC EC-4 – pertains to the dispositioning of depleted uranium ("DU") byproduct. As admitted, however, Contention NIRS/PC EC-4 relates solely to the potential environmental impacts associated with the

³⁷ See Tr. 1204, 1268.

³⁸ See LBP-05-13, slip op. at 63 n.8.

construction and operation of a commercial facility for the *deconversion* of depleted uranium from DUF_6 to DU_3O_8 . While the Board modified Contention NIRS/PC EC-4 in November 2004 to include a challenge to the NRC Staff's "reliance" on information from the DOE EISs for the Portsmouth and Paducah deconversion facilities, this contention has *never* encompassed disposal-related issues. Thus, to the extent the Petitioners now raise disposal-specific issues in the context of Contention NIRS/PC EC-4 – the only admitted environmental contention germane to LES's treatment of DU byproduct – they yet again seek to expand the scope of that contention.

Specifically, Petitioners have sought repeatedly and belatedly to inject issues associated with ultimate *disposal* of DU into Contention NIRS/PC EC-4. Each time, the Board has appropriately rejected Petitioners' attempt to untimely expand the narrow scope of that contention.³⁹ Contrary to Petitioners' apparent suggestion that it somehow "erred," the Board simply adhered to Commission precedent in limiting litigation on Contention NIRS/PC EC-4 to *deconversion-related* issues. Namely, "[a]n intervenor may not freely 'change the focus of an admitted contention at will as litigation progresses, but is bound by the terms of the contention.'"⁴⁰ In fact, the presiding officer has a "duty . . . to take appropriate action to control the prehearing and hearing process" and "to avoid delay and maintain order."⁴¹ This duty includes restricting "irrelevant, immaterial, unreliable, duplicative, or cumulative evidence

³⁹ See, e.g., November 2004 Ruling on Late-Filed Contentions, at 13-15; Memorandum and Order (Ruling on In Limine Motions and Providing Administrative Directives) (unpublished) (Jan. 21, 2005), at 7.

⁴⁰ *Duke Energy Corp.* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-28, 56 NRC 373, 378-81, 386 (2002) (citations omitted).

⁴¹ 10 C.F.R. § 2.319; see also 10 C.F.R. § 2.333.

and/or arguments.”⁴² In short, the Board in no way “erred” in refusing to allow NIRS/PC to expand the scope of Contention NIRS/PC EC-4 to encompass *disposal-related* issues.

b. Petitioners Improperly Seek Interlocutory Review of Board Rulings on Technical Contentions Not at Issue in LBP-05-13

Significantly, NIRS/PC do not challenge the Licensing Board’s initial July 19, 2004 admissibility ruling on Contention NIRS/PC EC-4. In that ruling, the Board properly excluded as “outside the scope of this proceeding” the argument that the NEF Environmental Report (“ER”) must “discuss the environmental ramifications of construction and operation of a geological repository for UF₆ waste.”⁴³ Instead, Petitioners focus on other Board rulings involving contentions that are scheduled for hearing in October 2005. For example, Petitioners cite page 16 of the Licensing Board’s November 22, 2004 ruling on late-filed contentions. Petition at 15. That Board ruling pertained to Contention NIRS/PC EC-5/TC-2. Similarly, Petitioners refer to the Board’s ruling at page 7 of its May 3, 2005 decision on late-filed contentions. *Id.* That ruling, concerned Contention NIRS/PC EC-3/TC-1. Insofar as NIRS/PC are seeking Commission review of Board rulings on those technical contentions, such a request for review is interlocutory and unwarranted.⁴⁴ At a minimum, Petitioners have provided no basis for Commission review of the Board’s merits decision on Contention NIRS/PC EC-4.

⁴² 10 C.F.R. § 2.319(e).

⁴³ LBP-04-14, 60 NRC at 67-68; *see also* “Petition to Intervene By Nuclear Information and Resource Service and Public Citizen” (Apr. 6, 2004), at 32.

