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NUCLEAR REGULATORY COMMISSION

Title: Louisiana Energy Services

Docket Number: 70-3103-ML; ASLBP No.: 04-826-01-ML

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

(ASLB)

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IN THE MATTER OF: ||

LOUISIANA ENERGY SERVICES, || Docket No. 70-3103-ML

L.P. || ASLBP No. 04-826-01-ML

Wednesday, August 10, 2005

TWEN

11545 Rockville Pike

Rockville, MD 20852

The above-entitled matter came on for pre-hearing conference via telephone, at 9:30 a.m.

BEFORE:

G. PAUL BOLLWERK, III, Chairman

DR. PAUL B. ABRAMSON

DR. CHARLES N. KELBER

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P R O C E E D I N G S

3:05 P.M.

1
2
3 JUDGE BOLLWERK: This is Judge Bollwerk.
4 We're here for a telephone pre-hearing conference in
5 the Louisiana Energy Services case to talk about
6 scheduling for the mandatory and the uncontested
7 issues in the contested hearing coming up essentially
8 in the October-November time frame.

9 With me in the room is Judge Paul
10 Abramson, Judge Charles Kelber and our law clerk,
11 Bethany Ingle.

12 I'd like to go around quickly and have all
13 the parties identify themselves for the record, pleas.

14 Let's start with LES.

15 MR. CURTIS: This is Jim Curtis of Winston
16 Strawn for LES.

17 MR. LAURENCE: John Laurence, General
18 Counsel, LES.

19 JUDGE BOLLWERK: All right, for the NRC
20 Staff, please?

21 MS. CLARK: This is Lisa Clark with the
22 NRC Staff.

23 MS. KANGLER: Katy Kannler for the NRC
24 Staff.

25 MR. JOHNSON: Tim Johnson, NRC Staff.

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1 MR. PARK: Jim Park, NRC Staff.

2 JUDGE BOLLWERK: All right, and then for
3 the Attorney General's Office in New Mexico or
4 Attorney General of New Mexico?

5 MR. COPPIN: This is Chris Coppin, C-O-P-
6 P-I-N and with me are David Pato, P-A-T-O and Glen
7 Smith.

8 JUDGE BOLLWERK: And for the New Mexico
9 Environment Department?

10 MS. FOX: Candace Fox, Deputy General
11 Counsel and I'm it.

12 JUDGE BOLLWERK: And for the Nuclear
13 Information and Resource Service and Public Citizen?

14 MR. LOVEJOY: Lindsay Lovejoy here in
15 Santa Fe, New Mexico.

16 JUDGE BOLLWERK: Let me just check. Is
17 there anybody we haven't identified out there that we
18 didn't account for? All right.

19 What we'd like to do today is talk for a
20 couple of minutes about some scheduling matters. We
21 really have, I think, three things involved. One is
22 the mandatory hearing, also potentially some
23 information we need about the materials for the
24 mandatory hearing and then finally the question about
25 the scheduling for the contested issues for the

1 contested part of the hearing.

2 We'd like to start with the mandatory
3 hearing and I would just like to give a little
4 background, how we got where we are today and then
5 we'll have some questions and hopefully get some
6 feedback from the parties that are involved.

7 Back in July of 2004, the Board asked for
8 a Joint Report from the parties on procedures to be
9 used for the hearing generally, including the
10 mandatory portion of the hearing, the uncontested part
11 and we received a response back from the Staff and
12 LES, the Applicant, outlining a series of five steps
13 that propose to take for the mandatory hearing.

14 In the August 2004 general schedule that
15 we established, we indicated at that point that the
16 mandatory hearing would follow the contested hearing
17 in the October-November time frame of 2005 and that
18 the pre-filed testimony for that mandatory hearing
19 would be filed basically on the same schedule as for
20 the contested portion of the hearing.

21 Then in March of 2005, in LBP0507, as the
22 Chief Administrative Judge, I referred to the
23 Commission a series of questions regarding the conduct
24 of mandatory hearings because there were some issues
25 that had arisen, not only with respect to the LES

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1 hearing, but also the early site permit hearings which
2 also have a mandatory portion to them and then
3 essentially, there was the USEC hearing on that
4 enrichment facility as well.

5 Then in mid-July, the 15th of July, as
6 part of a memorandum and order that we issued on the
7 location of the contested hearing, we indicated that
8 we were postponing a final schedule for the mandatory
9 hearing, pending some kind of Commission ruling on the
10 deferred questions, but that we did indicate that we
11 contemplated holding that hearing in the Hobbs area if
12 that was at all possible.

13 Then the Commission responded on July 28,
14 2005 in CLIO-517 to the mandatory hearing, referred
15 questions and gave the Board in the proceeding some
16 guidance. At that point, we directed then a response
17 or rather a question to the parties in which they
18 responded to on August 5, 2005 regarding how long,
19 given the Commission's guidance in CLIO-517, they
20 still contemplated for the evidentiary presentations
21 on the mandatory hearing and they indicated then two
22 to three days. Of course, depending on what the
23 Board's questions were, that obviously could have a
24 significant impact on the length of the hearing.

25 Let me go back to -- I should mention that

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1 the Board now has begun reviewing materials, in
2 particular, the SAR, to begin getting up to speed and
3 thinking about what it would like to see in terms of
4 mandatory hearing.

5 Back in July of 2004, the series of steps
6 that had been outlined by the parties, the first one
7 was to provide the Board with an executive summary of
8 the key areas for review and Staff findings with
9 references to the Staff's final review documents.
10 Given where the Board is at, which is having begun
11 looking at these materials and give where we're at
12 with the rest of the proceeding, do the parties have
13 any sense at this point of when they would provide
14 such an executive summary or could provide such an
15 executive summary to the Board?

