

RAS 10637

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 10/20/05

SERVED 10/20/05

Before Administrative Judges:

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

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

October 20, 2005

MEMORANDUM AND ORDER

(Ruling on In Limine Motions Regarding Prefiled Exhibits and Rebuttal Testimony)

Pending before the Licensing Board are several motions related to the prefiled rebuttal testimony and the prefiled exhibits relative to the upcoming evidentiary hearing in this proceeding, including (1) two separate motions filed on October 7, 2005, by applicant Louisiana Energy Services, L.P. (LES) and the NRC staff, each seeking to exclude certain prefiled exhibits of intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) relative to admitted contentions NIRS/PC Environmental Contention (EC)-3/Technical Contention (TC)-1 – Depleted Uranium Hexafluoride Storage and Disposal; NIRS/PC EC-5/TC-2 – Decommissioning Costs; and NIRS/PC EC-6/TC-3 – Costs of Management and Disposal of Depleted UF₆; (2) two separate motions filed on October 14, 2005, by LES and the staff, each seeking to exclude certain prefiled rebuttal testimony of principal NIRS/PC witness Dr. Arjun Makhijani relative to contentions EC-3/TC-1, EC-5/TC-2, and EC-6/TC-3; and (3) an October 18, 2005 motion by NIRS/PC seeking an extension of time in which to file revised prefiled direct and rebuttal testimony. The Board's rulings on these motions are set forth below,

as well as administrative directives regarding further party filings to address these rulings and other matters.

I. IN LIMINE MOTIONS REGARDING PREFILED REBUTTAL TESTIMONY

A. LES and Staff Motions to Exclude Portions of Arjun Makhijani's Deconversion Testimony

DISCUSSION: [LES] Motion In Limine to Exclude Portions of the Prefiled Rebuttal Testimony of Arjun Makhijani Concerning Contentions NIRS/PC EC-3/TC-1, EC-5/TC-2, and EC-6/TC-3 (Oct. 14, 2005) at 1-5 [hereinafter LES Motion]; NRC Staff's Motion In Limine to Exclude [NIRS/PC] Rebuttal Testimony (Oct. 14, 2005) at 1-4 [hereinafter Staff Motion]; Memorandum on Behalf of [NIRS/PC] In Response To Applicant's Motion In Limine to Exclude Portions of the Prefiled Rebuttal Testimony of Arjun Makhijani and NRC Staff Motion In Limine to Exclude NIRS/PC Rebuttal Testimony (Oct. 19, 2005) at 1-6 [hereinafter NIRS/PC Response].

RULING: LES and the staff each object to question and answer twelve of Dr. Makhijani's testimony that they allege seeks improperly to reintroduce testimony stricken by this Board in the context of our October 4, 2005 ruling on in limine motions relative to Dr. Makhijani's prefiled direct testimony. As we made clear in our October 4 memorandum and order, the purpose of rebuttal testimony is not to reintroduce testimony that the Board has previously stricken. See Licensing Board Memorandum and Order (Ruling on In Limine Motions and Motion to Dismiss) (Oct. 4, 2005) at 17 (unpublished) [hereinafter October 4 Order]. As LES points out, much of the testimony LES and the staff now seek to exclude is virtually identical to certain prefiled direct testimony by Dr. Makhijani that we struck in our October 4 ruling. Accordingly, we grant the LES and staff motions relative to that testimony. In addition, because question eleven and the answer thereto serve no purpose other than to provide context for the testimony we strike with our instant ruling, we grant the LES motion as to that testimony as well.

LES next seeks to exclude what it views as an entirely new argument by Dr. Makhijani concerning the cost of management of empty DUF₆ cylinders. NIRS/PC, on the other hand,

assert that this is not an impermissible “new argument,” but instead addresses an omitted cost element. The testimony at issue arguably falls within the bounds of an element of decommissioning “whose costs have not been included in the estimated costs for the DOE disposal option.” See October 4 Order at 7-8. Accordingly, we deny the LES motion relative to the issue of cost of management of empty depleted uranium cylinders.¹