⁴⁴ *See* 10 C.F.R. § 2.341(f)(2); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-01-01, 53 NRC 1, 5 (2001) (citations omitted) (“Commission practice generally disfavors interlocutory review” absent “pervasive or unusual effect.”).

c. *Petitioners Improperly Rely on Prior Arguments Regarding the Waste Classification of DU Under Part 61 in Seeking Additional NEPA Review*

In their petition NIRS/PC rely principally on arguments made in connection with original Basis “D” (later renamed Basis “C” by the Licensing Board) of Contention NIRS/PC EC-3/TC-1, which challenged the so-called DOE or Section 3113 disposition strategy identified by LES. Indeed, NIRS/PC twice cite the “Basis D” arguments advanced on pages 27-31 of their April 6, 2004 intervention petition. *See* Petition at 15. In January 2005, however, the Commission specifically reversed the admission of that basis to this proceeding, concluding that it “rest[ed] on inaccurate premises – that only waste suitable for near-surface disposal can be low-level radioactive waste and that GTCC [greater-than-Class C] waste is not low-level waste.”⁴⁵ Petitioners cannot now resurrect those arguments in the instant petition for review.

As Petitioners recognize, the arguments at pages 27-31 of their April 2004 intervention petition relate to the classification of DU under 10 C.F.R. Part 61, and whether that DU is “acceptable for disposal in a land disposal facility, in the terms of 10 C.F.R. 61.2.” Petition at 15. These issues were never part of Contention NIRS/PC EC-4. NIRS/PC try to recast their earlier waste classification arguments in a different light, suggesting that “they are clearly relevant to the required environmental analysis,” and that “the Commission remanded for further environmental analysis” the issue of “whether the LES material, in the volumes and concentration proposed, will meet the Part 61 requirements for near-surface disposal.” Petition at 15. In reality, however, the Commission stated only that “a definitive conclusion on this and other disposal methods cannot be reached *at this time*, and *may* require further environmental or safety analysis.”⁴⁶ The Commission did not “remand” this issue to the Board for further

⁴⁵ CLI-05-5, 61 NRC at 33-34, 36.

⁴⁶ *Id.* at 35 (emphasis added).

“environmental” or NEPA analysis. Indeed, the Commission described this issue as relating to “the plausibility of LES’s proposed private disposal options, and to financial assurance. . . .”⁴⁷ not to the deconversion-related issues raised in Contention NIRS/PC EC-4.

2. The Board Did Not Improperly Limit Consideration of the Impacts of Deconversion

In the third argument of their petition, Petitioners contend that the Board erred in rejecting arguments and evidence on certain “alternatives” proposed by NIRS/PC. Petition at 17-19. First, NIRS/PC maintain that deconversion of DUF₆ to DUO₂ is an “appropriate alternative” to deconversion to DU₃O₈. Petitioners fail, however, to show clear error by the Board.

Specifically, LES identified DU₃O₈ as its preferred disposal form in its original (*i.e.*, December 2003) license application.⁴⁸ Clearly, NIRS/PC could have raised the issue of “alternative” disposal forms in their April 2004 intervention petition. Instead, NIRS/PC waited until November 2004, when they produced the expert report of Arjun Makhijani, to express their view that DUO₂ is a more suitable disposal form.⁴⁹ Accordingly, when NIRS/PC sought to introduce testimony regarding the DUO₂ disposal form, the Board rejected it as an “improper attempt to use expert testimony to amend an existing contention or introduce what is essentially a new contention outlining a an additional alternative for consideration.”⁵⁰ The Board also deemed this *disposal-related* issue to be beyond the scope of Contention NIRS/PC EC-4, which pertains

⁴⁷ *Id.*

⁴⁸ *See* NEF ER at 4.13-8, 4.13-14 (Dec. 2003).

⁴⁹ *See* Arjun Makhijani & Brice Smith, “Costs and Risks of Management and Disposal of Depleted Uranium from the National Enrichment Facility Proposed to be Built in Lea County, New Mexico by LES” (Nov. 24, 2004), at 30-51.

⁵⁰ Memorandum and Order (Ruling on In Limine Motions and Providing Administrative Directives) (unpublished) (Jan. 21, 2005), at 7.

to deconversion facility impacts.⁵¹ When NIRS/PC sought to amend Contention NIRS/PC EC-4 to encompass disposal-related issues the Board likewise rejected the proposed amendment.⁵² In short, the Board did not commit clear or prejudicial error by excluding issues that were both untimely raised and beyond the scope of the admitted contention.