16 And I guess -- LES?

17 MR. CURTIS: Jim Curtis for LES. I think
18 we'd be prepared to provide that executive summary,
19 the key areas on the same schedule that I think the
20 Board originally contemplated for the pre-filed
21 testimony for the mandatory hearing which I believe
22 was scheduled for September 16th as well.

23 JUDGE BOLLWERK: That's correct. Let me
24 turn now to the Staff and see what they have to say on
25 that subject.

1 MS. KANNLER: The Staff would also be
2 prepared to file on that date.

3 JUDGE BOLLWERK: That's again your
4 executive summary, correct?

5 MS. KANNLER: Correct.

6 JUDGE BOLLWERK: The second part of the
7 five-part series of events that you all had
8 contemplated was then some kind of interaction between
9 the Board and the parties in terms of questions,
10 additional subject matter, areas potentially -- sort
11 of trying to get further information about the scope
12 of the proceeding.

13 It strikes us, given what you've just told
14 us and given what we've seen so far, just in looking
15 at the materials that we have, that that is something
16 we're likely not going to be able to do prior to going
17 to hearing on the contested issues.

18 I want to get some feedback, however, from
19 you all on where you would be because you have to
20 filing pre-filed testimony and doing other things.
21 And Judge Abramson is stepping up to the plate here.
22 He has something he wants to say as well.

23 JUDGE ABRAMSON: Before you attempt to
24 deal with that suggestion from Judge Bollwerk, let me
25 just mention that we need some further documentation.

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1 I'm hoping the Staff can provide this. This is all
2 stuff I'm pretty sure you guys have your hands on or
3 if the Applicant has it. We'd like a paper copy of
4 the SAR. Is there an SSAR, by the way or is it just
5 a PSAR?

6 MR. CURTIS: No, there's an SAR.

7 JUDGE ABRAMSON: Just an SAR?

8 MR. CURTIS: Yes sir.

9 JUDGE ABRAMSON: So we'd like a paper copy
10 of the SAR. We'd like the Staff to assemble for us
11 all the ACRS reviews and comments, including
12 subcommittees. Is that right, Charlie?

13 We'd like the ISA. We've seen a lot of
14 references in the SAR to the summary ISA. We like the
15 full-blown ISA. I assume there is one.

16 MR. CURTIS: Yes sir.

17 JUDGE ABRAMSON: So we'd like a paper copy
18 of the ISA and I assume that the summary that the SAR
19 refers to is sort of an exec. summary that's in the
20 front of that, is that right or is that a separate
21 document?

22 MR. CURTIS: No, I think that's the
23 summary, sir. Jim Curtis here.

24 JUDGE ABRAMSON: Is that a separate
25 document, the summary is separate from the ISA itself?

1 MR. CURTIS: Let me just defer to Tim
2 Johnson as well.

3 Tim, is that your understanding?

4 MR. JOHNSON: This is Tim Johnson from the
5 Staff. What is required to be submitted is an ISA
6 summary and it's more than just an executive summary.
7 It's really a two-volume set of materials that
8 explains the accident analysis process and the results
9 of it and how items relied on for safety are
10 identified, the accident sequences that are based on
11 and those items relied on for safety that will be used
12 by the facility.

13 The whole ISA itself is documentation that
14 was not submitted to the NRC. They're not required to
15 submit the full ISA, only the ISA summary.

16 JUDGE ABRAMSON: We'll start with the ISA
17 summary then and if we need further information upon
18 reviewing it, we'll ask. What we're trying to do is
19 get our arms around the scope of the Staff's review.
20 As you know, we're not going to repeat it, but we want
21 to make sure that there's a reasonable basis for the
22 Staff's conclusions.

23 MR. JOHNSON: Well, I think there's a good
24 deal of information in the summary itself and if there
25 is additional material that's needed, I think that can

1 be requested.

2 JUDGE ABRAMSON: The other thing we'd like
3 to ask about is are there any TERS? Did the Staff
4 have anybody do technical evaluation reports to back
5 up the SAR?

6 MR. JOHNSON: Basically, the safety
7 evaluation report is our evaluation report.

8 JUDGE ABRAMSON: Were there any
9 contractors?

10 MR. JOHNSON: We had contractors that
11 provided input to us and basically their input to us,
12 what were sections that went into the safety
13 evaluation report.

14 JUDGE KELBER: This is Judge Kelber. You
15 mean in other words, specific sections such as
16 criticality, safety, were supplied by contractors and
17 just included verbatim into the report?

18 MR. JOHNSON: Well, the contractors we
19 used were for things like wind loading, tornado
20 effects. We used a contractor for decommissioning
21 funding. There was also a contractor that we used for
22 preparing the environmental impact statement. But
23 those were the contractors that we used. And they
24 provided input to us that basically became part of the
25 safety evaluation report.

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1 JUDGE ABRAMSON: Did they not give you
2 written reports?

3 MR. JOHNSON: They gave us inputs that we
4 adapted into the safety evaluation report. There was
5 not -- it was not -- I don't think the term technical
6 evaluation report is something that we used here. We
7 asked them to provide us input for our chapters to the
8 safety evaluation report.

9 JUDGE ABRAMSON: Judge Kelber asked you
10 quite specifically was that information adopted
11 verbatim or was it adapted with an A.

12 MR. JOHNSON: Most of it was adopted,
13 verbatim, but we did make changes in the format and in
14 some cases editorial changes.

15 JUDGE ABRAMSON: On criticality safety,
16 that was done in-house?

17 MR. JOHNSON: Yes.

18 JUDGE ABRAMSON: And do you have
19 supporting technical memorandum which summarizes the
20 calculations done?

21 MR. JOHNSON: As far as I know, separate
22 calculations were not performed. We reviewed what was
23 prepared by -- in the integrated safety analysis by
24 LES. We also had discussions with them. And we
25 reviewed material in responses to requests for

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1 additional information.