Finally, LES challenges a portion of Dr. Makhijani’s testimony in which he presents his revised estimate for the overall cost of dispositioning DUF₆. In our October 4 memorandum and order, we made clear our interest in hearing testimony from NIRS/PC (in the context of prefiled rebuttal testimony) relative to cost estimates that might challenge or contradict certain LES cost estimates. See October 4 Order at 5. We made equally clear, however, that such testimony should not incorporate any subject matter the Board previously had declined to hear, including deconversion to UO₂ and uranium toxicity to women. See id. In his prefiled rebuttal testimony, Dr. Makhijani incorporates a discussion of such matters, noting that he is merely stating matters not included in the cost estimates per the Board’s instruction. While these matters are not included in the cost estimates, both have been previously excluded and we do not find them to be of the nature which will meaningfully add to our deliberations. We therefore grant the LES motion relative to this portion of Dr. Makhijani’s testimony.

In summary, the LES and staff motions in limine relative to Dr. Makhijani’s deconversion testimony are granted in that the testimony is stricken as follows: (1) question eleven and the answer thereto, in their entirety; (2) question twelve and the answer thereto, in their entirety;

¹ In this regard, LES and the staff can cross-examine Dr. Makhijani on this issue, and likewise provide oral surrebuttal testimony on this issue at the appropriate time during the presentation of evidence relative to deconversion issues. Further, to the extent this ruling requires revision to the cross-examination plans submitted to the Board by the staff and LES on, respectively, October 18 and October 19, 2005, those parties should provide the Board with revised copies of their cross-examination plans at the beginning of the hearing on Monday, October 24, 2005.

and (3) in answer fourteen, the text on page twenty-one beginning with “Unlike the cost estimates” and ending on page twenty-two with “geologic disposal than U3O8.”

B. LES Motion to Exclude Portions of Arjun Makhijani’s Transportation Testimony

DISCUSSION: LES Motion at 1-2, 6; NIRS/PC Response at 1-3, 6.

RULING: LES again challenges a portion of Dr. Makhijani’s testimony in which he presents his revised estimate for the overall cost of dispositioning DUF_6 , incorporating subject matters which the Board has repeatedly declined to consider. Because the identified testimony is identical to that which we strike above in the context of Dr. Makhijani’s deconversion testimony, for the reasons set forth above we grant the LES motion as to this issue, and strike that portion of answer four beginning on page four with “Unlike the cost estimates” and ending on that page with “geologic disposal than U3O8.”

C. LES and Staff Motions to Exclude Portions of Arjun Makhijani’s Disposal Testimony

DISCUSSION: LES Motion at 1-2, 6-8; Staff Motion at 1-2, 4-5; NIRS/PC Response at 6, 7-8.

RULING: We deal first with the LES and staff motions to exclude Dr. Makhijani’s testimony in response to question eleven relative to the suitability of the Envirocare site for disposal of depleted uranium from the National Enrichment Facility (NEF). The testimony LES and the staff seek to exclude is, in large part, virtually identical to testimony we struck in the context of Dr. Makhijani’s prefiled direct testimony regarding disposal, and we have made clear that the purpose of rebuttal testimony is not to reintroduce testimony the Board has previously stricken. Portions of the challenged testimony do, however, discuss issues we previously have found relevant to the issues at hand, or duplicates testimony we declined to exclude in the context of Dr. Makhijani’s prefiled direct testimony. Accordingly, we grant in part and deny in part the LES and staff motions as to this issue and strike portions of that testimony as outlined below.

LES also seeks to exclude testimony by Dr. Makhijani regarding question five relative to concentration limits on radium-226, which LES asserts is irrelevant to the disposal of depleted uranium. We deny the LES motion as to this testimony. As we indicated in our October 4 in limine ruling, the Commission has left for Board consideration the issue of whether near-surface disposal of depleted uranium from the NEF will ultimately be appropriate. See CLI-05-5, 61 NRC 22, 34-35, 35 n.64 (2005). Such a determination may include consideration of whether the properties of depleted uranium from the NEF are comparable or similar to those of radioactive materials that require more than near-surface disposal. Therefore, Dr. Makhijani's testimony relative to radium-226 is appropriately within the scope of this admitted subject matter.