Petitioners also contend that “the deconversion process that would generate AHF [anhydrous hydrofluoric acid] should have been examined but was not.” Petition at 18. This statement is erroneous and utterly disregards the record, which contains substantial testimony from the LES and Staff witnesses relative to the AHF process.⁵³ More importantly, Petitioners flat-out ignore the Board’s statement that “although LES has now firmly committed not to use the anhydrous process, the Board nonetheless has considered that option for the purpose of determining the adequacy of the NEPA analysis in connection with this contention.”⁵⁴ That consideration led the Board to conclude that “based on the testimony of Dr. Palmrose as it supplemented the staff DEIS, the Board finds sufficient information exists to demonstrate there has been adequate consideration of the impacts of the management of anhydrous HF.”⁵⁵

3. No Substantial Question Exists With Respect to the NRC Staff’s Reliance on the DOE Environmental Impact Statements

The fourth argument proffered by NIRS/PC in their petition for review is two-fold. First, NIRS/PC assert that “[t]he fundamental problem with the DEIS analysis of deconversion is that NRC Staff did no analysis and, instead, relied upon DOE documents, which

⁵¹ *Id.*

⁵² November 2004 Ruling on Late-Filed Contentions, at 14-15.

⁵³ *See, e.g.*, Tr. 896-97, 912, 1001-06, 1018-21.

⁵⁴ LBP-05-13, slip op. at 80, ¶ 4.89.

⁵⁵ *Id.* at 82, ¶ 4.91.

Staff neither prepared nor even checked.”⁵⁶ Petition at 19. Second, NIRS/PC contend that in accepting the NRC Staff’s reliance on information contained in the DOE’s PEIS, the Board “ignore[d] the applicable rules” and “depart[ed] from the Board’s NEPA role.” Petition at 21. Neither argument raises “an important issue of environmental compliance,” or, for that matter, any other “substantial question.”

Petitioners’ assertion that the NRC Staff “have done no independent inquiry” patently disregards the record. Petition at 20. In paragraph 4.78 of its partial initial decision, the Board states that the Staff’s expert witness, Dr. Palmrose, “reviewed the impacts presented in the DOE documents and, *based on his past experience and his review of the assumptions and the information available in those documents* [], concluded that DOE had provided a reasonable assessment of the impacts of deconversion of DUF₆ to U₃O₈ [].”⁵⁷ Indeed, the record is replete with testimony by Dr. Palmrose confirming that the Staff did, in fact, perform an “independent inquiry” relative to the potential environmental impacts of a commercial deconversion facility.⁵⁸ Petitioners point to nothing in the record to controvert these facts.

⁵⁶ The “DOE documents” alluded to by Petitioners include (1) a programmatic EIS (hereinafter “PEIS”) prepared by DOE in 1999 in developing a broad strategy for managing its inventory of DUF₆, and (2) two final site-specific EISs issued in 2004 for the construction and operation of planned deconversion facilities at Paducah, Kentucky and Portsmouth, Ohio (hereinafter “DOE site-specific EISs”). See LBP-05-13, slip op. at 70-71, ¶ 4.77 (providing full citations to DOE EISs).

⁵⁷ LBP-05-13, slip op. at 71, ¶ 4.78 (citing Tr. at 1027-28, 1044) (emphasis added).

⁵⁸ For example, Dr. Palmrose testified that he reviewed the Lawrence Livermore National Laboratory (“LLNL”) Engineering Analysis Report that formed the basis for the DOE PEIS, and did his “own independent search for any type of situation or case where aqueous HF had been upgraded to anhydrous HF.” Tr. at 1046. Similarly, Dr. Palmrose testified that he had reviewed the DOE site-specific EISs for the planned Paducah and Portsmouth deconversion facilities and independently confirmed their applicability to a potential commercial deconversion facility. See Tr. 1005, 1040-44, 1053.

