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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.

ASLBP No. 04-826-01-ML

**RESPONSE ON BEHALF OF INTERVENORS
NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN
TO MOTION BY LOUISIANA ENERGY SERVICES, L.P.
TO SUPPLEMENT THE RECORD**

Preliminary statement

This response is submitted on behalf of Intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") in response to the motion by the Applicant, Louisiana Energy Services, L.P. ("LES") to Supplement the Record, filed November 29, 2005, pursuant to the Order of the Atomic Safety and Licensing Board (The "Board") dated November 29, 2005.

Argument

By its latest application LES continues its pattern of presenting cost estimates supported by undocumented, unreasonable assumptions, attributed to unavailable witnesses. See, e.g., LES Ex. 110 (concerning transportation costs), LES Ex. 115 (concerning costs of neutralizing HF). Thus, LES seeks to introduce important segments of the evidence through hearsay documents, so that the bases for assertions contained in such documents cannot be examined, and there is no opportunity to cross-examine either LES witnesses or Staff witnesses about LES's new factual

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SECY-02

assertions. If such approach is condoned, LES may, in effect, obtain summary disposition of major issues on a paper record, without following the established procedure under 10 CFR 2.710.

By statute, 42 U.S.C. 2243(b)(1), the licensing of a uranium enrichment facility must be based upon an adjudicatory hearing on the record—*i.e.*, based upon testimony before the Board. Moreover, the hearing notice (69 Fed. Reg. 5873, Feb. 6, 2004) instructs the Board to conduct hearings upon the admitted contentions. Now LES, the Applicant, who bears the principal burden of proof, seeks to introduce new unsworn opinions on key issues into the record—without the hearing and other safeguards that Congress, the Commission and the Board have worked to preserve. LES's attempt should be rejected.

At the hearing in October the Board expressly recognized that, if additional evidence were introduced on issues of return on investment or cylinder management, it would be necessary to allow further cross-examination of the witnesses who testified on deconversion. The evidence offered by LES should not be admitted without allowing such testimony. (Tr. 2230).

a. Return on investment.

LES now tells the Board that it has calculated the necessary return on investment of funds used to construct a deconversion plant. As the Board is aware, return on investment was the subject of vigorous inquiry in the October hearings. LES's calculation clearly should have been presented at that time and scrutinized by the parties and the Board.

LES now says in its post-hearing letter that it has calculated that \$0.40 per kgU will cover the return on investment to build the deconversion plant, based upon an assumed 10% cost of money and an assumed amortization period of 17 years. (LES Mot., Att. at LES-06018). LES's new estimate varies significantly from evidence given in the hearings. Dr. Makhijani analyzed

the deconversion plant project like a mortgage, assuming a 16 year operating life and a 10% cost of money. (Tr. 2363-64). With an expected throughput of 110,000,000 kgU and a 16 year life, about 7,000,000 kgU would be processed annually. Assuming LES's estimated value of \$2.67 per kgU, and operating and maintenance costs of \$12,500,000, he assumed that the difference—\$6,190,000—is available for debt service, return on equity, and other costs. However, he testified that, at a 10% return, the annual debt service on investment in the plant (amortization and interest or dividends) is \$11,000,000. (Tr. 2356-70). Thus, about \$4,800,000 would be uncovered by revenues—about \$0.64 per kgU. (Tr. 2365).

LES's much lower estimate of \$0.40 is unexplained. LES's new figure may have been arrived at by assuming that only the \$70 million construction cost need be financed, which would be a mistake, since the total up-front cost is \$88 million, when licensing and engineering costs are included. (LES Ex. 92). But, without a chance to examine the LES witnesses, the parties and the Board can only speculate about the origin of LES's numbers.

In this situation, NIRS/PC strongly object to the Board's receipt of LES's new evidence on return on investment, where:

1. None of the new material on return on investment was identified in the LES answers to interrogatories, describing how LES calculated costs of deconversion. (NIRS/PC Ex. 221).
2. None of the new material was mentioned in the depositions of LES's witnesses on deconversion costs. At the deposition, LES's witness, Leslie Compton, said that the LES estimate *did not include* a calculation of return on investment. (Sept. 2, 2005 deposition at 61).

3. None of the new material was included in prefiled testimony, either direct or rebuttal, required by the Board's schedule.
4. There is no explanation of how the return on investment figure, \$0.40 per kgU, was derived, except the assertion that it reflects a 10% return and a 17 year amortization.
5. No documents of any kind—much less supporting backup information showing how the numbers were developed—have been produced by LES in discovery. There is not even a computer spread sheet showing how a supposed 10% return converts to \$0.40 per kgU.
6. The new LES estimate appears to be seriously in error.
7. LES has identified no witness as an expert who stands behind the number. LES does not offer to allow the witness who prepared these figures to be deposed, and he or she is unavailable for the Board to cross-examine.

The estimate offered by LES, having no demonstrable derivation or explanation, cannot possibly constitute the type of estimate based upon "documented and reasonable assumptions" that the Commission's guidance requires. (NUREG-1757, NIRS/PC Ex. 249 at 4-10).

Moreover, LES's new evidence on deconversion plant financing begs the question: Does the Staff accept the new return on investment calculation, and if so can the Staff explain and support the figure? Neither the parties nor the Board should be required to accept a new calculation of deconversion costs without hearing testimony from the Staff about it. LES's approach leaves no opportunity for such inquiry. The purported estimate should be rejected.

b. Cylinder washing and disposal.

LES's estimate of costs for cylinder cleaning and disposal should likewise be rejected.