2 JUDGE ABRAMSON: Let me perhaps cut right
3 to the chase here. Our job as I see it and I think
4 that the other panel members will agree, although we
5 haven't had this discussion in depth, is to determine
6 whether the record contains a reasonable basis to
7 support the Staff's conclusions. Much of what I see
8 in the SAR is conclusory. It doesn't state any basis.

9 So I'm seeking, Mr. Johnson, information
10 that will supply that basis. Perhaps after we're
11 done, you need to chat with Staff counsel, get a
12 handle on what that means and then we can figure out
13 how we're going to get the supporting information to
14 be able to reach the conclusion that there's a
15 reasonable basis for a statement that states a
16 conclusion.

17 So that said, there's no TERs, there's no
18 TERs.

19 So given that we that information and
20 we'll need to review that, in our view, that means a
21 fairly heavy amount of review for us which will be
22 interrupted around September 15 when pre-filed directs
23 start coming in. So we don't envision -- I don't
24 envision being able to give complete set of questions
25 about what you need to follow up on with the Staff on

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1 their review for the mandatory portion of the hearing
2 until after we've concluded the evidentiary hearing.

3 MR. CURTIS: Judge Abramson, this is Jim
4 Curtis. Could I respond with a couple of thoughts
5 here. On the question of the basis for the Staff's
6 review, I think as Tim Johnson suggested, there have
7 been extensive RAIs that have been propounded by the
8 Staff and responded by LES which set out in additional
9 detail LES responses to the questions that have been
10 raised. So that might be a natural complement to the
11 documents that you're seeing.

12 JUDGE ABRAMSON: That would be great.

13 MR. CURTIS: And set forth in more detail,
14 perhaps some of the additional background that you're
15 looking for.

16 JUDGE ABRAMSON: That would be very
17 helpful. Let's get the RAIs and the responses also.

18 MR. CURTIS: My second comment I guess is
19 in the form a question. The order that was originally
20 issued by the Board on scheduling contemplated that we
21 would have a mandatory hearing on the tail end of the
22 evidentiary hearing on the contested issues. Is it
23 now your thought that those would be decoupled and the
24 mandatory hearing might be at some point much later
25 than the evidentiary hearing on the contested issues?

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1 JUDGE ABRAMSON: I think we sort of
2 indicated that in mid-July, but I think we're now at
3 that point where --

4 JUDGE KELBER: The answer is yes.

5 JUDGE ABRAMSON: Yes, I think that's where
6 we're coming from. I think the schedule we're looking
7 at is probably going out, having you all had mentioned
8 a prehearing conference at some point to talk about
9 scope. Probably doing that somewhere in the January,
10 mid-January time frame with written questions and
11 input from the Board, perhaps towards the end of
12 January. And then an evidentiary process, if that's
13 necessary, some time in the early March time frame.

14 JUDGE KELBER: Or the actual face to face
15 hearing some time in March on the mandatory part.

16 MR. CURTIS: And from the time that the
17 evidentiary hearing is completed is it the Board's
18 contemplation that you would then issue a decision
19 following that?

20 JUDGE ABRAMSON: Yes.

21 MR. CURTIS: And when would that likely
22 come in the schedule that you're contemplating?

23 JUDGE KELBER: By beginning of June,
24 before the target date according to the regs.

25 MR. CURTIS: Okay.

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1 JUDGE ABRAMSON: According to the
2 Commission's order, they said 30 months and that's
3 approximately 30 months. Mid-June, somewhere in
4 there.

5 MR. CURTIS: Okay.

6 JUDGE ABRAMSON: Does the Staff or the
7 Applicant have any other reaction to that at this
8 point?

9 MR. JOHNSON: I have got one point that
10 goes back to Judge Abramson's previous question on
11 information that we need to supply. Did he say ACRS
12 material?

13 JUDGE KELBER: This is Judge Kelber. Yes,
14 the ACRS, if the subcommittee meeting and a full
15 committee meeting, the portions of the transcript, at
16 least, from those meetings.

17 MR. JOHNSON: We didn't have -- we -- our
18 interactions with ACRS is very different than what is
19 required for power plant licensees. All we did was we
20 briefed them, a very broad level briefing of what we
21 were doing, but they did not provide comments or
22 specific information or guidance to us for this
23 particular project.

24 JUDGE KELBER: Well, if that's what it was,
25 that's what it was.

1 No ACRS comments, wow.

2 MR. JOHNSON: Right, so they didn't have
3 a formal role in providing this input into this
4 project.

5 JUDGE KELBER: All right. There are two
6 sets of documents. The integrated safety analysis
7 summary and the RAIs and the responses thereto.

8 MR. JOHNSON: And the SAR.

9 JUDGE KELBER: And the SAR.

10 COURT REPORTER: I'm sorry, this is the
11 court reporter. Who is this speaking?

12 JUDGE ABRAMSON: That was Judge Kelber.

13 COURT REPORTER: Thank you.

14 JUDGE KELBER: Let me just say, much of
15 this -- some of this information we can pull out of
16 ADAMS. I'm hoping, for instance, that the Applicant
17 has an additional copy of the SAR that they've already
18 put together and you just make available to us.

19 MR. CURTIS: We can make available a hard
20 copy if you'd like. How many copies would you like?

21 JUDGE KELBER: Two would be terrific.

22 MR. CURTIS: So the documents that the
23 Applicant would provide would be two paper copies of
24 the SAR. And the two-volume set of the ISA. Two
25 copies of that. Is there anything else that the

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1 Applicant is required to submit?

2 JUDGE KELBER: In terms of the RAIs and
3 the responses is between you all and the Staff. I
4 don't know how you'd want to work that out. They were
5 your responses, their RAIs.

6 MR. CURTIS: We'll work with the Staff to
7 ensure that between the two of us you get two paper
8 copies of the RAIs and the responses.