The Staff's reliance on information contained in the DOE EISs does not constitute a departure from established law or precedent. Indeed, as the Board recognized, "in the hearing notice for this proceeding, the Commission indicated that, relative to the environmental impacts associated with the management of DUF₆, it was appropriate for the Staff to consider DOE EIS analysis."⁵⁹ It is well-established that "an agency takes a sufficient 'hard look' when it obtains opinions from its own experts, *obtains opinions from experts outside the agency*, gives careful scientific scrutiny, and responds to all legitimate concerns that are raised."⁶⁰ As the Board indicated, the Staff may draw from "the underlying scientific data and inferences from an analysis conducted by another agency without independent review, so long as it exercises independent judgment with respect to conclusions about the environmental impacts relative to the current proposed agency action."⁶¹ In other words, the NRC is not required to duplicate or otherwise verify the specific numerical calculations contained in the DOE EISs. The Staff, in any event, clearly exercised "independent judgment" in relying on the DOE EISs.⁶²

⁵⁹ LBP-05-13, slip op. at 71, ¶ 4.78 (citing CLI-04-3, 59 NRC at 22). While the hearing order refers to "the DOE EIS," the Staff reasonably construed the Commission's directive as allowing it to consider both the 1999 PEIS and the 2004 site-specific EISs, so as to account for the "most current available" information. Tr. 1051, 1055.

⁶⁰ *Hughes River Watershed Conservancy v. Johnson*, 165 F.3d 283, 288 (4th Cir. 1999) (citing *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378-85 (1989)) (emphasis added).

⁶¹ LBP-05-13, slip op. at 20, ¶ 3.7 (citing *Philadelphia Elec. Co. (Limerick Generating Station, Units 1 and 2)*, LBP-82-43A, 15 NRC 1423, 1467-68) (1982)).

⁶² This practice also is consistent with NRC regulations and guidance. See 10 C.F.R. Part 51, App. A, § 1(b) (allowing use of incorporation by reference); NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs – Final Report" (Aug. 2003), § 1.6, at 1-8 to 1-11 (stating that "[e]xisting environmental analyses [EAs and EISs] should be considered to evaluate the impacts associated with a proposed action to the extent possible and appropriate," as this approach "builds on work that has already been done, avoids redundancy, and provides a coherent and logical record of the analytical and decisionmaking process").

Finally, Petitioners' discussion of the particular procedural requirements associated with "tiering" and "adoption" is sheer surplusage. *See* Petition at 19-20. While the NRC Staff's DEIS (and now FEIS) references and incorporates information from the DOE site-specific EISs, it does not purport to "tier off" of, or "adopt," any DOE EIS in accordance with CEQ regulations.⁶³ Moreover, the final DOE site-specific EISs were published in June 2004, several months before the Staff's publication of the NEF DEIS. Like the Staff's DEIS, the DOE EISs were subject to a public scoping and comment process.⁶⁴ Any suggestion that the public has been denied an opportunity "to review and comment on the material" is unfounded.

Petitioners also argue that the Board ignored "applicable rules" and reneged on its NEPA obligations by relying on testimony regarding the DOE PEIS. Petition at 20-21. The predicate for this argument is Mr. Palmrose's statement, made during his cross-examination, that the Staff did not explicitly reference in its DEIS the analyses contained in the 1999 DOE PEIS insofar as they were not "the most current." *Id.* (quoting Tr. at 1052-53). When viewed in the context of the broader hearing record, this single statement cannot be construed as discounting the validity of the environmental analyses contained in the DOE PEIS or the Staff's reliance thereon. The record shows the opposite, *i.e.*, that the Staff's review of environmental analyses in the PEIS substantially informed its preparation of the DEIS. Dr. Palmrose's testimony in this proceeding – which contains extensive discussion of the PEIS – confirms this fact.⁶⁵

The rationale underlying the Staff's focus on the DOE site-specific EISs for the Portsmouth and Paducah facilities also is evident from the record. Specifically, Dr. Palmrose

⁶³ *See* 40 C.F.R. §§ 1502.20 & 1508.28 (tiering), 1506.3 (adoption).

⁶⁴ *See* Appendix C of the DOE site-specific EISs, entitled "Scoping Summary Report for Depleted Uranium Hexafluoride Conversion Facilities – Environmental Impact Statement Scoping Process;" *see also* Appendices H through J of NUREG-1490 (the NEF FEIS).

