ASLB Aug 4 2005

NIRS/PC Prefiled Exhibit 204
Docketed 09/23/2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Paul B. Abramson
Dr. Charles N. Kelber

In the Matter of	Docket No. 70-3103-ML
LOUISIANA ENERGY SERVICES, L.P.	ASLBP No. 04-826-01-ML
(National Enrichment Facility)	August 4, 2005

MEMORANDUM AND ORDER
(Ruling on Motion to Admit Late-Filed Amended and Supplemental Contentions)

Before the Licensing Board is a motion dated July 5, 2005, in which joint intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) seek the admission of amended and supplemental contentions relating to the pending application of Louisiana Energy Services, L.P., (LES) for a 10 C.F.R. Part 70 license to possess and use source, byproduct, and special nuclear material to enrich natural uranium at a proposed National Enrichment Facility (NEF), to be constructed near Eunice, New Mexico. In a July 19, 2005 response to the NIRS/PC motion, applicant LES asserts that neither the contention amendments nor the supplemental contention is admissible. The NRC staff, in its July 20, 2005 response, maintains that the proffered supplemental contention is inadmissible, as are the contentions amendments save two aspects of one proposed amendment.

For the reasons set forth below, the Board finds that the proposed NIRS/PC contention amendments and supplemental contention do not warrant admission under the late-filing and/or substantive requirements of 10 C.F.R. § 2.309(c), (f).

-- PUBLICLY-AVAILABLE VERSION --

I. BACKGROUND

On December 12, 2003, LES filed with the Nuclear Regulatory Commission (NRC) an application to obtain a license to possess and use source, byproduct, and special nuclear material to enrich natural uranium at the NEF. On April 6, 2004, pursuant to 10 C.F.R. § 2.309(a) public interest groups NIRS/PC filed a joint petition to intervene in this proceeding to challenge the LES application,[1] see Petition To Intervene by [NIRS/PC] (Apr. 6, 2004), and in an issuance dated May 20, 2004, the Commission found that NIRS/PC met the requirements for standing to intervene.[2] See LBP-04-14, 60 NRC 40, 53-54 (2004).

On June 15, 2004, this Licensing Board conducted a prehearing conference with the petitioners, LES, and the staff in Hobbs, New Mexico, during which all these participants gave oral presentations on the admissibility of the petitioners' contentions. See Tr. at 1-290. In a memorandum and order dated July 14, 2004, the Board admitted NIRS/PC as a party to this proceeding pursuant to 10 C.F.R. § 2.309(a)-(b) as having established the requisite standing and having submitted at least one admissible contention. See LBP-04-14, 60 NRC at 75. Specifically, the Board admitted eight NIRS/PC contentions, including NIRS/PC EC-3/TC-1 –

---

[1] Two governmental entities associated with the State of New Mexico – the New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM) – also filed petitions to intervene in the LES licensing proceeding on, respectively, March 23, 2004, and April 5, 2004. See [NMED] Request for Hearing and Petition for Leave to Intervene (Mar. 23, 2004); [AGNM] Request for Hearing and Petition for Leave to Intervene (Apr. 5, 2004). The Board subsequently admitted both NMED and the AGNM to this proceeding as having proffered at least one admissible contention. See LBP-04-14, 60 NRC 40, 75 (2004).

[2] The Commission previously indicated in a January 2004 issuance that it would make all threshold determinations regarding standing. See CLI-04-03, 59 NRC 10, 13-15 (2004) (69 Fed. Reg. 5873 (Feb. 6, 2004)).

Depleted Uranium Hexafluoride Storage and Disposal, and NIRS/PC EC-5/TC-2 – Decommissioning Costs.[3] See id. at 78.

By a subsequent order dated August 16, 2004, the Board set a general schedule for this proceeding. See Licensing Board Memorandum and Order (Memorializing and Ruling on Matters Raised in Conjunction with August 3, 2004 Conference Call and Setting General Schedule for Proceeding) (Aug. 16, 2004) (unpublished). Pursuant to that schedule, on October 20, 2004 NIRS/PC filed a motion to amend or supplement previously admitted environmental and environmental/technical contentions, including NIRS/PC EC-3/TC-1 and EC-5/TC-2, based on certain additional information contained in, among others, the staff's draft environmental impact statement (DEIS) for the NEF. See Motion on Behalf of [NIRS/PC] To Amend and Supplement Contentions (Oct. 20, 2004). In a November 22, 2004 memorandum and order, the Licensing Board admitted several of these amendments, including an amendment to EC-5/TC-2,[4] finding that they met both the standard for late filing under 10 C.F.R. § 2.309(c) and the general contention admissibility requirements of 10 C.F.R. § 2.309(f), but declined to admit others for, among other reasons, seeking to raise impermissible matters outside the scope of the admitted contentions. See Licensing Board

[3] In ruling on the admission of contention NIRS/PC EC-5/TC-2, the Board consolidated the admitted portions of this contention with the admitted aspects of contention AGNM TC-i based on their similar subject matters, and designated NIRS/PC as lead party on the consolidated contention. See LBP-04-14, 60 NRC at 68, 72. For simplicity's sake in the context of this ruling, the Board will refer to this contention only as NIRS/PC EC-5/TC-2.

[4] With regard to the amendment to contention EC-5/TC-2, the Board found timely and otherwise admissible a supplement initially proffered by NIRS/PC in connection with contention NIRS/PC EC-6/TC-3, Costs of Management and Disposal of Depleted UF_6, but found it should more appropriately be incorporated into EC-5/TC-2 . See Licensing Board Memorandum and Order (Ruling on Late-Filed Contentions) (Nov. 22, 2004) at 16-17 (unpublished).

Memorandum and Order (Ruling on Late-Filed Contentions) (Nov. 22, 2004) at 8-18 (unpublished) [hereinafter November Late-Filing Ruling].