9 JUDGE KELBER: That's terrific. Thank
10 you, counselor.

11 MR. CURTIS: I think that's everything
12 then, isn't it?

13 JUDGE KELBER: At least for now.

14 MR. CURTIS: Could I -- Jim Curtis again,
15 just another comment on schedule. This certainly is
16 consistent with the schedule that was contemplated in
17 the order that allowed for 30 months for the
18 completion of the process. I do note that the
19 Commission's order encourages this to be completed in
20 less than that and I wonder if there's any flexibility
21 in moving this up because this now becomes the
22 critical path, I believe to the licensing for the
23 facility, if we contemplate a Board decision on
24 February 27th on the remaining contested issues.

25 JUDGE KELBER: Well, February 27th is the

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1 PID, potentially, and within two weeks after that we
2 probably would move to the hearing on the -- the
3 mandatory hearing.

4 JUDGE ABRAMSON: I think the big question,
5 Mr. Curtis, is how much we find when we start
6 reviewing the record, and I can't answer your question
7 yet. Certainly we will move it as expeditiously as we
8 can. Like you, we're going to be devoting a material
9 fraction of our time to the evidentiary hearing until
10 those are concluded and we've written our decision.

11 What Judge Kelber and I, at least, are
12 contemplating is that once the evidentiary hearing is
13 concluded, we'll start tackling writing something up
14 while you guys are doing your proposed findings and
15 that means that at least during that period we're not
16 going to be spending a lot of time reviewing the
17 record.

18 MR. CURTIS: Jim Curtis here again. It
19 would be our hope and I can't say this with certainty
20 at this point, but it would be our hope with the
21 pending settlement agreement, as well as on the basis
22 of discussions of counsel for NIRSPC and counsel for
23 LES are having that we may be able to narrow down some
24 of the issues that will need to be litigated in the
25 October hearing. And I would hope the Board would

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1 take that into account if that's a shorter and less
2 complicated hearing and the possibility of moving this
3 schedule up.

4 JUDGE ABRAMSON: Absolutely.

5 JUDGE KELBER: Surely.

6 MR. CURTIS: But I don't know what you've
7 got in mind yet, so I guess I can't --

8 JUDGE KELBER: When you show us, we'll do
9 it.

10 MR. CURTIS: We hope to be in a position
11 to do that in a timely way.

12 JUDGE ABRAMSON: If, in fact, the
13 documents furnished us are clear and complete, we may
14 be able to progress much more rapidly on the mandatory
15 portion. It depends on how good a writer you are.

16 MR. CURTIS: We'll try to write in a
17 manner that allows you to reach a timely and prompt
18 decision.

19 JUDGE KELBER: Let me raise one other
20 question with respect to the mandatory hearing and
21 that's a question of security matters and safeguards
22 information. Do you contemplate we will be seeing
23 some of that?

24 MR. CURTIS: I think, let me just defer to
25 Tim on the ISA summary because I don't have Rod Critch

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1 on, but Tim, could you address that?

2 MR. JOHNSON: Yes. The ISA summary is not
3 considered safeguards information. We did have some
4 material that was submitted in responses to questions
5 that were made that were submitted as classified
6 information, particularly in the criticality area.
7 But the ISA summary itself is not classified of
8 proprietary.

9 JUDGE KELBER: Would it be, I'm asking
10 both parties -- this is Judge Kelber. Would it be
11 possible to handle the safeguards and security
12 questions via paper filings and avoid a closed hearing
13 here in Washington?

14 MR. JOHNSON: This is Tim Johnson. There
15 is no safeguards information applicable to this
16 particular facility. There is information that -- of
17 the security, in the security area that was submitted
18 as proprietary information.

19 MR. CURTIS: I think from LES's
20 standpoint, we'd need to take that issue under
21 advisement and discuss it, because not everybody has
22 had access to the classified information because they
23 are not cleared and so there's a clearance here. And
24 if perhaps we can identify that there are discrete
25 issues there that the Board is aware of, but not be

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1 required to submit the information. That perhaps
2 would address the Board's concern?

3 JUDGE KELBER: I think that we're
4 contemplating, counselor, is to hold the mandatory
5 hearing out in Hobbs. And what we're wondering is is
6 that likely to be hamstrung as the evidentiary hearing
7 seems to be by having large portions of it closed.

8 MR. CURTIS: I don't think large portions
9 of it, subject to any input from the NRC Staff, but I
10 wouldn't think large portions of it would be. The ISA
11 summary, if that's sufficient for the Board to assess
12 the robustness of the Staff's review and the
13 Applicant's submittal, together with the SAR and the
14 RAIs, if that's sufficient as at least a starting
15 point, we can submit those and I don't think that
16 requires the closing of the hearing except to the
17 extent that there are issues that you know are already
18 proprietary because they involve commercial vendor
19 estimates on depleted uranium disposition.

20 MR. JOHNSON: This is Tim Johnson. There
21 would also be -- if areas that you want to pursue are
22 in the physical security and materials control and
23 accounting area or transportation security area, those
24 would be proprietary.

25 Also, we are withholding the emergency

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1 plan, so if those are areas that are going to be
2 pursued in the mandatory hearing, then those will be
3 areas that I would expect would be closed.

4 JUDGE ABRAMSON: I've got the Commission's
5 order. Would you expect them not to be followed?
6 Aren't they part of the regulations?

7 MR. JOHNSON: Yes, they are.

8 JUDGE ABRAMSON: But my question is could
9 those matters be handled by paper filings to minimize
10 the amount of closed session?

11 MR. JOHNSON: Well, I think you could do
12 that. But again, I think the Board would have to
13 decide how they want to deal with it. But I think in
14 those particular areas, if you have questions, we
15 could respond in writing.

16 JUDGE BOLLWERK: Let me just also, for my
17 own purposes, I keep hearing the word proprietary with
18 respect to some of this information. It's not
19 safeguards, it's proprietary?