LES next challenges a portion of Dr. Makhijani's testimony in his response to question twelve regarding DOE statements relative to near-surface or shallow land disposal of depleted uranium. As we note above, the appropriateness of near-surface disposal of depleted uranium from the NEF is at issue in this proceeding. Accordingly, we deny the LES motion as to this testimony. Relatedly, LES also seeks to strike a statement by Dr. Makhijani in answer fourteen relative to the classification of depleted uranium and the basis for near-surface disposal. For the same reasons we decline to exclude Dr. Makhijani's testimony regarding the DOE statements, we deny the LES motion in this context as well.

Finally, LES again challenges a portion of Dr. Makhijani's testimony in which he presents his revised estimate for the overall cost of dispositioning DUF₆, incorporating subject matters the Board has repeatedly declined to consider. Because the identified testimony is identical to that we strike above in the context of Dr. Makhijani's deconversion and transportation testimonies, we grant the LES motion as to the instant testimony.

To summarize, the LES and staff motions in limine relative to Dr. Makhijani's disposal testimony are granted in that the testimony is stricken as follows:

- (1) In answer eleven, (a) the text on page fifteen beginning with "In early February 2005" and ending on that page with "on February 25, 2005," (b) the text beginning on page sixteen with "The fact that Envirocare" and ending on page eighteen with "exceed this concentration limit," and (c) the text beginning on page eighteen with "The results of our" through the end of the answer; and
- (2) In answer sixteen, the text on page twenty-four beginning "Unlike the cost estimates" and ending on page twenty-five with "geologic disposal than U3O8."

D. LES and Staff Motions to Exclude Portions of Arjun Makhijani's Contingency Factor Testimony

DISCUSSION: LES Motion at 1-2, 8-10; Staff Motion at 1-2, 6; NIRS/PC Response at 1-3, 4-5, 8-10.

RULING: We deal first with the LES and staff challenges to Dr. Makhijani's testimony in connection with question six relative to determinations regarding the method for disposal of depleted uranium. Because we find that portions of the contested testimony fall outside the scope of what is relevant for the contingency factor, including the issue of licensing delays on which we have previously declined to allow testimony, we grant in part the LES and staff motions.

LES also seeks to exclude a portion of Dr. Makhijani's testimony in response to question five regarding the Portsmouth deconversion plant. This testimony arguably provides support for NIRS/PC's claim that a larger contingency factor is required, and we therefore deny the LES motion as to this testimony.

LES next challenges testimony by Dr. Makhijani relative to questions seven and eight regarding an appropriate contingency factor to be applied to DOE cost estimates. To the extent such testimony incorporates testimony we have previously stricken in the context of Dr. Makhijani's prefiled direct testimony, or discusses issues we have previously excluded in the

context of this proceeding (e.g., licensing delays), that testimony is not appropriate here.

Accordingly, we grant in part the LES motion relative to this issue.

Finally, LES again seeks to exclude a portion of Dr. Makhijani's testimony in response to question nine regarding his revised estimate for the overall cost of dispositioning DUF₆, which incorporates subject matters which the Board has repeatedly declined to consider. For the reasons set forth in our rulings on this matter in the context of Dr. Makhijani's deconversion, transportation, and disposal testimonies, we grant the LES motion as to this issue.

In summary, the LES and staff motions in limine relative to Dr. Makhijani's contingency factor testimony are granted in that the testimony is stricken as follows:

- (1) In answer six, (a) the phrase on pages seven to eight "As detailed in the November 2004 and July 2005 reports and my direct testimony," and (b) the text beginning on page eight with "In particular, the annual" and ending on page eleven with "independent scientific bodies";
- (2) In answer eight, (a) the text beginning on page twelve with "Significantly, as noted in" and ending on page fourteen with "25 percent for this option," and (b) the text beginning on page fourteen with "Further, the size of" through the end of the answer on page fifteen; and
- (3) In answer nine, the text beginning on page fifteen with "Unlike the cost estimates" and ending on page sixteen with "geologic disposal than U3O8."

II. IN LIMINE MOTIONS REGARDING EXHIBITS AND ADDITIONAL MATTERS

DISCUSSION: Motion in Limine on Behalf of [LES] Concerning Exhibits of [NIRS/PC] (Oct. 7, 2005) at 5-12; Staff Motion in Regard to Objections to NIRS/PC Hearing Exhibits (Oct. 7, 2005) at 1-3; Memorandum on Behalf of Intervenors [NIRS/PC] In Response to Motion in Limine on Behalf of [LES] Concerning Exhibits of NIRS/PC and Staff Motion in Regard to Objections to NIRS/PC Hearing Exhibits (Oct. 12, 2005), at 2-7.

