

October 7, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
)	
(National Enrichment Facility))	ASLBP No. 04-826-01-ML
)	

STAFF MOTION IN REGARD TO OBJECTIONS TO NIRS/PC HEARING EXHIBITS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.704(c)(3), the Staff of the Nuclear Regulatory Commission (“Staff”) hereby objects to certain exhibits included in the prefiled testimony filed by intervenors Nuclear Information and Resource Service and Public Citizen (“NIRS/PC”). For reasons set forth below, the Staff submits that these exhibits should not be admitted because they are not relevant to the admitted contentions.

DISCUSSION

Evidence is admissible in an NRC proceeding only if it is “relevant, material, and reliable.” 10 C.F.R. § 2.337(a). Immaterial, unreliable, or irrelevant evidence should be segregated from admissible evidence and excluded wherever possible. *Id.* Thus, only evidence within the scope of the admitted contentions is relevant and therefore admissible.¹

On October 4, 2005, the Board issued a Memorandum and Order (Ruling on In Limine Motions and Motion to Dismiss) (“October 4, 2005 Order”). In the October 4, 2005 Order, the Board ruled that several portions of the prefiled testimony submitted by NIRS/PC are outside the scope of the admitted contentions and, therefore, are inadmissible. In the Order, the Board

¹ See Memorandum and Order (Discovery Rulings), October 20, 2004

also instructed NIRS/PC to prepare a revised version of its prefiled direct testimony reflecting the portions stricken by the Board, as well as an exhibit list revised to reflect the removal of any associated exhibits. See October 4, 2005 Order at 18. The Staff submits that the following exhibits, all associated solely with the portions of the testimony stricken by the Board, are inadmissible as outside the scope of the proceeding and should be removed from the revised exhibit list: NIRS/PC Exhibits 102, 103, 115, 116, 118, 135-38, 150, 160, 170-75, 179-84, 189, 194, 196, 198-200, 202, 207, 211-17, 219, 223, 227, and 228.

In addition, NIRS/PC has submitted exhibits that support both testimony stricken by the Board, as well as separate testimony ruled admissible. These exhibits should be admitted only for the limited purpose of supporting admissible testimony. The exhibits that should be admitted include NIRS/PC Exhibits: 55, to the extent it supports NIRS/PC's testimony on page 50 of the Disposal section; 186, to the extent it supports NIRS/PC's testimony on page 49 of the Disposal section; and 190, to the extent it supports NIRS/PC's testimony on pages 49 and 55 of the Disposal section and pages 11 and 27 of the Contingency section. However, the above exhibits should not be admitted in support of stricken testimony. Therefore, NIRS/PC Exhibit 55 should not be admitted to the extent that it supports the stricken testimony on page 55 of the Disposal testimony or pages 22 and 25 of the Contingency testimony; NIRS/PC Exhibit 186 should not be admitted to the extent that it supports the stricken testimony on page 17 of the Deconversion testimony, page 57 of the Disposal testimony, or page 21 of the Contingency testimony; and NIRS/PC Exhibit 190 should not be admitted to the extent that it supports the stricken testimony on page 29 of the Deconversion testimony, pages 22, 27, and 59 of the Disposal testimony, and pages 12, 14, and 28 of the Contingency testimony.

Finally, NIRS/PC has attempted to introduce a large number of exhibits that have not been shown to be either relevant or material and, therefore do not meet the standard for admissibility as set out in 10 C.F.R. § 2.337(a). These exhibits, while included in the exhibit list,

are not referenced in the testimony, and it is difficult if not impossible to discern whether they have been offered in support of testimony within the scope or in support of testimony outside the scope of the admitted contentions. Some of these documents on their face appear to relate to issues outside the scope of the proceeding. These include documents related to harmful health effects of radiation² (NIRS/PC Exhibits 89, 91, 97, 99, 108, 119-21, 123-24, 126-27, 130, 141-49, 154-59, 165-66, and 225) and documents related to the viability of disposal of radioactive waste at either the WCS or Envirocare facilities³ (NIRS/PC Exhibit 218). These exhibits should also be stricken from the revised exhibit list. No explanation is given for how the remaining documents relate to the issues within the scope of the contention. Without such explanation, the following NIRS/PC Exhibits should not be admitted: 90, 92-96, 98, 101, 104, 107, 109-10, 113-14, 125-27, 129, 131, 139-40, 151, 153, 161-64, 176-78, 208-10, 224, 230-39, 244-45, and 255-57.

CONCLUSION

For the reasons set forth above, the Staff respectfully requests that the listed NIRS/PC exhibits be ruled inadmissible.

Respectfully Submitted,

/RA/

Margaret J. Bupp
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of October, 2005

² See October 4, 2005 Order at 12-13.

³ See *Id.* at 13.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF MOTION IN REGARD TO OBJECTIONS TO NIRS/PC HEARING EXHIBITS" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 7th day of October, 2005.

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