20 MR. JOHNSON: It's not labeled safeguards.
21 It's proprietary under 2.390(d) which allows certain
22 physical security type information to be withheld.
23 And it's withheld under the label of proprietary.

24 JUDGE BOLLWERK: All right. Anything
25 else?

1 JUDGE ABRAMSON: You might think how best
2 to handle that particular part of it.

3 JUDGE BOLLWERK: I should mention, we'll
4 be issuing -- if there's any questions, an order or
5 memorandum outlining much of what we're talking about
6 here in terms of the things we're asking for, the
7 dates we're looking at.

8 And we actually will probably try to put
9 some dates in that order then subject to the parties
10 coming back and say there's been a change in
11 circumstances. We can look at the dates again and we
12 can do that. But I think we will try to set some
13 dates so that folks will have an opportunity to look
14 at -- know what the milestones are.

15 COURT REPORTER: I'm sorry, could you
16 speak up a bit?

17 JUDGE ABRAMSON: This is Judge Abramson,
18 I'm sorry. The question was do we want to talk about
19 when they can provide us with the documents that we
20 requested. And I guess we hadn't set a date for that.

21 Would LES like to speak first in terms of
22 what -- they have the bulk of the material.

23 MR. CURTIS: Well, let me just review to
24 make sure I understand what we would be submitting in
25 this. We would submit two paper copies each of the

1 SAR, the two-volume ISA and the RAIs, except at this
2 point RAIs that might be classified material and we
3 and the Staff would need to consult further on that,
4 but is that the entirety what the Board is looking
5 for, at least in the initial submittal?

6 JUDGE BOLLWERK: Right, and I guess
7 there's some question about the response and/or the
8 RAIs themselves, I don't know in terms of how that
9 works out.

10 MR. CURTIS: We'll work out that so that
11 you will have the complete set of RAIs, both the RAI
12 and the response. For purposes of LES and subject to
13 the Staff's comments on this, those are documents that
14 are discretely identifiable and I think could be
15 submitted on the same schedule as the executive
16 summary and the key areas of findings or on September
17 16th, if that suits the Board's purposes.

18 JUDGE BOLLWERK: The two technical members
19 are nodding their heads, so it sounds like -- let me
20 just see if the Staff has any comments on that.

21 MS. CLARK: This is Lisa Clark. I don't
22 see any problem, Tim. Does that seem reasonable?

23 MR. JOHNSON: Yes, I think we can get
24 together with LES and do this. Now another option
25 might be just to identify those items in the hearing

1 file that are documents that pertain to RAIs and RAI
2 responses as well. And with the accession number. I
3 don't know if that would be acceptable to the Board
4 though.

5 JUDGE BOLLWERK: Rather have a paper copy,
6 thank you.

7 MR. JOHNSON: All right.

8 JUDGE BOLLWERK: How many pages are we
9 talking about in terms of the RAIs and the RAI
10 responses?

11 MR. JOHNSON: Depending on the RAIs and
12 RAI responses, there is quite a bit of information.
13 I would say at least six inches of material.

14 JUDGE BOLLWERK: I think we would prefer
15 to have paper then.

16 MR. CURTIS: I'm guesstimating and this
17 reflects the LES review as the party that was
18 answering these that there may be a couple thousand
19 pages of documents, Tim. Is that a correct
20 guesstimate?

21 MR. JOHNSON: Yes, I would say it's in
22 that ballpark.

23 MR. CURTIS: We'll submit two copies of
24 that then, unless the Board decides differently in its
25 order from this hearing.

1 JUDGE BOLLWERK: All right. Then we'll
2 use September 16th then as the date for that and we'll
3 then establish some additional dates in the memorandum
4 that we issued sort of memorializing some of the
5 things we're going to talk about, we're talking about
6 here.

7 Any other questions about the mandatory
8 hearing from the parties then?

9 All right, I think we've dealt then with
10 two of the matters that we had on our -- on the agenda
11 that I had.

12 The third item would be the question of
13 the contested hearing and where it's going to be held.
14 Again, let me give a little background. The Board did
15 wait until the spring to begin looking at places for
16 the hearing because we didn't want to tie up a
17 facility when there was a possibility it might be that
18 the thing would be moved and we'd then be canceling
19 space.

20 What we found when we did that was that
21 the Lea County events center had been booked for a
22 number of events during the time frame that we were
23 looking at holding the hearing. We then went and did
24 an extensive check in the Hobbs area of meeting
25 spaces, including the junior college, the New Mexico

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1 Junior College, hotels, lodges, all kinds of different
2 places, probably 20 places or more.

3 What we found at that point was the junior
4 college offered us a lecture hall or an auditorium in
5 the uncompleted Cowboy Museum. We were concerned
6 about that, given the experience we've had with the
7 facility that we've been equipping out in Las Vegas.
8 Construction schedules can be very flexible things and
9 they weren't going to be finished until about a week
10 before we were scheduled to go to hearing and we just
11 decided that wasn't going to be appropriate.

12 That's why on the 15th -- the July 15th
13 order that we issued, we indicated that we hadn't been
14 able to find any place because we essentially had not
15 been able to locate any space within the Hobbs area
16 that we felt was appropriate.

17 On the parties and their joint response
18 back to us, indicated and we asked them to indicate
19 whether Rockville or Las Vegas were preferable
20 locations. While they indicated that Rockville was
21 preferable, you urged us to look again at the Hobbs
22 area which we did. And there was another space that
23 was identified by the Junior College and we went back
24 and asked again in the Bob Moran Center, a multi-
25 purpose facility. We looked at that, but asked one

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1 additional question which is how much of the hearing
2 was going to involve proprietary information that
3 might well amount to it being closed. And the
4 response we received back on August 4th from the
5 parties was that of the three to four days potentially
6 for the hearing, perhaps a half day to a day would be
7 open, the rest being closed or about 75 percent of the
8 hearing being closed.