In motions submitted October 7, 2005, LES and the staff make various assertions regarding which of the many exhibits proffered by NIRS/PC in support of its prefiled direct and rebuttal testimony are appropriate for admission into the evidentiary record of this proceeding.

In most instances, NIRS/PC disagrees with the LES and staff positions regarding the admissibility of its exhibits.

In reviewing these motions, the Board takes a practical, straightforward approach, consistent with our previous rulings regarding testimony and exhibits. As we noted in our October 13, 2005 issuance regarding the October 7 LES and staff motions, “each reference provided in the prefiled direct or rebuttal testimony of any of the witnesses/panels providing testimony on behalf of LES, the staff, or NIRS/PC to a prefiled exhibit with a length greater than five (5) pages shall be modified to refer, along with the citation to the specific exhibit, to the specific pages or other distinct portion of that exhibit that directly support the specific testimony.” Licensing Board Memorandum and Order (Regarding Motions to Exclude Certain NIRS/PC Exhibits) (Oct. 13, 2005) at 3 (unpublished).

Putting aside for the moment the issue of the status of the November 2004 and July 2005 reports of Dr. Makhijani and Smith, which have been proffered respectively as NIRS/PC Exhibits 190 and 224, and the documentary material referenced therein, a matter we address in section III below, in accord with our October 13 order we have reviewed the October 18 prefiled revised direct and rebuttal testimony of Dr. Makhijani relative to the supporting materials cited therein. Based on that review, and taking into account in limine rulings in section I above regarding his rebuttal testimony, we find that the following NIRS/PC prefiled exhibits would be admissible and so deny the LES and staff motion relative to those exhibits:²

² In this regard, we also note that the following NIRS/PC exhibits cited in its prefiled testimony were not the subject of an admissibility challenge: 58, 85, 100, 105, 134, 152, 169, 185, 191, 193, 195, 203, 204, 205, 206, 221, 222, and 226. It should be noted as well, however, to the degree these exhibits contain various references to and discussion of subject matters previously excluded by this Board as outside the scope of any remaining contested issue in this proceeding (e.g., uranium health effects to women, licensing delays) or provide information on matters not within the scope of the issues being adjudicated, our admission of these exhibits comes with the limitation that these discussions are without evidentiary

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55, 56,³ 96, 98, 99, 106, 109, 111, 117, 122, 128, 150, 151, 186,
188, 201, 229, 249, 259, 260, 262, 263, and 264.

Conversely, those exhibits not listed above or in note 2 (or included in NIRS/PC's final revision of Dr. Makhijani's prefiled testimony, as discussed further in section III below) will not be admitted by the Board as evidence in the evidentiary record in support of the prefiled testimony of Dr. Makhijani.⁴ They may, however, be used as exhibits for cross-examination or in support of surrebuttal, as appropriate, with the exhibit number currently assigned by NIRS/PC.

III. MOTION FOR EXTENSION OF TIME

DISCUSSION: Motion on Behalf of Intervenors [NIRS/PC] for Extension of Time to Comply with Order Dated October 17, 2005 (Oct. 18, 2005); Applicant's Response to Motion on Behalf of Intervenors [NIRS/PC] for Extension of Time to Comply With Order Dated October 17, 2005 (Oct. 18, 2005); NRC Staff Response to Motion on Behalf of Intervenors [NIRS/PC] for Extension of Time to Comply with Order Dated October 17, 2005 (Oct. 18, 2005).

As was noted above, in the context of our review of the LES and staff motions to preclude certain NIRS/PC prefiled exhibits from becoming part of the evidentiary record, in our

²(...continued)

significance except to the limited extent they provide context for the relevant portions of those exhibits.

