



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 19, 2005

DOCKETED
USNRC

December 22, 2005 (1:28pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket No. 70-3103-ML

SERVED December 22, 2005

SECRETARY

The Honorable Robert Andrews
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Andrews:

This is a response to your letter dated November 22, 2005, addressed to Chairman Nils J. Diaz, in which you raised concerns about the uranium enrichment facility that Louisiana Energy Services (LES) proposes to establish in Eunice, New Mexico. To address your concerns your letter has been referred to the NRC staff. The staff will respond to your concerns in a separate letter.

Currently, the LES application is the subject of a contested proceeding before an Atomic Safety and Licensing Board. Under Nuclear Regulatory Commission procedural rules for adjudications, the Commission has an appellate role in proceedings commenced before its Atomic Safety and Licensing Boards. Because of that role, I trust that you will understand that the Commissioners must remain impartial during the pendency of a case, whether it is before a Licensing Board or on appeal to the Commission.

A copy of your letter and this response, as well as, the response of the NRC staff when issued will be served on the participants in the Louisiana Energy Services, L.P. proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook

cc: LES Service List



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 21, 2005

The Honorable Robert Andrews
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Andrews:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated November 22, 2005. In your letter, you raised concerns about the review of the Louisiana Energy Services (LES) license application for a gas centrifuge uranium enrichment plant to be located in the State of New Mexico. Your concerns relate to nuclear proliferation and other national security threats. Specifically, you are concerned about the adequacy of national security reviews of the proposed licensee in light of the loss of control of gas centrifuge technology information at the Urenco facility in The Netherlands. I assure you that before issuing a license, the NRC must determine that the licensed activity will not be inimical to the common defense and security, will not constitute an unreasonable risk to the health and safety of the public and that the LES centrifuge facility complies with all safeguards, security, and technology control requirements.

As part of the NRC staff's licensing review of the LES license application, NRC staff has evaluated pertinent safeguards and security issues. The NRC staff documented its review and findings of the LES license application and related documents, including documents addressing safeguards and security issues, in a safety evaluation report (SER) and an environmental impact statement (EIS). The staff issued the draft EIS in September 2004, and the final EIS (NUREG-1790) and SER (NUREG-1827) on June 15, 2005. In addition, the U.S. Department of Energy (DOE) conducted a foreign ownership, control, and influence (FOCI) review of the application. The purpose of the FOCI review was to assure that U.S. national security information would be appropriately controlled.

In your letter, you asked if there is assurance that neither LES nor Urenco will permit recurrence of the type of classified information leaks that occurred 30 years ago. The protection of classified information is the subject of a quadripartite security agreement negotiated among the United States, United Kingdom, The Netherlands, and Germany. The required protection measures regarding the transfer and handling of information outside the United States are in that agreement. The LES centrifuge facility will be subject to the United States regulatory requirements found in Title 10 of the Code of Federal Regulations (10 CFR) Parts 25, 73, 74, 75, 95, 110, and 810 (10 CFR Part 810 is a DOE regulation). These regulations provide for security clearances, physical protection of nuclear materials, the physical security of the transportation of nuclear materials, and nuclear material control and accounting requirements to assure that uranium is not stolen or enriched to levels higher than authorized. These regulations also provide for international safeguards, protection of classified information, and technology controls to ensure that centrifuge technology does not become available to other countries. Any entity with access to classified and export-controlled information in the United States is subject to the same information security requirements.

The requirements that will be in place for the protection of classified information will be in accordance with the National Industrial Security program. The purpose of this program is to establish requirements, restrictions, and the safeguards that are necessary to prevent unauthorized disclosure of classified information. Currently, LES protects classified information under a facility clearance issued to its security contractor pursuant to 10 CFR Part 95. Access to classified information is provided only to persons with appropriate security clearances and a need to know. During construction and operation, LES will be required to protect classified matter through the issuance of facility clearances and access to classified information will be limited to persons with appropriate security clearances and a need to know. NRC inspectors will verify compliance with classified matter requirements through periodic inspections of the LES activities.

In your letter, you discuss another issue regarding the removal of a large number of documents from NRC's Web site. On October 25, 2004, the NRC temporarily suspended public access to the Agencywide Document Access and Management System (ADAMS) because of concerns that terrorists could use some documents to plan attacks. On December 29, 2004, the agency made redacted LES documents available to the public in ADAMS. In June 2005, all LES documents, except those containing proprietary and classified information, were restored to the publicly available ADAMS Web site. These documents included the unredacted versions of many documents previously removed to support public hearings.

In your letter, you stressed the importance of the nuclear proliferation issue. The Atomic Energy Act, the Nuclear Non-Proliferation Act, the Nuclear Non-Proliferation Treaty, the United States/International Atomic Energy Agency (IAEA) Safeguards Agreement, and nuclear cooperation agreements between the United States and certain other countries establish legal requirements to protect nuclear materials and technology against proliferation. The cooperation agreements ensure that nuclear materials and equipment imported to and exported from the United States will be protected in accordance with international standards and will be subject to the relevant IAEA Safeguards Agreement.