⁶⁵ *See, e.g.*, Tr. 1000-07, 1018-22.

testified that “in my discussion of the impacts that would result from a private conversion facility, I assumed that for conversion of DUF_6 to U_3O_8 , the impacts would be similar to those for the Portsmouth and Paducah facilities,” and that, “[a]ccordingly, I used the values from the DOE EIS analyses in reaching my conclusions regarding the expected impacts in Section 4.2.14.3 of the DEIS.”⁶⁶ Dr. Palmrose concluded that a commercial deconversion facility, whether constructed and operated at an offsite location or immediately adjacent to the NEF, would have impacts bounded by those impacts evaluated in the DOE site-specific EISs.⁶⁷

It is thus clear that Petitioners’ argument regarding Board reliance on PEIS-related testimony is frivolous. Further, as the Board noted, the DOE site-specific EISs upon which the DEIS and FEIS rely incorporate by reference the PEIS.⁶⁸ The record demonstrates the wealth of information available in the DOE PEIS and site-specific EISs, which greatly facilitated the Staff’s ability to take a “hard look” at the impacts of a *prospective* deconversion facility.⁶⁹

D. EC-7 (“Need for the Facility”)

1. The Licensing Board Properly Excluded the Issue of Nonproliferation Impacts From This Proceeding

Petitioners argue that the Board erred in rejecting both a proposed basis and a contention concerning the purported impacts of NEF upon U.S. nuclear nonproliferation objectives, including, for example, those associated with the 1993 U.S.-Russia High-Enriched Uranium (“HEU”) Agreement. Petition at 16. In rejecting proposed Contention NIRS/PC EC-1,

⁶⁶ Tr. 1005.

⁶⁷ See Tr. 1040-44.

⁶⁸ See LBP-05-13, slip op. at 72, ¶ 4.79.

⁶⁹ As the Board correctly observed, “the licensing process for any [future] private sector deconversion facility would require the cognizant regulatory entity to conduct an appropriate evaluation of site-specific impacts.” LBP-05-13, slip op. at 82, ¶ 4.91.

Basis G and Contention NIRS/PC EC-8/TC-5 as inadmissible, the Board found that they failed to specify a genuine dispute; did not establish the circumstances under which management character issues may be litigated; impermissibly challenged the Commission's regulations; lacked materiality; lacked adequate factual or expert opinion support; and failed to properly challenge the security provisions of the NEF license application.⁷⁰ NIRS/PC have presented no reason for the Commission to second-guess the Board's admissibility rulings.

Petitioners offer two arguments in support of their request for Commission review. The first is that nonproliferation is a "national objective" that must be considered by the NRC under NEPA. Petition at 17. Petitioners, however, provide no statutory or regulatory support for this assertion. Plainly, a NEPA "need" discussion is intended to assist in framing alternatives to the proposed action for environmental review; it is not a forum on national policy. Accordingly, Petitioners' views on U.S. nonproliferation policy are well beyond the scope of a need or alternatives discussion, this proceeding, and even the NRC's jurisdiction.⁷¹

Petitioners claim that in "similar cases" DOE has examined the impact of its actions on nonproliferation objectives under NEPA. However, Petitioners' analogy to the DOE's *Record of Decision for the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact* is inapposite. That document relates to DOE's program for making surplus highly enriched uranium non-weapons usable by downgrading it to low-enriched uranium. The purpose of the program, as described by DOE, is to "support the United States' nuclear weapons nonproliferation policy by reducing global stockpiles of excess weapons-usable

⁷⁰ See LBP-04-14, 60 NRC at 69-70.

⁷¹ See NEF FEIS, App. H at H-5, App. I at I-101 (identifying nonproliferation issues as beyond the scope of the Staff's environmental review of the NEF license application); cf. *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 456 (2001) ("Any issues pertaining to the federal government's nonproliferation policy clearly go beyond the scope of the [application].").

fissile materials, and to recover the economic value of the materials to the extent feasible.”⁷² Given the purpose of that proposed action, it necessarily stands that DOE needed to explore nonproliferation issues in the EIS. That obligation did not come about, as NIRS/PC suggest, due to some overarching duty to consider nonproliferation objectives under NEPA. Because the proposed NEF is a commercial endeavor – not a government nonproliferation program – DOE’s NEPA evaluation of nonproliferation objectives is irrelevant here.