On February 2, 2005, NIRS/PC filed with the Board a second motion for the admission of late-filed contentions, seeking amendments to three previously-admitted contentions, again including NIRS/PC EC-3/TC-1 and NIRS/PC EC-5/TC-2. See Motion on Behalf of Intervenors [NIRS/PC] For Admission of Late-Filed Contentions (Feb. 2, 2005). The Board ruled on the admissibility of these proffered amendments and/or supplements in a May 3, 2005 memorandum and order, again declining to admit proffered supplements to EC-3/TC-1, but admitting a supplement to EC-5/TC-2 as supported by a basis sufficient to meet the section 2.309(c) late-filing standards and section 2.309(f) general admissibility requirements. See Licensing Board Memorandum and Order (Ruling on NIRS/PC Late-Filed Contentions and Providing Administrative Directives) (May 3, 2005) at 6-9, 11-13 (unpublished) [hereinafter May Late-Filing Ruling].[5]

On May 16, 2005, NIRS/PC filed two separate motions seeking, for a third time, admission of amendments to EC-3/TC-1 and EC-5/TC-2. See Motion on Behalf of Intervenors [NIRS/PC] for Admission of Late-Filed Contentions Concerning LES Disposal Strategy (May 16, 2005); Motion on Behalf of Intervenors [NIRS/PC] for Admission of Late-Filed Contentions Concerning Dispositioning Cost Estimates (May 16, 2005). In addition, on May 20, 2005, NIRS/PC filed a second motion with regard to EC-5/TC-2 providing additional bases in support of the amendment to that contention proffered in its May 16 motion. See Motion on Behalf of

[5] In addition, relative to contention EC-3/TC-1, the Board also noted that, in accordance with the Commission's January 18, 2005 memorandum and order, see CLI-05-5, 61 NRC 22, 36 (2005), previously admitted paragraph C to this contention had been ruled inadmissible. See May Late-Filing Ruling at 9.

Intervenors [NIRS/PC] for Admission of Additional Bases for Late-Filed Contentions Concerning Dispositioning Cost Estimates (May 20, 2005). In a memorandum and order issued June 30, 2005, the Board declined to admit any of the proffered further amendments to either NIRS/PC EC-3/TC-1 or EC-5/TC-2. See Licensing Board Memorandum and Order (Ruling on NIRS/PC Late-Filed Contention Amendments) (June 30, 2005) (unpublished) [hereinafter June Late-Filing Ruling]. Specifically, as to EC-3/TC-1, the Board found that a balancing of the section 2.309(c) factors precluded admission of the amendment as late-filed, and, even if they did not, the amendment raised matters outside the Board's jurisdiction.[6] See id. at 10-11. As to EC-5/TC-2, the Board found that the proffered amendment added nothing to the previously-admitted contention (as amended by prior rulings) that would warrant rewording of that contention, but noted that the Board would evaluate any relevant information on which NIRS/PC based the proffered amendment that was put before it during the evidentiary hearing process. See id. at 14-15.

Most recently, on July 5, 2005, in accordance with the August 2004 general schedule, NIRS/PC filed another motion for admission of amendments to contentions EC-3/TC-1 and EC-5/TC-2, as well as for admission of a new environmental contention NIRS/PC EC-9, which generally challenges the staff's evaluation of depleted uranium disposal impacts in its Final

[6] Also with regard to contention NIRS/PC EC-3/TC-1, because there was a serious question as to whether, in connection with the matter of a plausible strategy for NEF waste disposition as it relates to the agency's decommissioning funding requirements, LES was continuing to rely on the ConverDyn and Cogema options as originally discussed in its ER, the Board requested that LES provide a filing indicating whether it continues to rely upon either the ConverDyn geologic repository or Cogema private deconversion options that are the focus of this contention as the basis for any showing regarding a "plausible strategy" for waste disposition relative to the agency's decommissioning funding requirement. In its July 25, 2005 response, LES indicated it was no longer relying on the ConverDyn option. See Final Response of [LES] to Licensing Board Request for Clarification Regarding Applicant's Private Sector "Plausible Strategy" for Disposition of Depleted Uranium (July 25, 2005) at 2.

Environmental Impact Statement (FEIS) for the NEF. See Motion on Behalf of Intervenors [NIRS/PC] for Extension of Time Under 10 C.F.R. 2.307(a) and For Admission of Supplemental and Additional Late-Filed Contentions Under 10 C.F.R. 2.309(c) (July 5, 2005) [hereinafter NIRS/PC Motion]. In a response filed July 19, 2005, LES opposes admission of all amendments to EC-3/TC-1 and EC-5/TC-2 as well as contention EC-9, asserting generally that each of those proffered amendments/contentions fail to meet both the section 2.309(c) late-filing standard and the section 2.309(f) general contention admissibility requirements. See Answer of [LES] to Motion on Behalf of [NIRS/PC] for Extension of Time and Admission of Supplemental and Additional Late-Filed Contentions (July 19, 2005) [hereinafter LES Response]. For its part, the staff filed a response on July 20, 2005, in which it asserts that the proposed amendments to EC-3/TC-1 and contention EC-9 in its entirety are inadmissible as failing to meet the section 2.309(c) and/or 2.309(f) admissibility requirements. See NRC Staff Response to Motion on Behalf of Intervenors [NIRS/PC] for Admission of Supplemental and Additional Late-Filed Contentions Under 10 C.F.R. 2.309(c) (July 20, 2005) at 7-12, 24-27 [hereinafter Staff Response]. As to the proffered amendments to EC-5/TC-2, the staff contends that all but two aspects of one paragraph of the proposed amendment to that contention are inadmissible. See id. at 15-23.

II. ANALYSIS

A. Standards Governing Admissibility of Late-Filed Contentions

As this Board has discussed on numerous prior occasions, as it is relevant to the matters currently before the Board, section 2.309(c) of the agency's 10 C.F.R. Part 2 rules provides that the issue of whether late-filed contentions, or nontimely amendments to

previously-admitted contentions, must be considered by a Licensing Board is based on a balancing of five factors:[7] (1) good cause, if any, for failure to file on time;[8] (2) availability of other means whereby the petitioner's interest will be protected; (3) extent to which the petitioner's interests will be represented by existing parties; (4) extent to which the petitioner's participation will broaden the issues or delay the proceeding; and (5) extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record. It is also well-established that the first factor, good cause for failure to file on time, carries the most weight, and that if good cause is lacking, a compelling showing must be made as to the remaining four factors such as would outweigh the lack of good cause. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-98-29, 48 NRC 286, 293 (1998) (citation omitted). As noted above, this Board has further elaborated on this balancing test on other occasions in this proceeding, and we need not do so here. See, e.g., Licensing Board Memorandum and Order (Ruling on Commission-Referred Late-Filed Contentions) (Jan. 26, 2005) at 10-11 n.11 (unpublished); November Late-Filing Ruling at 6-7.