9 At this point, I guess the Board has
10 several concerns I want to express to the parties and
11 then get your feelings. I know that NIRSPC had raised
12 the question about reviewing evidentiary material to
13 try to maximize the amount of public disclosure and
14 sort of take a basic look at all of the information in
15 terms of what was being claimed.

16 I think the Board the Board at this point
17 is not inclined to spend a lot of pre-hearing time
18 trying to sort out what's proprietary and what isn't,
19 as well as deal with the potential for an
20 interlocutory appeals if this Board did decide that
21 something should be released in LES or the Staff
22 didn't agree with that.

23 The process we would contemplate using is
24 one that the Board in Private Fuel Storage Use which
25 is a recent case that had a number of substantial

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1 amount of proprietary information. We basically dealt
2 with those challenges after we had issued the Board's
3 partial initial decision.

4 The parties then were asked to go through
5 with respect to the PID with respect to the
6 evidentiary material, indicate to us what they felt
7 was proprietary and what wasn't and we then went
8 through the process of sorting it out.

9 The information then gets on the public
10 record, but we don't have the potential procedural
11 delays involved with trying to sort it out at this
12 point and I think that's where we're inclined to go
13 with this particular hearing.

14 Having said that, we then are looking at
15 the majority of the hearing, at least under the last
16 representation you all gave us, three quarters of it
17 not being public and again, Private Fuel gives me some
18 cause for concern because we had a similar situation
19 and frankly for the Board to go out to invite people
20 to attend the hearing and then close three quarters of
21 it, it's just not an efficient or a respective use.
22 It doesn't really serve the public interest.

23 Also, frankly, for extended periods of
24 closed hearings, our Rockville hearing room is much
25 better able to handle them because we can control

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1 access to the building much more readily. We don't
2 have to worry about people walking in unexpectedly
3 which in a junior college in this facility, there's a
4 lot of traffic around the area and we'd have to be
5 watching fairly carefully. So at this point I'd have
6 to say that we're not inclined to hold the contested
7 portion of the hearing out in Hobbs, rather would hold
8 it here in Rockville and then come back in the early
9 spring and hold the balance of the mandatory hearing
10 in the Hobbs area.

11 I think I've basically give you the
12 Board's perspective at this point. Let me turn to the
13 parties and see what, if anything, you all want to say
14 about that and I guess I'll go with LES first.

15 MR. CURTIS: Judge Bollwerk, is it the
16 Board's view that an acceptable location was not
17 available in the Hobbs area in the period of time we
18 would have the contested hearing?

19 JUDGE BOLLWERK: I think we were able to
20 find -- I think the Bob Moran Multi-Purpose Room would
21 have worked, but for the fact that we had to close so
22 much of the hearing.

23 Again, it was identified to us very late
24 in the process, but we have looked at it. We've seen
25 some pictures of it. We've talked to the college

1 about it and it very likely would work in terms of
2 physical space, but it has other problems, given what
3 we're talking about in terms of conducting this
4 hearing.

5 JUDGE ABRAMSON: This is Judge Abramson,
6 counselor. I think that the Board's view really is
7 that doesn't serve the public interest and we're not
8 sure it serves anybody's interest to have a four-day
9 or a three-day hearing in Hobbs and have most of it
10 closed.

11 So when you guys reach your settlements,
12 you wind up with something that's wholly unclosed,
13 that might cause us to revisit it, but if it stays in
14 this ratio, doesn't appear to us that there's any
15 reason, any advantage at all to having the hearing in
16 Hobbs.

17 MR. CURTIS: And would it be the Board's
18 intent, subject to being able to identify an
19 acceptable location to hold the hearing on the
20 mandatory matters in the Hobbs area?

21 JUDGE BOLLWERK: Absolutely.

22 MR. CURTIS: And do you have a location
23 identified for that yet?

24 JUDGE BOLLWERK: We can go back.
25 Actually, the multi-purpose room in the Bob Moran

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1 Center, their hall would be fine. We could go back to
2 the Lea County Events Center. We haven't talked to
3 them about a date. Those are both possibilities. So
4 I think we could probably expect that we could find
5 some place in Hobbs. Again, we're more than six
6 months away. I think part of the problem we ran into
7 this time is that we simply didn't understand how
8 popular frankly the Lea County Events Center is, but
9 we think we could get in there again or the junior
10 college.

11 MR. CURTIS: From LES's perspective, I
12 think we expressed our strong view that every effort
13 should be made to hold this hearing in the vicinity of
14 the facility. Having said that, the Board's efforts
15 to locate such a facility that would suit the type of
16 hearing that this will likely be, I think from our
17 perspective we appreciate your efforts to locate a
18 facility out in New Mexico, but ultimately I think
19 have to defer to the Board's strong view if this is
20 what we're hearing.

21 JUDGE BOLLWERK: Let me turn to the Staff.

22 MS. CLARK: This is Lisa Clark. From the
23 Staff's perspective, we have no problem with the
24 Board's approach.

25 JUDGE BOLLWERK: Let me then turn to the

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1 Attorney General, again recognizing we have a
2 settlement agreement pending with you all that may or
3 may not resolve your participation, but if you have
4 anything you'd like to say, please feel free at this
5 point.

6 MR. COPPIN: Thank you, Judge. I think
7 we'll echo the comments already made by Mr. Curtis.

8 JUDGE BOLLWERK: All right.

9 MR. COPPIN: We appreciate your efforts to
10 locate a proper facility here. We understand the
11 problem the Board is having.

12 JUDGE BOLLWERK: Let's see, the
13 Environment Department?

14 MS. FOX: This is Candace Fox. We agree
15 and we do appreciate your efforts trying to locate a
16 place, a place here. I certainly didn't realize how
17 much of the hearing would be held confidentially. And
18 I think the efforts have been made and I think the
19 Board's preference at this point should be honored.