None of the prehearing disclosures by LES included an estimate of the cost of cylinder washing and disposal:

1. It was not contained in the LES interrogatory answers. See NIRS/PC Ex. 221.
2. It was not set forth in the testimony offered by LES on deposition. At the deposition, Mr. Krich stated that he did not believe that decommissioning financial assurance should include cylinder washing. (Sept. 2, 2005 deposition at 159-60).
3. It was not in the LES prefiled testimony, either direct or rebuttal.

At the hearing, when NIRS/PC sought to show that the costs of cylinder washing and disposal had not been accounted for in LES's cost estimate, LES's witnesses testified as follows:

1. Mr. Krich acknowledged, as seems obvious, that all cylinders in inventory would be contaminated with DUF6. (Tr. 1970-71).
2. Mr. Krich assumed that, if a third party took over decommissioning the NEF, it could send the DUF6 cylinders to the deconversion plant, and only those cylinders needing their five-year certification would need to be cleaned before being recycled. (Tr. 1969). In so testifying, Mr. Krich was assuming that the deconversion plant continued to be a going concern. (Tr. 1987). However, he could not state that it would be commercially viable to market the DUF6 containers remaining after deconversion. (Tr. 1977).
3. Mr. Krich testified, reportedly based upon information from Cameco, that Cameco can clean a cylinder to free release standards, using washing and sandblasting (Tr. 2309), and that this process is less expensive than washing and recertifying. (Tr.

2309-10). Mr. Krich had little further information about Cameco's methods. (Tr. 2326).

4. At the hearing Mr. Krich gave certain cost estimates. (Tr. 1981, 2310). LES now states that the cost of cylinder management would be about \$0.58 to 0.60 per kgU. (LES Mot., Att. at LES-06017).
5. Addressing disposal costs, Mr. Krich said that the stiffening rings are the most contaminated. (Tr. 1990). He did not say that no other parts were contaminated or needed cleaning. The Board said that it should be assumed that we take the whole cylinder. (Tr. 1990).

The letter now proffered contains little additional information. Important questions are unanswered. For example, in estimating the cost of managing the DUF6 cylinders by a third party, does LES assume that the cylinders may be cleaned to less-than-free-release standards, and then recycled into an active commercial enrichment market? Or does LES assume that the cylinders must be cleaned to free release limits? Is there factual basis for the statement, attributed to Cameco, that cylinders can be cleaned to free release limits for less than the cost of washing and recertifying? How is the cost of cylinder "disposal," which appears in the Urenco business study, calculated? Is this Urenco cost estimate the basis for the \$0.58 to 0.60 cost cited by LES? Is the Urenco estimate, presumably based upon European disposal requirements, applicable in the United States? Is the Urenco estimate based upon a quotation from a third party or is it an in-house estimate by Urenco?

Since LES has not produced any documents underlying the calculations that it offers, none of these questions are answered. Again, LES has clearly failed to meet the test of

“documented and reasonable assumptions” that the Commission’s guidance requires. (NUREG-1757, NIRS/PC Ex. 249 at 4-10).

Moreover, at the hearing, Staff stated that they were not prepared to express a final position on cylinder washing and disposal. (Tr. 2222-25, 2252). Counsel for NIRS/PC stated, in the face of Staff’s unresolved position, that it was not possible to complete cross-examination of the Staff. The Board agreed that further examination remained to be done:

MR. LOVEJOY: Well, my problem is that the method of dealing with the cylinders has been dealt with so impressionistically so far. And there’s really no proposal on the table.

I’m concerned that the—that cost, that element of the whole process be presented in a more formal way with the proposals of LES and others, and a chance for us to review it and talk to these witnesses about it when they evaluate it.

And I must say—and maybe this is getting into kind of a general procedural question. I understand that Ms. Compton is coming back and there’s going to be more inquiry about rate of return and that kind of thing, which may then induce these witnesses to revise what they have proposed so far.

So, I can bring the examination of the panel to a pause. But I don’t understand that they’re done. So I’m not quite sure how I can be done.

JUDGE ABRAMSON: And I think in my view that is appropriate.

CHAIR BOLLWERK: You are correct. If there’s additional information that’s relevant here that’s going to be coming in, and it appears there is, the obviously you have to have some opportunity to deal with that in some way.

I don’t know how it’s going to come in or what that will be at this point. . . .” (Tr. 2227-28).

The Board recognized that cross-examination could not be completed on questions of return on investment and cylinder management until LES and the Staff had completed their presentations. (Tr. 2230).

Admission of the LES exhibit would leave the record incomplete, with no Staff position on the estimate belatedly provided by LES and no opportunity for the Board and the parties to examine the Staff about their position. LES’s attempt to limit inquiry on important issues should be rejected.

Conclusion

LES seeks to avoid the sworn testimony offered in hearings before this Board, by offering an unsworn back-door post-hearing letter, addressing some of the major, difficult questions presented. The financial conclusions stated in LES's letter are unexplained and unsupported. LES's unilateral submission prevents the parties and the Board from conducting key inquiries of LES and Staff witnesses. It conflicts with the statutory requirement of a *hearing* on the record. (42 U.S.C. 2243(b)(1)). The Commission has directed this Board to hold *hearings*—not to receive unsworn, unsupported correspondence. LES's submission should be rejected.

Respectfully submitted,



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December 6, 2005

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on December 6, 2005, the foregoing Response on behalf of Intervenors Nuclear Information and Resource Service and Public Citizen to Motion by Louisiana Energy Services, L.P. to Supplement the Record was served by electronic mail and first class mail upon the following:

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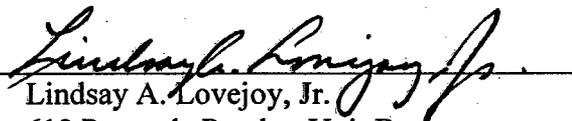
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