---

[7] As the Board has noted in several previous orders, section 2.309(c) actually includes eight factors. See, e.g., November Late-Filing Ruling at 5-6. Section 2.309(c)(i), (v)-(viii) of the agency's current rules of practice encompass the five late-filing criteria previously found in 10 C.F.R. § 2.714(a)(1) of the agency's superseded 10 C.F.R. Part 2 rules. Section 2.309(c)(ii)-(iv) mirror the factors set forth in former section 2.714(d)(1), factors that essentially deal with the question of whether a petitioner has standing to intervene. Because standing is not at issue here, we will address only section 2.309(c) factors one and five through eight.

[8] In the context of contentions intended to address matters under the National Environmental Policy Act, the provisions of section 2.309(f)(2) provide some guidance relative to this good cause factor, to the degree that they indicate the circumstances that trigger the need timely to file an amended or supplemental NEPA contention, i.e., if the data or conclusions in staff's draft or final environmental impact statement (EIS) differ significantly from the data or conclusions in the applicant's environmental report; or if, as between the draft and final EIS, there is information that was not previously available or is materially different from information previously available.

In addition, should a petitioner show, upon a balancing of the section 2.309(c) factors, that it has met the standard for late-filing, its late-filed contention or amendment still must meet the section 2.309(f) contention admissibility standards. The Board likewise has discussed at length the general standards for contention admissibility in a prior decision in this case, and will not do so here. See LBP-04-14, 60 NRC at 54-58. An assessment of NIRS/PC's proffered amendments to contentions EC-3/TC-1 and EC-5/TC-2 as well as new contention EC-9 relative to those standards discussed above follows.

B. NIRS/PC Contentions[9]

NIRS/PC EC-3/TC-1 – DEPLETED URANIUM HEXAFLUORIDE STORAGE AND DISPOSAL

CONTENTION: Petitioners contend that Louisiana Energy Services, L.P. (LES) does not have a sound, reliable, or plausible strategy for disposal of the large amounts of radioactive and hazardous Depleted Uranium Hexafluoride ("DUF6") waste that the operation of the plant would produce in that:

* * * * *

(D) **Disposal of DU at the proposed Andrews County, Texas disposal site of Waste Control Specialists ("WCS") would not constitute a plausible strategy, because the WCS site is not licensed to receive such waste and would not perform satisfactorily in containing such waste. Due to the effects of erosion, disposal of DU from the NEF at the proposed WCS site is likely to violate the dose limit contained in 10 CFR Part 61, Subpart C.**

(E) **The FEIS states that "under its Radioactive Materials License issued by the State of Utah, Envirocare is authorized to accept for disposal the quantities of depleted uranium oxides expected to be generated by the conversion of the proposed NEF's DUF_6." (FEIS at 2-33). Further, the FEIS states that the Envirocare site has several site-specific factors that contribute to its acceptability for DU disposal. (FEIS at 4-63). However, disposal of DU at the Envirocare site would not constitute a plausible strategy. The statements referred to did not appear in the DEIS. These statements are**

[9] As NIRS/PC seek to amend two contentions already admitted in this proceeding, the newly-proffered material is included in **bold.**

inaccurate or outdated, and the Envirocare site would not support a plausible strategy, for the reasons that:

a. Depleted uranium from the NEF would not constitute Class A low level waste for purposes of disposal at the Envirocare site. The issue of depleted uranium's classification under 10 CFR 61.55 has not been determined by the Commission, and DU would not be classified as Class A waste under the standards used by the Commission in issuing 10 CFR Part 61. The Envirocare site is prohibited by law as well as license conditions from receiving LLRW other than Class A waste.

b. Disposal of DU from the NEF at the Envirocare site is likely to violate the dose limit contained in 10 CFR Part 61, Subpart C.

c. Conditions of the current Envirocare license amendment would probably prohibit the disposal of bulk DU from the NEF at the site.

1. Late-Filing Standards

DISCUSSION: NIRS/PC Motion at 3-12; LES Response at 9-10, 12-14; Staff Response at 7-10.

RULING: As this Board has discussed on numerous prior occasions in this proceeding, in evaluating the question of whether good cause exists for late filing, the focus is often on whether new information has recently become available that serves as the basis for the new or amended contention. As to proposed paragraph D, no good cause exists as to any proposed amendment because, as NIRS/PC itself concedes in making its argument for an extension of time, which we likewise find unavailing,[10] this proposed amendment is based on information that

[10] NIRS/PC has requested an extension of time pursuant to 10 C.F.R. § 2.307(a) to file its contention amendments/supplemental contention to the degree those requests relate to matters disclosed more than 30 days prior to the date of its July 5 filing. Unfortunately, this request is too little, too late. As the Board suggested in its June 30 late-filing ruling, see June Late-Filing Ruling at 9 & n.8, had NIRS/PC made such a request in the context of their May filings regarding contention amendments, the Board might have been inclined to then grant it. Such a request is now, however, several months late. In addition, pursuant to the Board's initial (continued...)

was available well before the date of the NIRS/PC filing. See NIRS/PC Motion at 3-4. Therefore, the issues could have been raised, and to a large degree were raised, prior to the July 5 NIRS/PC motion, and NIRS/PC does not have good cause for raising them at this juncture.

Good cause for late-filing not having been established, in considering the other four factors we must look to see whether they provide the compelling showing necessary to outweigh the lack of good cause. The factors regarding the "availability" of other "means" and "parties" to protect their interests, albeit factors with less weight than the other two, weigh in NIRS/PC's favor. As to the more weighty "delay" to the proceeding factor, we consider this a negative factor, albeit only moderately so, because any addition to the existing issues is likely to embody some delay in that it will likely add time to the scheduled fall evidentiary proceeding. Finally, as to the last factor, contribution to development of a sound record, as this Board discussed in ruling on a previous proposed contention amendment, see June Late-Filing Ruling at 10, providing information such as the precise issues to be covered, identity of prospective witnesses, and summary of proposed testimony, is a necessary, see South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), ALAB-642, 13 NRC 881, 894 (1981), aff'd sub nom. Fairfield United Action v. NRC, 679 F.2d 261 (D.C. Cir. 1982) (case for record contribution should be set out with as much particularity as possible, including precise issues to be covered, identity of prospective witnesses, and summary of their proposed testimony), but not always sufficient showing in the context of this factor. As discussed further below, this

---

[10](...continued)
prehearing order in this proceeding, motions for time extensions should be filed before the motion for which the extension is sought is filed with the Board, and should indicate whether the extension is opposed or supported by the other parties. See Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 15, 2004) at 7 (unpublished).

amendment does not present a "significant, triable issue" and therefore NIRS/PC cannot reasonably be expected to contribute to the development of a sound record in this context. See June Late-Filing Ruling at 10. As a consequence, to the degree two of the four factors weigh in favor of admitting proposed paragraph D, they do not provide the compelling showing necessary to outweigh the lack of good cause.