20 JUDGE BOLLWERK: Mr. Lovejoy?

21 MR. LOVEJOY: Well, Your Honor, as we said
22 previously, we strongly believe that a hearing about
23 this facility should be held in New Mexico and I
24 understand you have found a location in Hobbs that
25 would work. Certainly, there are locations in other

1 New Mexico cities that would also work. And it's --
2 well, we've just said exactly that, that people should
3 have a chance to attend to the extent they can a
4 hearing about a facility of this nature planned for
5 their state.

6 I do think there's going to be some
7 question whether huge amounts of the material need to
8 be kept proprietary and although it's easy to project
9 at this point, knowing that we cost issues to deal
10 with, that there will be some proprietary information.
11 We haven't really seen the exhibits -- the exhibits
12 haven't been identified.

13 It's kind of guessing to say that it's
14 going to be proprietary to a huge extent and I think
15 actually if we think about it, the proprietary
16 information falls into a few major categories and I
17 really don't think the Board is going to have to put
18 in too much time on the issue of proprietary status.

19 I think the parties could assemble the
20 information and present it, say this is material about
21 from URENCO and this is material from COJEMA and this
22 is material from WCS. And I'm not sure it's going to
23 take you very long to reach decisions on the status of
24 that kind of material. I think it would serve us all
25 if we could deal with these issues and decide about a

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1 New Mexico hearing on the basis of actual decisions on
2 what's proprietary.

3 JUDGE BOLLWERK: I think as Judge Abramson
4 indicated, if we get a different percentage from you
5 at some point, we're willing to go back and in fact,
6 we could probably go to the junior college and reserve
7 the space, subject to whatever, tentatively subject to
8 whatever you all can get back to us on and give us
9 additional information, even in the mid-September time
10 frame.

11 We're willing to do that, but we'd have to
12 -- once we get to mid-September, certainly beginning
13 of October, have to make a final decision and again,
14 to the degree you can come to some agreement as
15 opposed to getting involved in a number of disputes
16 over what's proprietary and look at it that way. We
17 did hold a morning of closed session the first part,
18 the first time around.

19 Certainly, a morning of closed session the
20 second time around is not going to bother us, but once
21 we begin to get in percentages that look like half or
22 greater, that causes us some concern. So we certainly
23 have no problem, I thinking of looking at the other
24 two Board Members, with looking at this if you want to
25 come back to us at some point, after you've seen the

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1 evidentiary material and talk among yourselves and
2 give us some additional thoughts about how much of it
3 is going to be closed.

4 MR. CURTIS: Jim Curtis here for LES.
5 Just a couple of observations. The core of this phase
6 of the hearing, as I understand the deposition that
7 we've taken of the expert witness and the NIRSPC's
8 responses to our interrogatories is a challenge to
9 LES' cost estimate for the disposition of depleted
10 uranium and that consists of several components which
11 include the cost estimate for deconversion, the cost
12 estimate for transportation and the cost estimate for
13 disposal.

14 In all of those respects, LES has
15 submitted information to the Staff and disclosed
16 information which itself is proprietary. It's been
17 submitted pursuant to the regulations in 2.790 with
18 necessary affidavits and this is information that has
19 been produced by third parties that serves as the
20 basis for the cost estimates and it is information
21 that those third parties have insisted be treated as
22 proprietary.

23 So from my perspective, I think if that is
24 the core of this hearing and I believe it is, and
25 understanding that our estimate is based upon actual

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1 commercial vendor estimates that the vendors seek to
2 treat as proprietary for obvious competitive and
3 business reasons, I'm not sure further discussion is
4 going to narrow down substantially what we think is
5 going to be a largely proprietary hearing on those
6 issues.

7 MR. LOVEJOY: If I may respond, Your
8 Honor?

9 JUDGE BOLLWERK: Yes.

10 MR. LOVEJOY: I understand Mr. Curtis'
11 point and surely the Board is in a position to
12 evaluate claims of proprietary status. I think maybe
13 what we can do today though is to set up a schedule
14 for identification of proprietary information to be
15 used at the hearing and for a report by the parties to
16 the Board on how much of the proprietary status issues
17 they've been able to resolve and what we might ask you
18 to look at before the hearing.

19 In other words, just to set in a structure
20 and a procedure so that we can -- if to the extent
21 possible resolve these issues before the hearing. I
22 think we all remember that down in Hobbs in February
23 these issues came up and there were some portions that
24 had to be closed, but not a lot and many of the issues
25 we could work out. And I'm hoping we can do the same.

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1 JUDGE ABRAMSON: This is Judge Abramson,
2 Mr. Lovejoy.

3 Let me ask you and Mr. Curtis a question.
4 I gather that from what you said you're working on a
5 possible reduction of the number of issues that will
6 be litigated in this final evidentiary hearing. Do
7 you have, either of you, or collectively, an estimate
8 of when you think you will have that part resolved?

9 MR. LOVEJOY: I kind of hope it can be
10 done this week.

11 MR. CURTIS: Yes, our hope and expectation
12 and the discussion that counsel for NIRS and I have
13 discussed is that we would be a position to file a
14 joint stipulation on the matters that we think can be
15 resolved without further evidentiary hearing by some
16 time close of business tomorrow. That, in turn, is
17 important from our perspective because that defines
18 issues that we may or may not need to address in
19 interrogatory responses which are due the next day.

20 So Lindsay Lovejoy and I have talked about
21 a schedule that would have us file that tomorrow.
22 We're in active discussion and when I return to D.C.
23 this evening, I hope to talk with him tomorrow about
24 that. But that's our goal, I think.