³ In at least one instance, see Revised Direct Testimony of Dr. Arjun Makhijani In Support of NIRS/PC Contentions EC-3/TC-1, EC-5/TC-2, and EC-6/TC-3 Concerning LES's Deconversion Strategy and Cost Estimate (Oct. 18, 2005) at 14 n.23, Dr. Makhijani's testimony cites to an exhibit 56A. We take this to mean that, in accord with section A.3.b of the Board's September 14, 2005 memorandum and order, see Licensing Board Memorandum and Order (Regarding Administrative Matters Relative to October 2005 Evidentiary Hearing) (Sept. 14, 2005) at 5, NIRS/PC designated previously-admitted exhibit NIRS/PC 56 as "56A" because LES challenged the admissibility of NIRS/PC 56 in some regard in the context of this hearing. Because we deny the LES challenge to this exhibit, NIRS/PC need not resubmit exhibit NIRS/PC 56 as "56A," and may instead rely on previously-admitted NIRS/PC 56 in support of the relevant proffered testimony of Dr. Makhijani.

⁴ Under the circumstances, we see no reason to have them identified on the record at the hearing and then rejected by the Board. The parties positions regarding their admission and the Board ruling on their admissibility is clear for the purposes of any future appeals.

October 13 order we made clear that when exhibits are being provided in conjunction with prefiled testimony, the testimony should include a clear reference to the exhibit, including a citation to the pages or other discrete portion of the document that is being relied upon as support. In that order, we also provided all the parties with an additional opportunity to ensure that their prefiled testimony conformed to these precepts. Additionally, so there would be no uncertainty regarding the appropriate manner for referencing supporting material, by issuance dated October 17, 2005, we advised the parties that “incorporation by reference of a document or documents as purported testimony or as evidentiary exhibits, including the incorporation by reference of documents cited in another document, is not an acceptable practice.” Licensing Board Memorandum and Order (Regarding October 13, 2005 Memorandum and Order) (Oct. 17, 2005) at 1 (unpublished). In response to that order, NIRS/PC now requests an extension of time to amend its prefiled testimony to reformat it to include relevant portions of two documents -- the November 2004 and July 2005 reports by Drs. Makhijani and Smith -- that they had previously referenced in Dr. Makhijani’s testimony as part of that testimony.

We deny the motion, finding what NIRS/PC proposes is unnecessary. To be sure, in their original form the two reports were not appropriate for use as prefiled testimony, given they had two authors (only one of which was proffered as a witness before the Board) and were not in a question and answer format. The two reports, however, have been marked as exhibits -- NIRS/PC Exhibits 190 and 224 respectively -- that have been cited in different portions of the prefiled testimony as supporting various propositions put forth by Dr. Makhijani.⁵ As such, with

⁵ In admitting the November 2004 and July 2005 reports, we note (as did the staff in its motion in limine regarding exhibits) that they contain various references to and discussion of subject matters previously excluded by this Board as outside the scope of any remaining contested issue in this proceeding (e.g., uranium health effects to women, licensing delays) or provide information on matters not within the scope of the issues being adjudicated. Our admission of these reports, in toto, as exhibits comes with the limitation that they are without
(continued...)

one exception, we fail to see the necessity for any additional reformatting of those reports or the prefiled testimony they are intended to support. The exception is this: in those instances in which specific portions of those reports have been cited as substantive support for Dr. Makhijani's testimony, his prefiled testimony may be amended to include references to the supporting material that is cited in the footnotes or text of the specific pages of NIRS/PC Exhibit 190 or 224 referenced in the testimony, but only if those supporting materials have previously been identified as prefiled exhibits in this proceeding.⁶

Finally, so that their original fidelity is maintained, the copies of these reports proffered for admission as exhibits should be those versions initially provided to the Board that did not

⁵(...continued)
evidentiary significance except to the limited extent they provide context for the specifically-referenced, relevant portions of those documents.

⁶ As to Dr. Makhijani's prefiled testimony, adding a citation in his testimony to the supporting report materials previously provided as prefiled exhibits (including the specific pages of the exhibit that supports the reference) would be appropriate as to the following:

Revised Deconversion Direct Testimony (Oct. 18, 2005): Page 7
Deconversion Rebuttal Testimony (Oct. 18, 2005): Note 26; Note 46

Revised Transportation Direct Testimony (Oct. 18, 2005): Page 7
Transportation Rebuttal Testimony (Oct. 18, 2005): Note 7

Revised Disposal Direct Testimony (Oct. 18, 2005): Page 7; Note 24; Note 38; Note 50.
Disposal Rebuttal Testimony (Oct. 18, 2005): Page 5; Note 17; Note 43