Petitioners’ second argument is that, due to the allegedly poor management character of Urenco, that entity’s involvement in the NEF project will increase nonproliferation risks. The Board properly rejected this argument. The Commission has made clear that “[f]or management ‘character’ to be an appropriate issue for adjudication in a licensing proceeding, ‘there must be some direct and obvious relationship between the character issues and the licensing action in dispute.’”⁷³ NIRS/PC have established no such nexus. Rather, they cite past allegations of security lapses outside of the United States and provide no basis to connect those allegations to the instant licensing action. *See* Petition at 17.

2. The Licensing Board Properly Excluded Arguments and Evidence Regarding the Economic and Market Impacts of the Proposed NEF From This Proceeding

Petitioners argue that the Board erred in prohibiting discovery or testimony on the economic cost and benefits of the proposed NEF plant – so as to examine its impact on the uranium enrichment services market impact – under Contention NIRS/PC EC-7. NIRS/PC Petition at 21. Such a restriction, Petitioners argue, “conflicts with Commission precedent.” In reality, the Board was fully justified in excluding the issues raised by Petitioners.

⁷² 61 Fed. Reg. 40,619, 40,619 col. 2 (Aug. 5, 1996).

⁷³ *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 365 (2001) (citation omitted).

As the Board has explained, “[i]n our original order regarding contentions, we admitted [Contention NIRS/PC EC-7] as an *environmental* contention only, expressly declining to require LES to present a ‘business case’ or provide detailed market analysis.”⁷⁴ This admissibility ruling comports with the controlling NRC regulations and precedent. Namely, the Commission's NEPA regulations (10 C.F.R. Part 51) do not require an applicant to demonstrate the economic viability, profitability, or market impacts of a proposed facility. Commission precedent makes clear that “[t]he NRC...is not in the business of regulating the market strategies of licensees” but instead looks at whether the applicant can safely conduct operations and “leave[s] to the applicant ongoing business decisions that relate to costs and profit.”⁷⁵ Petitioners simply overlook this governing precedent, which is fully consistent with federal jurisprudence regarding an agency’s consideration of purely economic issues under NEPA.⁷⁶

Moreover, Petitioners misread the Commission’s *Claiborne* decision. In *Claiborne*, the Commission in no way suggested that the “need” for an enrichment facility be determined on economic grounds. Rather, the Commission merely affirmed a Board factual determination, concluding that the Board had “sufficient reason to examine” the price-related

⁷⁴ November 2004 Ruling on Late-Filed Contentions, at 17 (emphasis added).

⁷⁵ *Hydro Resources, Inc.* (P.O. Box 15910, Rio Rancho, NW 87174), CLI-01-04, 53 NRC 31, 48-49 (2001); *see also Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 145 (citations omitted) (stating that “[d]eterminations of economic benefits and costs that are tangential to environmental consequences are within a wide range of agency discretion”).

⁷⁶ *See, e.g., Citizens Against Burlington, Inc. v. Busey*, 938 F. 2d 190, 197 n. 6 (D.C. Cir. 1996), *cert. denied*, 502 U.S. 1000 (1991) (stating that federal agencies are not equipped “to canvas...business choices” because they have “neither the expertise nor the proper incentive structure to do so”); *Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1235-36 (D.C. Cir. 1996) (noting NEPA’s “rather sweeping lists of interested intended to be served . . . do not include purely monetary interests, such as the competitive effect that a construction project might have on [a competitor’s] commercial enterprise”).

matters that LES had “repeatedly advanced in [that] proceeding.”⁷⁷ In fact, the Commission took great pains to emphasize that the Board should not let the economic analysis presented by LES in *Claiborne* distract from the other benefits of the facility discussed in the FEIS and the record.⁷⁸ On this point, the Commission – specifically citing CLI-98-3 – recently stated that “the Commission is not looking for burdensome attempts by the applicant to precisely identify future market conditions and energy demands, or to develop detailed analyses of system generating assets, costs of production, capital replacement ratios, and the like . . . ”⁷⁹

Accordingly, Petitioners have cited no “established law” that the Board “departed from” or acted “contrary to” when it excluded arguments and evidence concerning the purported market impacts of the NEF. Thus, there is no reason for Commission review.

⁷⁷ *Louisiana Energy Servs., L.P. (Claiborne Enrichment Center)*, CLI-98-3, 47 NRC 77, 91, 96 (1998). In contrast to the *Claiborne* proceeding, LES has not relied on the notion that the NEF “would act to ‘suppress’ or ‘moderate’ future SWU price increases.” *Id.* at 91.

