

RAS 10250

August 1, 2005

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

**DOCKETED
USNRC**

August 2, 2005 (7:35am)

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.

ASLBP No. 04-826-01-ML

**MEMORANDUM ON BEHALF OF INTERVENORS
NUCLEAR INFORMATION AND RESOURCE SERVICE
AND PUBLIC CITIZEN
IN RESPONSE TO RENEWED JOINT MOTION
FOR APPROVAL OF SETTLEMENT
AGREEMENT**

Preliminary statement

This memorandum is submitted on behalf of Intervenor Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") pursuant to the order of the Atomic Safety and Licensing Board (the "Board") dated July 25, 2005, in response to the renewed Joint Motion for Approval of Settlement Agreement, dated July 27, 2005.

Statement

As NIRS/PC stated in response to the initial settlement agreement dated June 23, 2005, the restrictions imposed upon Louisiana Energy Services, L.P. ("LES") by the proposed agreement do not on their face prejudice NIRS/PC. NIRS/PC request that in considering the proposed settlement the Board address the following points:

First, as stated previously, NIRS/PC have been found by the Commission to have standing to intervene, and the Board has determined that NIRS/PC are entitled to present and

Template = SECY-041

SECY-02

litigate several contentions before a license may be issued. ((Memorandum and Order, 60 NRC 223, 226 (Aug. 18, 2004); Memoranda and Orders dated July 19, 2004, Nov. 22, 2004, May 3, 2005). These contentions must be heard and decisions made upon the contentions before a license may be issued. Thus, the Board should adhere to the general rule that a settlement between some, but not all, of the litigating parties does not affect the litigation of contentions of non-settling parties. *CFC Logistics, Inc.*, 60 NRC 475, 478, ASLBP No. 03-814-01ML (Nov. 4, 2004); *Sequoyah Fuels Corp.*, 1995 WL 761196 at 5, ASLBP No. 94-684-01-EA (Dec. 8, 1995). Consequently, the Settlement Agreement may not, now or hereafter, affect the rights of NIRS/PC to make and pursue contentions in this proceeding.

Second, litigation of the NIRS/PC contentions may lead to the adoption of license terms different from those contained in the proposed settlement. NIRS/PC submit that proceedings under Contentions NIRS/PC EC-5/TC-2 and EC-6/TC-3 will require that financial assurance for decommissioning (including costs of DUF₆ deconversion, transportation, and disposal) will substantially exceed \$7.15/kgU and, in fact, may be between \$20 and \$30/kgU. Therefore, the dollar amounts stated in the settlement can only be regarded as minimum amounts, or a "floor," for a determination of decommissioning costs, but not a final amount.

Third, the settling parties in this instance are agencies of the State of New Mexico and have continuing responsibilities with regard to the health and safety of citizens of New Mexico. For that reason, NIRS/PC request that any order approving this agreement specifically state that the agreement does not in any way restrict the authority of State agencies over issues that may hereafter arise in connection with the construction or operation of the National Enrichment Facility, any associated deconversion facility, or the treatment or disposal of any waste or byproduct of any such facility. For example, the State agencies should be free in the future to

take the position that (a) the CaF_2 resulting from deconversion of depleted uranium constitutes low-level radioactive waste and may not be disposed of as industrial waste, or (b) the actual costs of depleted uranium dispositioning will exceed the minimum amount agreed to in paragraph 7A of the settlement agreement, so that the required financial assurance should be increased to account for such actual costs.

NIRS/PC request that the Board address the foregoing points in ruling upon the proposed settlement agreement.

Respectfully submitted,



Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501
(505) 983-1800
(505) 983-0036 (facsimile)
E-mail: lindsay@lindsaylovejoy.com

Counsel for Petitioners
Nuclear Information and Resource Service
1424 16th St., N.W. Suite 404
Washington, D.C. 20036
(202) 328-0002

and

Public Citizen
1600 20th St., N.W.
Washington, D.C. 20009
(202) 588-1000

August 1, 2005

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on August 1, 2005, the foregoing Memorandum on behalf of Intervenor Nuclear Information and Resource Service and Public Citizen in response to Renewed Joint Motion for Approval of Settlement Agreement was served by electronic mail and by first class mail upon the following:

G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: gpb@nrc.gov

Dr. Paul B. Abramson
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: pba@nrc.gov

Dr. Charles N. Kelber
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
e-mail: CKelber@att.net

James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
Winston & Strawn
1700 K St., N.W.
Washington, D.C. 20006
e-mail: jcurtiss@winston.com
drepka@winston.com
moneill@winston.com

John W. Lawrence, Esq.
National Enrichment Facility
100 Sun Avenue, N.E.
Albuquerque, NM 87109
e-mail: jlawrence@nefnm.com

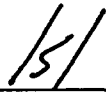
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Associate General Counsel for Hearings, Enforcement, and Administration
e-mail: OGCMailCenter@nrc.gov
lbc@nrc.gov
abc1@nrc.gov
jth@nrc.gov
dmr1@nrc.gov
dac3@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Tannis L. Fox, Esq., Deputy General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-1031
e-mail: tannis_fox@nmenv.state.nm.us

Glenn R. Smith, Esq.
Christopher D. Coppin, Esq.
Stephen R. Farris, Esq.
David M. Pato, Esq.
Assistant Attorneys General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
e-mail: ccoppin@ago.state.nm.us
dpato@ago.state.nm.us
gsmith@ago.state.nm.us
sfarris@ago.state.nm.us

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications Staff (original and two copies)
e-mail: hearingdocket@nrc.gov



Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501
(505) 983-1800

(505) 983-0036 (facsimile)

e-mail: lindsay@lindsaylovejoy.com