In addition, in 1983 the United States committed to make all commercial gas centrifuge enrichment plants in the United States eligible for IAEA safeguards inspections. The IAEA is expected to select the LES facility for safeguards inspections before the plant begins operations. The objectives of the IAEA inspections are to ensure timely detection of diversion from a plant's declared nuclear material flow, timely detection of facility misuse to produce undeclared product from undeclared feed, and timely detection of the production of highly enriched uranium. The IAEA is expected to inspect the facility, if licensed, several times a year when the LES facility becomes operational. It is noteworthy that The Netherlands, Germany, and the United Kingdom, which are signatories to the Nuclear Non-Proliferation Treaty, are also subject to IAEA safeguards inspections of their gas centrifuge uranium enrichment facilities and that they implement the Nuclear Supplier's Group export control guidelines. These activities provide additional international assurance for non-proliferation.

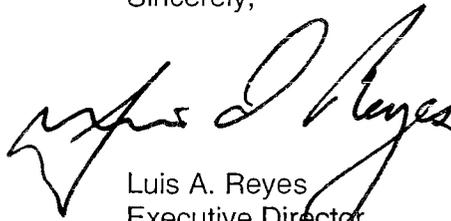
Over the past 30 years, and particularly after the terrorist attacks of September 11, 2001, there have been marked advances in, and an increased focus on, the safeguards and security of nuclear facilities, technology and materials in the United States and worldwide. NRC has a key role in assuring that any new commercial nuclear facility built in the United States meets

stringent safeguards, security, and export control requirements. We continually review these requirements to incorporate improvements and lessons learned from regulating existing facility operations. The NRC will only issue a license after it assures that the applicant meets, and will continue to meet, these stringent requirements.

In your letter, you requested that information and documentation relating to NRC security findings be made available to you and to the rest of the Congress to ensure transparency in the approval process. Our goal is to make our licensing action decisions transparent to the Congress and to the public without compromising security and classified information. Thus, all LES documents, except for documents with proprietary and classified information, are publicly available on our ADAMS Web site.

Your letter has been added to the LES docket file. Thank you for your interest in this important matter. I trust this information adequately addresses your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Luis A. Reyes". The signature is fluid and cursive, with a large initial "L" and "R".

Luis A. Reyes
Executive Director
for Operations

ROBERT E. ANDREWS

FIRST DISTRICT, NEW JERSEY

COMMITTEES:

EDUCATION AND THE WORKFORCE

SENIOR RANKING DEMOCRAT, SUBCOMMITTEE ON
EMPLOYER-EMPLOYEE RELATIONS

MEMBER, SUBCOMMITTEE ON 21ST CENTURY
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AND DEVELOPMENT

MEMBER, SPECIAL OVERSIGHT PANEL ON
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Congress of the United States
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November 22, 2005

The Honorable Nils J. Diaz, Chairman
Nuclear Regulatory Commission
Room 18H1
One White Flint North Bldg
11555 Rockville Pike
Rockville, MD 20852-2738

Dear Honorable Diaz:

I am writing to inquire about your decision to approve, without further investigation, Louisiana Energy Services' (LES) proposed uranium enrichment facility in Eunice, New Mexico. I am concerned that serious questions regarding proliferation and national security have gone unanswered in the consideration of this project. Without resolution of these concerns, our global nuclear security could be at risk.

Thirty years ago, Urenco, the parent company of LES, was directly involved in leaks that resulted in Abdul Qadeer Khan's theft of information vital to the process of uranium enrichment. This information was then sold to Pakistan, Libya, North Korea, and Iran. Though the NRC, LES, and Urenco claim that this issue has been resolved, I have yet to be convinced. Is there clear evidence that Urenco has rid itself of those elements that were responsible for the leak? What assurances can the NRC give that such leaks will not occur at the proposed facility?

In addition, it is my understanding that the NRC has withdrawn itself from considering the ability of Urenco to operate on US soil, thereby removing the NRC from dealing with complex questions of national security and proliferation. The NRC then removed a large number of documents pertaining to these questions from its website sighting security concerns. In my opinion, few issues pertaining to nuclear energy are of more importance than nuclear proliferation. Thus, it is vital that the NRC fully consider the potential for nuclear proliferation by Urenco before any final decision is made. Though I understand the NRC's security concerns, I also request that the information and documentation relating to their findings on this matter be made available to me and to the rest of the Congress to ensure transparency in the approval process.

I thank you in advance for your response to these concerns. If you have any questions about this request, please contact Dr. Jake Stenzler on my staff at (202) 225-6501.

Sincerely,



Robert Andrews
Member of Congress

REA:jns

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 LETTERS FROM ANNETTE L. VIETTI-COOK AND LUIS A. REYES TO CONGRESSMAN ROBERT ANDREWS, AS WELL AS THE LETTER FROM CONGRESSMAN ROBERT ANDREWS DATED NOVEMBER 22, 2005 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
LETTERS FROM ANNETTE L. VIETTI-COOK AND LUIS A. REYES
TO CONGRESSMAN ROBERT ANDREWS, AS WELL AS THE LETTER FROM
CONGRESSMAN ROBERT ANDREWS DATED NOVEMBER 22, 2005

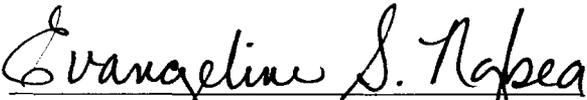
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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 22nd day of December 2005