Relative to paragraph E, to the extent this amendment is based on the June 13, 2005 amendment to the Envirocare permit, NIRS/PC has demonstrated good cause given that such information was not available prior to the adoption by the State of Utah of that amendment. To the extent the amendment purports to rely on "new" FEIS statements, Envirocare's change of ownership, or recent legislation by the State of Utah, however, NIRS/PC does not have good cause. Relative to the FEIS, the fact that NIRS/PC has found particular statements in that document that did not appear in the DEIS does not give NIRS/PC good cause when none of the specific issue statements in proposed paragraph E depend on the information first appearing in the FEIS, i.e., the issues NIRS/PC asserts it seeks to raise based on those statements could have been raised based on the discussion in the DEIS. As to Envirocare's change of ownership and the State of Utah legislation, to the extent either of these occurrences might have provided a basis on which to file amended contentions, each of those events occurred on or before February 25, 2005, more than four months prior to NIRS/PC's July 5 filing in which these events were first mentioned. Therefore, NIRS/PC does not have good cause for late-filing based on either of these events.

Nor do the remaining section 2.309(c) factors provide the compelling showing necessary to outweigh the lack of good cause as to the "new" FEIS statements, Envirocare's change of ownership, or the State of Utah legislation. Though factors five and six -- availability of other

means to protect petitioner's interest and extent of representation of petitioner's interests by existing parties -- weigh in favor of NIRS/PC, factors seven and eight weigh against NIRS/PC. Given that the parties to this proceeding are scheduled to begin filing prefiled testimony in just over six weeks, admitting a contention amendment relative to Envirocare at this late date would undoubtedly result in delay of this proceeding, albeit only a moderate one. In addition, given that none of the proffered issue statements are otherwise admissible, as discussed below, relative to this contention NIRS/PC would not contribute to the development of a sound record on a "significant, triable issue." As a consequence, to the degree two of the four factors weigh in favor of admitting these amendments, they do not provide the compelling showing necessary to outweigh the lack of good cause. In contrast, with good cause for its late-filing, any contention amendment footed in the June 13, 2005 amendment to the Envirocare permit is not barred by its late filing when all five factors are balanced.

2. Admissibility

DISCUSSION: NIRS/PC Motion at 13-20; LES Response at 10-11,14-17; Staff Response at 10-12.

RULING: Inadmissible, as to proposed paragraphs D and E. Specifically, as to paragraph D, bases (A) and (B) merely provide background information, and therefore do not provide adequate factual or expert opinion support for the amendment. See LBP-04-14, 60 NRC at 55-56. The remaining bases (C) through (I) all relate in some manner to the sufficiency of the Waste Control Specialists (WCS) application before the Texas Commission on Environmental Quality (TCEQ), a matter that is outside the Board's jurisdiction and, therefore, outside the scope of this proceeding. See id. at 55; see also June Late-Filing Ruling at 10-11. As to paragraph E, bases (A), (B), and (C) again provide only background and historical

information, and thus provide inadequate factual or expert opinion support for this amendment. See LBP-04-14, 60 NRC at 55-56. Bases (D), (E), and (F) constitute impermissible challenges to Commission regulations. See id. at 54-55. Finally, basis (G) fails to provide adequate factual or expert opinion support as it misstates the applicability of the Envirocare permit amendment to the depleted uranium at issue in this proceeding, and so fails to raise a genuine material dispute with the LES application or staff environmental review documents. See id. at 55-57.

Also in connection with this contention, given the LES statement in its July 25, 2005 report to the Board regarding clarification of its private sector "plausible strategy" that it no longer intends to rely on the "ConverDyn" geologic repository option at issue in paragraph A of this contention as originally admitted, see Final Response of [LES] to Licensing Board Request for Clarification Regarding Applicant's Private Sector "Plausible Strategy" for Disposition of Depleted Uranium (July 25, 2005) at 2 [hereinafter LES Plausible Strategy Response], the Board dismisses that portion of this contention as moot. A revised version of this contention incorporating this ruling is set forth in Appendix A to this memorandum and order.

In so ruling on the admissibility of this contention amendment, it appears to the Board there are novel legal or policy issues -- regarding the extent to which the viability of either the WCS or the Envirocare facility as a disposal site is a litigable issue in this proceeding -- that would benefit from early Commission consideration. Thus, in accordance with 10 C.F.R. § 2.323(f), see also CLI-04-3, 59 NRC 10, 15-16 (2004), we refer this portion of our ruling on the NIRS/PC motion to the Commission for its consideration.

NIRS/PC EC-5/TC-2 - AGNM TC-i – DECOMMISSIONING COSTS[11]

CONTENTION:

(A) Louisiana Energy Services, L.P. (LES) has presented estimates of the costs of decommissioning and funding plan as required by 42 U.S.C. 2243 and 10 C.F.R. 30.35, 40.36, and 70.25 to be included in a license application. See Safety Analysis Report 10.0 through 10.3; ER 4.13.1. Petitioners contest the sufficiency of such presentations as based on (1) a contingency factor that is too low; (2) a low estimate of the cost of capital; (3) an incorrect assumption that the costs are for low-level waste only; and (4) the lack of any relevant estimate of the cost of converting and disposing of depleted uranium, given it does not rely upon the three examples the –1993 CEC estimate, the LLNL report, and the UDS contract -- cited in its application.

(B) LES has presented additional estimates for the costs of deconversion, transportation, and disposal of depleted uranium for purposes of the decommissioning and funding plan required by 42 U.S.C. 2243 and 10 CFR 30.35, 40.36, and 70.25. See LES Response to RAN dated January 7, 2005. Such presentations are insufficient because they contain no factual bases or documented support for the amounts of the following particular current LES estimates, i.e., $2.69/kg for conversion, $1.14/kg for disposal, $0.85/kg for transportation, and a total of $5.85/kg including contingency, and cannot be the basis for financial assurance.