Revised Contingency Direct Testimony (Oct. 18, 2005): Page 7; Note 7; Note 23
Contingency Rebuttal Testimony (Oct. 18, 2005): Note 24

Adding supporting exhibit citations would not be appropriate for the report references on: Revised Deconversion Direct Testimony, Pages 5-6; Revised Transportation Direct Testimony Pages 5-6; Revised Disposal Direct Testimony Pages 5-6; and Revised Contingency Direct Testimony Pages 5-6, which are of a background rather than a substantive nature. Likewise, NIRS/PC should not provide supporting exhibit citations for report references found in those portions of Dr. Makhijani's prefiled rebuttal testimony that we have stricken with our rulings in section I above (e.g., Deconversion Rebuttal Testimony, Note 37) or for those instances in which it has cited one of these reports, but not provided a specific page reference (e.g., Revised Deconversion Direct Testimony at 10).

contain the NIRS/PC prefiled exhibit numbers as identifiers for the various items cited as supporting material in the reports' text and footnotes (i.e., those versions of the reports provided on September 22, 2005).

IV. ADMINISTRATIVE MATTERS

With the above rulings, certain revisions to and exclusions from NIRS/PC prefiled rebuttal testimony are required. The Board therefore requests that on or before 2:00 p.m. Eastern Time (ET) on Friday, October 21, 2005, NIRS/PC submit revised versions of the prefiled rebuttal testimony of Dr. Makhijani that omits all of the text (and associated footnotes) we have stricken by the above rulings and renumbers the questions to reflect stricken questions,⁷ and, to the extent NIRS/PC wishes to do so, incorporates citations to those exhibits cited in specific portions of the November 2004 and July 2005 reports, as delineated in section III above. This is not an opportunity to rephrase, add to, or otherwise substantively alter previously submitted prefiled rebuttal testimony, but should be used only to eliminate stricken testimony (and correct any syntax issues that may arise as a result of the Board's ruling). At this time (i.e., on or before 2:00 p.m. ET on Friday, October 21, 2005), NIRS/PC may also submit a final revised version of Dr. Makhijani's prefiled direct testimony incorporating the Board's ruling in section III above, relative to the inclusion of exhibits referenced in the relevant portions of the November 2004 and July 2005 reports.

As the Board noted in its October 4 in limine ruling relative to Dr. Makhijani's prefiled direct testimony, see October 4 Order at 18-19, the fact the Board has determined that certain

⁷ As with the revisions to Dr. Makhijani's prefiled direct testimony, the Board requests that NIRS/PC provide a clean copy of Dr. Makhijani's revised prefiled rebuttal testimony, i.e., with the stricken testimony (and associated footnotes) deleted from the text, as opposed to "overlining" or "blacking out" that stricken testimony.

witness testimony should be stricken does not mean that NIRS/PC is no longer able to prevail relative to the contention or portion of the contention that witness was intended to address. NIRS/PC still have the opportunity to make their case in support of their proffered safety contentions on the basis of oral cross-examination of LES and staff witnesses relative to their direct and rebuttal testimony.

In addition, as we indicated in note 1 supra, to the extent any of our foregoing rulings require revision to the cross-examination plans submitted to the Board by the staff and LES on, respectively, October 18 and October 19, 2005, those parties may provide the Board with revised copies of their cross-examination plans at the beginning of the hearing on Monday, October 24, 2005.

Finally, in the Board's September 22, 2005 order regarding administrative matters related to the upcoming hearing, we noted our intent to hold, at the conclusion of the presentations on contested issues, a brief dialogue with LES and the staff regarding the mandatory hearings in this proceeding. See Licensing Board Memorandum and Order (Additional Administrative Matters) (Sept. 22, 2005) at 3 (unpublished). LES and the staff need not prepare any presentations or statements in this regard. Rather, by reason of its ongoing review of documents submitted by LES and the staff, the Board plans to take this opportunity to provide LES and the staff with additional guidance regarding several issues upon which the Board intends to focus its inquiry during the mandatory hearing.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁸

⁸ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors NIRS/PC; and (3) the staff.

/RA/
G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 20, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (RULING ON IN LIMINE MOTIONS REGARDING PREFILED EXHIBITS AND REBUTTAL TESTIMONY) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-3103-ML
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 20th day of October 2005