25 JUDGE ABRAMSON: And is it your

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1 anticipation then that if those things are resolved,
2 as you currently are both hoping, that that will
3 affect the percentage of what's left that might be
4 proprietary or do I understand from what you said
5 earlier, Mr. Curtis, that the balance of what's left
6 out is going to relate to these third party estimates?

7 MR. CURTIS: I think in relative terms,
8 Judge Abramson, the relative percentage of the hearing
9 that would involve proprietary information does not
10 change. It's going to be three-fourths of the hearing
11 as it relates to these proprietary issues. Mr.
12 Lovejoy and I have discussed that.

13 I would make one additional comment.
14 There is a process under the regulations for us to
15 identify proprietary information which requires us to
16 submit an affidavit. It provides the basis for the
17 proprietary information designation. The Staff, in
18 turn, is charged under the regulations with reviewing
19 that determination and has the authority to reject the
20 claim of proprietary information. In all cases, the
21 information that we've submitted as proprietary, on
22 the basis that I previously described, has been
23 designated proprietary with the accompanied affidavit.
24 And the Staff has accepted it as such. So there is a
25 process established where under the regulations the

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1 Staff makes that determination.

2 Based upon earlier decisions of the Board,
3 I think there is a serious legal question as to
4 whether there's a separate process that could be or
5 should be established for the Board to review
6 proprietary determinations that are made by the Staff
7 pursuant to the regulations that define a process for
8 us to proffer that information.

9 JUDGE ABRAMSON: I appreciate that.

10 MR. LOVEJOY: If I may just say, I think
11 the order in this case has a procedure for review of
12 proprietary status claims.

13 JUDGE BOLLWERK: It looks from the
14 schedule that the first, I guess when you all file
15 your pre-filed direct testimony in mid-September is
16 when you also would identify your pre-filed exhibits.
17 Is that correct?

18 MR. CURTIS: No. I think the pre-filed
19 exhibits actually --

20 JUDGE BOLLWERK: They've already been
21 identified?

22 MR. CURTIS: They have not been. We have
23 made all of the disclosures and in the response to the
24 interrogatories which will be due this Friday,
25 interrogatories themselves, the responses will be

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1 proprietary, so we'll serve them via FedEx on Thursday
2 evening. They will further indicate the testimony the
3 witnesses will give, the documents that we're going to
4 rely on, but I do believe the regulations in 2.704, I
5 believe (b) Bravo, establish a process where we have
6 to identify exhibits 30 days before the hearing
7 itself, if I'm not mistaken about that.

8 MR. LOVEJOY: I agree on that.

9 JUDGE BOLLWERK: Well, there will come a
10 point when you all have got each other's exhibits and
11 again, the Board is willing to listen. If there's
12 some other approach that you all want to take in terms
13 of the amount of proprietary information that you can
14 work out. Again, at this point we're not inclined to
15 begin getting into a significant number of rulings on
16 proprietary information, at least not prior to the
17 hearing anyway.

18 MR. CURTIS: For LES's purposes, Your
19 Honor, I think the approach that you've outlined,
20 based upon the PFS precedent is going to be acceptable
21 to LES and workable and in large part because as we
22 identify our exhibits 30 days before the hearing
23 itself, if that's the key issue or the key time frame
24 in which we're going to go through the review of
25 proprietary documents as Mr. Lovejoy as suggested, at

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1 that point, I assume we will have identified the
2 location for the hearing. So there's a timing issue
3 there as well. And I think for our purposes, for that
4 reason and others, we would support the approach that
5 the Board initially outlined based upon PFS.

6 JUDGE BOLLWERK: Well, again, we can go
7 ahead and reserve -- I'm sure the New Mexico Junior
8 College has set aside the space for several days for
9 us. If we can do that, if you all want to come back
10 to us and within a reasonable period and suggest
11 something else, that's still a possibility, but it
12 sounds like to me that it may not happen. I'll leave
13 that up to you at this point. I'm more than willing
14 to entertain it again, if it's brought to us in a
15 reasonable time where we can still in terms of
16 scheduling can make it out to Hobbs.

17 All right, anything else that the other
18 Board Members have at this point?

19 Anything from the parties? All right,
20 hearing nothing, I thank you all for your time. We
21 will issue an order trying to memorialize this,
22 hopefully within the next day or so. And again, if
23 you in terms of the location of the hearing, if you
24 have some other information for us at some point,
25 please feel free to bring it to us. We'll be glad to

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1 consider it.

2 The two copies -- why don't you just go
3 ahead and send things to the Board Chairman, to me and
4 I'll make sure they get distributed appropriately.

5 MR. CURTIS: And we're to do that by
6 September 16th at the same time as executive summary?

7 JUDGE BOLLWERK: That's correct.

8 MR. CURTIS: Thank you.

9 JUDGE BOLLWERK: All right, earlier if
10 possible.

11 JUDGE KELBER: This is Judge Kelber, if
12 you have it together earlier that will be fine, but
13 September 16th, excuse me, would certainly be the --

14 JUDGE ABRAMSON: If you wanted to send the
15 ISA or the SAR prior to that and you happened to have
16 them handy, they would be welcome here.

17 MR. CURTIS: We'll work together with NRC
18 Staff and try to make them available to the Board in
19 the manner requested, as soon as possible.

20 JUDGE BOLLWERK: All right, again, thank
21 you everyone for making yourselves available on short
22 notice. We appreciate your time and effort and we
23 stand adjourned. Thank you very much.

24 (Whereupon, at 3:55 p.m., the pre-hearing
25 teleconference was concluded.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

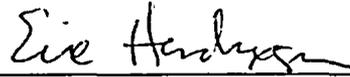
Name of Proceeding: Louisiana Energy Service, LP

Docket Number: 70-3103-ML

ASLBP No: 04-826-01-ML

Location: teleconference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Eric Hendrixson
Official Reporter
Neal R. Gross & Co., Inc.

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