

RAS 10705

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

DOCKETED 11/03/05

SERVED 11/03/05

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

November 3, 2005

MEMORANDUM AND ORDER
(Regarding Post-Hearing Administrative Matters)

On October 27, 2005, the Licensing Board concluded a four-day evidentiary hearing regarding the contested issues in this proceeding. The Board provides the following administrative directives relative to that recently-concluded hearing:

A. Hearing Transcripts and Exhibits

1. Transcript and Exhibit Corrections. The parties should review the transcripts of this evidentiary hearing and provide the Board with any substantive transcript corrections on or before Friday, November 18, 2005. By this date, the parties should also inform the Board whether the exhibits submitted at the evidentiary hearing require any correction, e.g., renumbering of exhibits.

2. Status of Certain NIRS/PC Exhibits. During the evidentiary hearing the Board expressed, off the record, to counsel for intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) concern regarding the format in which NIRS/PC Exhibit 186 was submitted for the evidentiary record. At that time, the Board stated that it would discuss with the NRC Office of the Secretary the best way to transfer that exhibit, which was submitted on a

computer disk as a password-protected, read-only file not capable of being printed. The Board now requests that NIRS/PC obtain either a hard copy of that exhibit that the Board may include in the record, or a printable version of the electronic document already submitted. A hard copy or printable version of that document should be submitted for the record on or before Friday, November 18, 2005.

Two NIRS/PC exhibits, NIRS/PC 96 and 98, were identified for the record, but no subsequent action was taken with regard to their admission. Consistent with discussions on the record, see, e.g., Tr. at 2445-46, we now denote those exhibits as rejected.

3. Redaction of Proprietary Information. At the conclusion of the evidentiary hearing, counsel for Louisiana Energy Services, L.P., (LES) indicated to the Board that it would attempt to complete within a week to ten days the process of presenting the Board and parties with proposed redactions to, at a minimum, the transcripts for the closed hearing sessions so that those transcripts may be made publicly available. See Tr. at 3161-62. The Board then indicated that LES should confer with the other parties regarding those proposed redactions before bringing those to the Board. See id. Based on this timeline identified by LES, the parties should file with the Board on or before Tuesday, November 8, 2005, a joint report outlining, at a minimum, the parties' proposal for dealing with the redaction of allegedly proprietary information from the transcript of the closed hearing sessions and associated proprietary exhibits.

4. Status of Evidentiary Record. As the Board indicated at the conclusion of the October 24-27, 2005 evidentiary hearing, the record of that evidentiary hearing remains open pending Board determination of whether additional evidentiary presentations are necessary relative to certain of the matters remanded to the Board by the Commission's October 19, 2005 ruling in CLI-05-20, 62 NRC __ (Oct. 19, 2005).

B. Schedule for Party Filings

1. Summary Disposition Motions. At the conclusion of the October evidentiary hearing, counsel for the NRC staff and NIRS/PC indicated that they may potentially seek to file cross-motions for summary disposition regarding issues related to remanded portions of contention NIRS/PC EC-4 – Impacts of Waste Storage and Disposal. See Tr. at 3156. Those parties indicated that they would discuss an appropriate timeline for such filings, given the schedule established for party proposed findings of fact and conclusions of law relative to those matters litigated at the evidentiary hearing. In this regard, assuming one or more dispositive motions have not been filed, the staff and NIRS/PC should file with the Board on or before Tuesday, November 8, 2005, a joint report indicating the proposed schedule for any summary disposition motions and party responses, bearing in mind the scheduling parameters for such filings as set forth in 10 C.F.R. § 2.710(a).¹ If the staff and NIRS/PC are unable to agree on such a proposed schedule, each should file with the Board on or before November 8 their individual proposed schedule for such filings and the Board will establish a schedule on that basis.

2. Proposed Findings of Fact/Conclusions of Law. Pursuant to the general schedule established by the Board in Appendix A to its August 16, 2004 memorandum and order, as modified by an August 12, 2005 memorandum and order, see Licensing Board Memorandum and Order (Memorializing Results of Prehearing Conference) (Aug. 12, 2005) at 3 (unpublished), party proposed findings of fact and conclusions of law should be provided to the

¹ In proposing such a timeline, the staff and NIRS/PC should keep in mind the Board's expressed preference that summary disposition motions be filed between approximately November 7 and November 17, 2005. See Tr. at 3159-60. Also, as the Board previously noted, motions are limited to ten pages absent Board pre-approval to exceed this page limit. See Licensing Board Memorandum and Order (Initial Prehearing Order) at 6 (Apr. 15, 2004) (unpublished).

Board and opposing parties on or before Wednesday, November 30, 2005, with reply findings of fact and conclusions of law due on or before Friday, December 23, 2005.²

As the Board advised in its October 4, 2005 memorandum and order, see Licensing Board Memorandum and Order (Ruling on In Limine Motions and Motion to Dismiss) (Oct. 4, 2005) at 3-4, 4 n.1 (unpublished), the parties as part of their proposed findings should include a discussion regarding what they believe is the legal standard that defines a “plausible strategy.”

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 3, 2005

² In drafting proposed findings of fact and conclusions of law, parties should bear in mind the Board’s concern that the filings remain concise statements of the parties’ respective positions on the issues in this hearing.

³ 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.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REGARDING POST-HEARING ADMINISTRATIVE MATTERS) 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
LB MEMORANDUM AND ORDER (REGARDING
POST-HEARING ADMINISTRATIVE MATTERS)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of November 2005