(C) LES's submission of additional material concerning the costs of deconversion, transportation, and disposal of DU is reflected in the Safety Evaluation Report, NUREG-1827 (June 15, 2005)("SER")(at pp. 10-11, 10-12). The SER contains certain additional statements, viz:

a. It is stated that LES adjusted the estimated cost of deconversion of DUF_6 by applying a factor for euros to dollars conversion, but the factor and its supporting bases are not explained. Without such explanation the cost data cannot be accepted.

b. It is said that the deconversion cost estimate was adjusted for "Americanization," referring to costs of obtaining regulatory approval and costs to convert European equipment standards to standards used in the United States, but the amounts of such adjustments and their rationale are not explained. Without such explanation the cost data cannot be accepted.

[11] In amending this contention, NIRS/PC would designate the two previously-admitted paragraphs to that contention (A) and (B), respectively.

c. It is said that Staff reviewed an estimate for tails disposition from the DOE and "Staff considers that the DOE estimate provides additional assurance that the applicant's estimate of depleted uranium disposition costs is reasonable." However, Staff's reasoning is not explained. In light of the fact that the DOE estimate referred to contains several unsupported assumptions (enumerated in connection with Contention EC-5/TC-2(E)), and Staff's acceptance of those assumptions is not explained, the cost data cannot be accepted.

(D) The actual cost of dispositioning DU safely and in a manner which will adequately protect public health and the environment is likely to fall in the range of $20.00 to $30.00 per kg. Such cost is significantly greater than the estimates offered by LES by reason of LES's apparent omission or inadequate consideration of such factors as:

a. The unsuitability of the WCS site or the Envirocare site for near-surface disposal, and the requirement of waste treatment and deep disposal at greater expense.

b. The need properly to consider scaling considerations in calculating, in particular, deconversion costs.

c. The need to account properly for the potential impacts of current and future currency exchange rates in calculating costs that include a significant component from outside the U.S.

d. The need to allow as a contingency for the costs of the potential need, in the future, of responding to the information emerging from recent research indicating that uranium may have adverse health effects not accounted for in existing regulations.

e. The need to account for the costs of delays in licensing new radioactive waste treatment and disposal facilities.

(E) LES has presented to the Commission an estimate of the cost of deconversion and disposal by DOE. (An Analysis of DOE's Cost to Dispose of DUF_6, LMI Government Consulting, Dec. 2004)(the "DOE Report"). The SER refers to and relies upon the DOE cost estimate. (SER at 10-12). The DOE Report contains several assumptions, including:

a. The assumption that after deconversion the DU would be disposed of at Envirocare.

b. The assumption that no costs are associated with disposition of hydrofluoric acid ("HF").

c. Assumptions as to future operation, maintenance, and decontamination and decommissioning costs, which the DOE Report assumes will remain unchanged despite the increased operating life of the Paducah or Portsmouth facility.

d. Assumption that LES's "pro rata" share of capital, decontamination and decommissioning costs will be based upon the amount of DU converted for LES, so that the less DU is converted for LES, the lower LES's share of such costs.

e. Assumption that, if LES's DU is stored at the DOE plants until the DOE backlog is deconverted, DOE is not authorized to charge LES for the storage costs.

f. No contingency for unexpected occurrences appears to be included in the DOE estimates.

These assumptions are incorrect and unsupportable, because:

a. As stated above, it cannot be assumed that disposal will take place at Envirocare and the DOE has explicitly stated that additional NEPA analysis and opportunity for public comment will be required before any disposal option can be selected.

b. It must be assumed that HF cannot be sold but must be treated and disposed of as waste.

c. Operating costs must be assumed to increase if the facility operating life is extended.

d. It is unlikely that DOE would agree to terms under which LES has the option to shift capital and D&D costs onto the DOE simply by not using the capacity of the plant.

e. It is reasonable to expect DOE to charge for the costs of storage of the LES DU tails.

f. NRC guidance requires a contingency allowance to provide for unforeseen cost increases.

1. Late-Filing Standards

DISCUSSION: NIRS/PC Motion at 3-12; Staff Response at 15-16, 17-19, 20-22.

RULING: As to proposed paragraph D, NIRS/PC has not demonstrated good cause for its nontimely filing in that it does not rely on any new information. Although NIRS/PC asserts that it could not have brought this contention amendment before the Board prior to receiving certain information in May 2005, even overlooking the fact that nearly two months passed between the information's May 11 circulation date and NIRS/PC's July 5 filing date, it does not appear that this proposed amendment raises any issues that could not have been raised prior to May 2005. In fact, as discussed further below, NIRS/PC has raised these or substantially similar issues in the context of previously-filed motions to amend this contention. See, e.g., June Late-Filing Ruling at 13-15; May Late-Filing Ruling at 12-13.

Relative to paragraph C, the information relied on by NIRS/PC in bases (A) and (B) to provide support for this proposed amendment does not constitute "new" or "previously unavailable" information. Initially, we note, as does the staff in its response, see Staff Response at 15, that when a challenge is based upon information found in an original application as well as the staff's Safety Evaluation Report (SER), challenges relative to that information must be raised with respect to the adequacy of the LES application. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 97 (2001) (adequacy of the application, not the staff's SER, is the proper focus of a safety-related contention based upon information appearing in both). Consequently, NIRS/PC cannot rely simply on the recent issuance of the SER to provide good cause for its untimely amendment if the relevant information was, in fact, available long before issuance of the SER. Further, even if the SER could provide a basis for the timeliness aspect of the NIRS/PC good cause

argument, the information found in the SER here is not materially different from that provided in previous LES cost estimates (which NIRS/PC previously challenged in its May 2005 late-filed contentions).[12] On the other hand, with regard to basis (C), NIRS/PC has demonstrated good cause for late-filing in that the substance of that basis is premised on DOE cost estimate information that was not available to NIRS/PC prior to June 6, 2005.