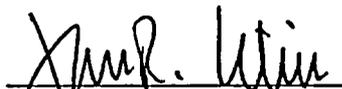
⁷⁸ *Id.* at 95. Contrary to Petitioners’ claim that the Board did not find whether the NEF would “contribute some public benefit,” the Board found that “the addition of the NEF would create the desired national security benefit,” *i.e.*, “a diverse, reliable domestic source of enrichment services.” LBP-05-13, slip op. at 95-98, ¶¶ 4.113-116.

⁷⁹ See *Nuclear Energy Institute: Denial of Petition for Rulemaking*, 68 Fed. Reg. 55,905, 55,910 col. 1 (Sept. 29, 2003) (citing CLI-98-3, 47 NRC at 88, 94).

IV. CONCLUSION

For the foregoing reasons, the Commission should deny the NIRS/PC petition for review. It raises no "substantial question" about the "specified matters" set forth in Section 2.341(b)(4) so as to warrant discretionary Commission review.

Respectfully submitted,



James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
Amy C. Roma, Esq.
WINSTON & STRAWN LLP
1700 K Street, NW
Washington, DC 20006
202-282-5000

John W. Lawrence, Esq.
LOUISIANA ENERGY SERVICES, L.P.
One Sun Plaza
100 Sun Lane NE, Suite 204
Albuquerque, NM 87109
505-944-0194

ATTORNEYS FOR LOUISIANA ENERGY
SERVICES, L.P.

Dated in Washington, District of Columbia
This 5th day of July, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "ANSWER OF LOUISIANA ENERGY SERVICES, L.P. IN OPPOSITION TO PETITION FOR REVIEW OF LBP-05-13" in the captioned proceeding have been served on the following by e-mail service, designated by **, on July 5, 2005 as shown below. Additional service has been made by deposit in the United States mail, first class, this 5th day of July 2005.

Chairman Nils J. Diaz
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Edward McGaffigan, Jr.
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary**
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
(original + two copies)
e-mail: HEARINGDOCKET@nrc.gov

Commissioner Gregory B. Jaczko
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Peter B. Lyons
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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

Ron Curry
Tannis L. Fox, Esq.**
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110
e-mail: tannis_fox@nmenv.state.nm.us

Administrative Judge
G. Paul Bollwerk, III, Chair**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: gpb@nrc.gov

Christopher D. Coppin, Esq.**
David M. Pato, Esq.**
Stephen R. Farris, Esq.**
Glenn R. Smith, Esq.**
Office of the New Mexico Attorney General
P.O. Box Drawer 1508.
Santa Fe, NM 87504-1508
e-mail: ccoppin@ago.state.nm.us
e-mail: dpato@ago.state.nm.us
e-mail: sfarris@ago.state.nm.us
e-mail: gsmith@ago.state.nm.us

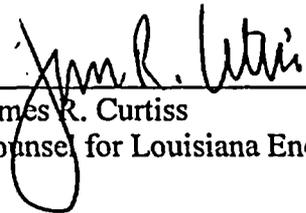
Office of the General Counsel**
Attn: Associate General Counsel for
Hearings, Enforcement and
Administration
Lisa B. Clark, Esq.**
Darani M. Reddick**
David A. Cummings**
Kathleen A. Kannler, Esq.**
Mail Stop O-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: OGCMailCenter@nrc.gov
e-mail: lbc@nrc.gov
e-mail: dmr1@nrc.gov
e-mail: dac3@nrc.gov
e-mail: kak1@nrc.gov

Administrative Judge
Paul B. Abramson**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: pba@nrc.gov

Administrative Judge
Charles N. Kelber**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: cnk@nrc.gov

Lindsay A. Lovejoy, Jr.**
618 Pasco de Peralta, Unit B
Santa Fe, NM 87501
e-mail: lindsay@lindsaylovejoy.com

Lisa A. Campagna**
Assistant General Counsel
Westinghouse Electric Co., LLC
P.O. Box 355
Pittsburgh, PA 15230-0355
e-mail: campagla@westinghouse.com



James R. Curtiss
Counsel for Louisiana Energy Services, L.P.