As to the remaining late-filing factors, a balancing of those factors does not provide the compelling showing necessary to outweigh the lack of good cause in the context of either basis (A) or (B), nor do they weigh against the admission of basis (C) sufficiently to overbalance the good cause demonstrated in that context. Factors five and six, availability of other means to protect NIRS/PC's interests and the extent to which other parties will protect those interests, weigh in favor of NIRS/PC. Factor seven also weighs in favor of NIRS/PC, given that the issue of cost estimates is already before the Board and, though any amendment to a contention at this juncture would undoubtedly result in some additional time spent at the evidentiary hearing,

---

[12] In that regard, the Board indicated that:

> [I]n a May 3 memorandum and order, this Board admitted an amendment to contention NIRS/PC EC-5/TC-2 regarding an alleged lack of support for LES "estimates for the costs of deconversion, transportation, and disposal of depleted uranium for purposes of the decommissioning and funding plan . . . ." The current amendments/supplements proffered by NIRS/PC, to the degree they relate to material matters that are within the scope of this proceeding, add nothing to that previously-admitted amendment that requires further rewording of the contention. In other words, to the extent NIRS/PC takes issue with cost estimate information provided by LES since January 7, 2005, having already admitted a contention amendment on this subject, the Board will evaluate any relevant information placed before it on that matter, including material relating to post-January 7, 2005 LES submissions.

June Late-Filing Ruling at 14 (footnotes omitted).

that delay would not be significant. Finally, as to factor eight, contribution to development of a sound record, as this Board discussed in ruling on a previous proposed amendment to this contention, see June Late-Filing Ruling at 10, providing information such as the precise issues to be covered, identity of prospective witnesses, and summary of proposed testimony, is a necessary but not always sufficient showing in the context of this factor. As discussed further below, however, because bases (A) and (B) of this proposed amendment do not present a "significant, triable issue" and thus NIRS/PC cannot reasonably be expected to contribute to the development of a sound record in this context. See id. Consequently, the balance for this contention amendment, as supported by bases (A) and (B), does not justify late admission.

As to proffered paragraph E, as is the case with paragraph C, basis (C), this proposed amendment appears to contemplate new data first revealed in the DOE cost estimate first provided by LES on June 6, 2005, so as to provide the requisite showing of good cause under late-filing factor one. After balancing this support for admission with the remaining four factors described above, we conclude that admission of the amended portion of this contention is not precluded by the fact that it was late-filed.

In sum, as to proposed paragraph C, basis (C), and paragraph E in its entirety, these proposed amendments are not precluded by the fact of their late-filing.

2. Admissibility

DISCUSSION: NIRS/PC Motion at 21-35; LES Response at 18-30; Staff Response at 16-17, 19-20, 22-23.

RULING: Inadmissible as to each of the specific proffered amendments. Proposed paragraph C, as supported by bases (A) and (B), and paragraph D are inadmissible in that

none of the asserted bases raise subjects that require further revision of this contention.[13] Besides seeking to raise matters outside the scope of the proceeding to the degree these issue statement attempt to justify admission based on the staff's "acceptance" of particular LES cost data in the SER, see LBP-04-14, 60 NRC at 55, each of these proffered amendments raises issues that this Board has found inadmissible on at least one prior occasion, rulings that the Board sees no basis for revisiting.[14] So too in connection with paragraph D, NIRS/PC again seeks to raise issues the Board has previously either admitted to the extent they are material to the proceeding, or rejected as inadmissible on various grounds. As to basis (A), as NIRS/PC seeks to raise issues relative to the WCS application pending before the TCEQ, they are outside this Board's jurisdiction and, therefore, outside the scope of the proceeding. Similarly, given that LES need only have one "plausible strategy," and given the availability of the DOE deconversion/disposal option, the particular suitability of either the WCS or Envirocare facilities as disposal options is outside the scope of this proceeding, see id. at 55, although, as we have previously indicated, whether deep disposal at greater expense would be necessary is a legitimate subject for inquiry, see June Late-Filing Ruling at 12 n.11. The issues of scaling and

[13] As noted in the Board's June 30, 2005 ruling regarding late-filed amendments to this contention, "to the extent NIRS/PC takes issue with cost estimate information provided by LES since January 7, 2005, having already admitted a contention amendment on this subject, the Board will evaluate any relevant information placed before it on that matter, including material relating to post-January 7, 2005 LES submissions." June Late-Filing Ruling at 14. Of course, this information will be evaluated in light of previously-established financial qualifications and decommissioning funding tenets, including triennial updating of decommissioning funding plans and the precept that a "plausible strategy" does not require that all necessary contractual arrangements be in place at the time the license is issued. See id. at 14 n.14.

[14] In addition, basis (A) does not raise a material issue given that the parties have indicated their intent to provide dispositioning costs in 2004 dollars, see LBP-04-14, 60 NRC at 56-57, and basis (B) regarding Americanization fails to demonstrate adequately the materiality of and provide adequate factual or expert opinion support for this amendment, see id. at 55-57.

the contingency factor raised in bases (B) and (D), respectively, have already been admitted in connection with this contention and NIRS/PC EC-6/TC-3, and so would not need to be admitted here. See, e.g., May Late-Filing Ruling at 13 n.13. Finally, as to bases (C) and (E), the issues of currency exchange rates and cost of licensing delays lack materiality. See LBP-04-14, 60 NRC at 56-57; see also June Late-Filing Ruling at 14 n.13.

Regarding proposed paragraph C, as supported by basis (C), and paragraph E, LES submits in its response that the cost estimates and supporting explanations provided by DOE cannot be challenged in this proceeding, citing section 3113 of the USEC Privatization Act, 42 U.S.C. § 2297h-11. According to LES, section 3113, which requires DOE to accept for disposal depleted uranium at the request of an NRC-licensed operator of a uranium enrichment facility, gives the Secretary of Energy exclusive authority to determine the amount of reimbursement required for disposal of that depleted uranium, thus rendering these proposed NIRS/PC contention amendments outside the scope of the proceeding. See LES Response at 23.

For its part, the Board is persuaded that, consistent with section 3113, this amendment should not be admitted to the proceeding. When DOE is acting pursuant to its statutory authority under section 3113 in setting the costs or providing the cost estimates, the situation is somewhat analogous to that discussed by the Board in the context of the need for the facility, see LBP-05-13, 61 NRC at 440, 444-45, wherein we found LES is entitled to rely on the statements of third-party market participants with respect to proposed plans to close old facilities or open new ones and contractual commitments to purchase output from the NEF in projecting market supply and demand and the LES ability to enter the marketplace. In essence, acting pursuant to that statutory authority, DOE can set those costs and cost estimates at

whatever level it determines is appropriate. Once DOE does so, a uranium enrichment concern that wishes to utilize DOE's services can obtain those services by paying that fee, with the federal government having responsibility for covering any DOE cost underestimation, subject to any appropriate cost recalibration/recapture, which would be accounted for in the triennial adjustment to cost estimates and associated funding levels, see 10 C.F.R. § 70.25. Therefore, the Board finds these challenges to the DOE cost calculations outside the scope of this proceeding and lacking materiality in that the agency has no basis for assuming DOE has erred in computing its fees and no authority to direct or challenge DOE's fee estimates established pursuant to its statutory authority.[15] See LBP-04-14, 60 NRC at 55.

In so ruling on the admissibility of this contention amendment, it appears to the Board there are novel legal or policy issues that would benefit from early Commission consideration. Thus, in accordance with 10 C.F.R. § 2.323(f), see also CLI-04-3, 59 NRC 10, 15-16 (2004), we refer this portion of our ruling on the NIRS/PC motion to the Commission for its consideration.

NIRS/PC EC-9 – [FEIS FAILS TO ANALYZE ENVIRONMENTAL IMPACTS OF DU WASTE DISPOSAL IN ACCORD WITH PROPOSED ACTION AND APPROPRIATE ALTERNATIVES][16]

CONTENTION: The Final Environmental Impact Statement does not comply with the National Environmental Policy Act, 42 U.S.C. 4321 et seq., or Commission regulations, 10 CFR

---

[15] Were the Board to find that section 3113 did not provide a rationale for excluding this proposed amendment, we would have found it admissible to the extent it is supported by basis (F), which is sufficient to establish a genuine material dispute adequate to warrant further inquiry. On the other hand, the remaining bases (A) through (E) fail to provide sufficient support for that amendment. Basis (A) is inadmissible in that it constitutes an impermissible challenge to Commission regulations. See LBP-04-14, 60 NRC at 54-55. Relative to bases (C) and (D), NIRS/PC has failed to provide adequate factual support or expert opinion for these propositions. See id. at 55-56. As to bases (B) and (E), given that HF disposal costs and depleted uranium storage costs, respectively, have in fact been accounted for by DOE and/or LMI Government Consulting, these bases fail to establish a genuine material dispute with the application adequate to warrant further inquiry. See id. at 57.

[16] Because NIRS/PC failed to title this contention, this title is provided by the Board.

51.71, 51.91, in that it fails to set forth any analysis of the environmental impacts of disposal of depleted uranium waste from the proposed facility in accordance with the proposed action and appropriate alternatives. The analysis at pages 4-62 through 4-64 of the FEIS is based upon erroneous or outdated assumptions concerning the Envirocare facility or relates to a deeply flawed analysis of a proposal to dispose of depleted uranium in an abandoned mine, which is not now the Applicant's apparent proposal. In any case the purported "maximum annual exposure" data in Table 4-19 of the FEIS are derived from purported analyses of hypothetical disposal sites, which are both technically incredible and irrelevant to understanding the impacts of the proposed action or appropriate alternatives. Moreover, the detailed technical bases for these calculations were not presented in the FEIS and are apparently no longer available even to the NRC Staff.

1. Late-Filing Standards

DISCUSSION: NIRS/PC Motion at 3-12; LES Response at 31-35; Staff Response at 24-26.

RULING: Inadmissible in all respects. In this supplemental contention, NIRS/PC focus on two aspects of the staff's FEIS: its discussion of the Envirocare and the WCS facilities as possible disposal sites for depleted uranium, and its analysis of the impacts of geologic repository disposal, in particular Table 4-19 that provides data on the maximum annual exposure from a postulated geologic disposal site previously presented in the staff FEIS for the proposed Claiborne Enrichment Center. Relative to factor (i) regarding good cause, as LES and the staff note, the possibility of using the Envirocare or WCS sites for disposal were both discussed in the staff's DEIS (FEIS at 2-32 to -33). Although there are references in the FEIS to post-DEIS information regarding an amendment to the Envirocare agreement-state license (FEIS at 4-63) and the existence of the memorandum of understanding (MOU) between LES and AREVA, Inc., for construction of a deconversion facility near the NEF from which depleted uranium could then go to the WCS facility for disposal (FEIS at 2-29; see also LES Exh. 80 (AREVA, Inc., and LES, Press Release, "LES and AREVA Sign [MOU] for Deconversion Facility near the [NEF]" at 2 (Feb. 3, 2005)) (February 2005 evidentiary hearing), we do not consider

this information to be significantly/materially different from the DEIS so as to provide an appropriate trigger for a new contention, particularly given that the challenge NIRS/PC ultimately wishes to mount is the lack of any site specific analysis of these or any other possible shallow burial low-level waste disposal sites. The same is true regarding the NIRS/PC challenge to geologic disposal site impacts Table 4-19, which was essentially the same in the DEIS and the FEIS.[17] As such, NIRS/PC has failed to establish good cause for the late filing of this particular issue statement.

In balancing the other factors, we find that the factors regarding the "availability" of other "means" and "parties" to protect their interests, albeit factors with less weight than the other two, weigh in NIRS/PC's favor. Regarding the more weighty "delay" to the proceeding factor, while any addition to the existing issues is likely to embody some broadening of the proceeding and potential delay at this juncture in that it will likely add time to the scheduled fall evidentiary hearings, we do not consider this a significant negative factor. Although there is a rapidly decreasing period that remains before the next evidentiary hearings are scheduled to begin in the fall, given the parties set this schedule for filing and ruling on late-filed contentions, we assume they contemplated they could accommodate additional discovery for admitted late-filed contentions and still maintain the scheduled evidentiary hearing dates. Finally, concerning the "contribute to sound record development" factor, NIRS/PC has shown itself to be a vigorous advocate for its positions thus far in the proceeding and, in the form of a report from Drs. Arjun Makhijani and Brice Smith, has provided some of the information that has been deemed

---

[17] In the FEIS, the staff has revised the Table 4-19 river drinking water pathway maximum annual exposure figures, with the revision for granite seemingly intended to correct an misprint regarding the millirem exposure. In challenging the chart, NIRS/PC has not asserted that these particular changes are significant. See NIRS/PC Motion at 35-40.

necessary to have this factor count in favor of late-intervention. As discussed further below, however, this amendment does not present a "significant, triable issue" and, therefore, NIRS/PC cannot reasonably be expected to contribute to the development of a sound record in this context. See id. As a consequence, to the degree two of the four factors weigh in favor of admitting proposed paragraph D, they do not provide the compelling showing necessary to outweigh the lack of good cause.

2. Admissibility

DISCUSSION: NIRS/PC Motion at 35-40; LES Response at 35-38; Staff Response at 26-27.

RULING: As was noted above, the challenge NIRS/PC ultimately seeks to mount in this proposed contention relative to the Envirocare and WCS sites is the lack of any site specific analysis of these or any other possible shallow burial low-level waste disposal sites. Consistent with the DOE approach in the FEIS for its proposed Paducah, Kentucky, and Portsmouth, Ohio depleted uranium hexafluoride conversion facilities, see LES Exh. 17, at 2-25 ([FEIS] for the Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah, Kentucky Site, DOE/EIS-0359, Oak Ridge Operations, DOE Office of Environmental Management (June 2004)) (February 2005 evidentiary hearing); LES Exh. 16, at 2-27 ([FEIS] for the Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio Site, DOE/EIS-0360, Oak Ridge Operations, DOE Office of Environmental Management (June 2004)) (February 2005 evidentiary hearing), the staff indicated in both the DEIS (at 2-31, 4-58) and the FEIS (at 4-63), that such an analysis would be done during the initial license approval process for disposal at such a low-level waste disposal facility or for an appropriate amendment to an existing facility license. While NIRS/PC

challenges this analysis as an inappropriate deferral of a required cumulative impacts analysis, see NIRS/PC Motion at 39, we are unable to conclude this assertion sets forth a genuine dispute regarding a material legal or factual issue so as to warrant further consideration. See Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-14, 55 NRC 278, 295 (2002); see also LBP-05-13, 61 NRC 385, 436 (2005). Moreover, relative to their concern about the mine disposal alternative discussion, putting aside that NIRS/PC apparently did have access to substantial information regarding the basis for Table 4-19, see LES Response at 38, as NIRS/PC notes, it is "irrelevant to analyze mine disposal if such disposal is not, in fact, intended to be carried out either as the Applicant's proposal or as an appropriate alternative." NIRS/PC Motion at 37. Given the recent LES filing with the Board in which it eschews that alternative as one of its disposal strategies, see LES Plausible Strategy Response at 2, at this juncture the NIRS/PC challenge regarding geologic disposal and Table 4-19 lacks sufficient materiality to warrant admission.

In making this contention admission denial ruling, we note the LES suggestion that, if we were not inclined to reject this contention, we await a Commission decision on the pending NIRS/PC petition for review of the Board's partial initial decision, LBP-05-13, 61 NRC 385 (2005), regarding the four admitted environmental contentions. See LES Response at 35 n.67. While we had decided this contention is not admissible, in light of the challenge raised by NIRS/PC to the staff's evaluation of disposal impacts, it seems appropriate to allow the Commission to have an immediate opportunity to review this environmental contention ruling as well (if it wishes to do so). Thus, in accordance with 10 C.F.R. § 2.323(f), see also CLI-04-3, 59 NRC at 15-16, we refer this portion of our ruling on the NIRS/PC motion to the Commission for its consideration.

III. CONCLUSION

The Board finds the contention amendments/supplement presented by NIRS/PC in its July 2005 motion to be inadmissible because, based on a balancing of the pertinent section 2.309(c) late-filing factors, the lack of good cause for late filing has not been outweighed by a compelling showing regarding the other four pertinent factors, and/or the amended/supplemental issue statements fail to satisfy the substantive admissibility standards of section 2.309(f). Additionally, in accordance with section 2.323(f), the Board finds that its rulings rejecting those contentions should be referred to the Commission for its consideration.

For the foregoing reasons, it is this fourth day of August 2005, ORDERED, that:

1. The July 5, 2005 NIRS/PC motion for admission of late-filed issues is denied in that the NIRS/PC modifications to contentions NIRS/PC EC-3/TC-1 and NIRS/PC EC-5/TC-2 - AGNM TC-i and supplemental contention NIRS/PC EC-9 are rejected as inadmissible for litigation in this proceeding.

2. The Board's rulings on the admissibility of amendments to contentions NIRS/PC EC-3/TC-1 and NIRS/PC EC-5/TC-2 - AGNM TC-I and contention NIRS/PC EC-9 are referred to the Commission in accordance with 10 C.F.R. § 2.323(f).

3. Contention NIRS/PC EC-3/TC-1 is modified in accordance with Appendix A to this issuance.

4. Because the July 5, 2005 NIRS/PC motion and July 20, 2005 LES response involved information that was claimed to be proprietary under 10 C.F.R. § 2.390, at the time of issuance

this decision is being treated as containing proprietary information pending further review. On or before Friday, August 12, 2005, LES, NIRS/PC, and the staff shall provide the Board with a joint filing outlining each (1) proposed redaction from this decision to which there is no objection; and (2) proposed redaction from this decision to which there is an objection. In the event any party seeks a redaction, the particular word or phrase should be specified; blanket requests for withholding are disfavored. Further, in accordance with section 2.390, the party seeking the proposed redaction shall at the same time provide a supplement to the joint report that describes with specificity (as supported by any necessary affidavits) the reasons for withholding each proposed redaction from the public. Responses to proposed redactions by

any party objecting to the redaction shall be filed on or before Friday, August 19, 2005.

Thereafter, following a final ruling on any proposed redactions, the Board will make this decision publically available.

THE ATOMIC SAFETY
AND LICENSING BOARD[18]

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

/RA/

Paul B. Abramson
ADMINISTRATIVE JUDGE

/RA/

Charles N. Kelber
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 4, 2005

[18] Copies of this memorandum and order were sent this date by overnight express delivery to counsel for (1) applicant LES; and (2) intervenors NMED, the AGNM, and NIRS/PC. Copies for counsel for the staff were placed in the agency's interoffice mail.

Appendix A: Modified Contention NIRS/PC EC-3/TC-1

NIRS/PC EC-3/TC-1 -- DEPLETED URANIUM HEXAFLUORIDE STORAGE AND DISPOSAL

CONTENTION: Petitioners contend that Louisiana Energy Service, L.P., (LES) does not have a sound, reliable, or plausible strategy for private sector disposal of the large amounts of radioactive and hazardous Depleted Uranium Hexafluoride ("DUF_6") waste that the operation of the plant would produce in that the statement that "discussions have recently been held with Cogema concerning a private conversion facility" (ER 4.13-8) is without substance.