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

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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

December 27, 2005

MEMORANDUM AND ORDER

(Evidentiary Hearing Schedule and Prehearing Administrative Matters)

Upon consideration of (1) the December 16, 2005 joint report submitted on behalf of applicant Louisiana Energy Services, L.P. (LES), intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC), and the NRC staff, see Joint Report Regarding January 2006 Evidentiary Hearing (Dec. 16, 2005) [hereinafter Joint Report], and (2) a December 21, 2005 conference call between the parties and the Licensing Board, regarding a schedule for the conduct of an additional evidentiary session relative to certain supplemental material that LES has sought to introduce into the evidentiary record,¹ the Board will hold a one to two day evidentiary hearing session in this proceeding beginning at 9:00 a.m. Eastern Time (ET).

¹ Specifically, the parties will present testimony and evidence related to two discrete topics: (1) the potential costs of washing and recertifying empty depleted uranium hexafluoride cylinders for reuse or, alternatively, disposing of those cylinders; and (2) the cost of capital associated with the construction of a private deconversion facility in the LES estimate for constructing such a facility. In this regard, the parties are reminded to focus their presentations on the areas of interest to the Board as set forth in its December 13, 2005 memorandum and order, see Licensing Board Memorandum and Order (Ruling on Motion to Supplement Record) (Dec. 13, 2005) at 3 n.4 (unpublished) [hereinafter December 13 Order], and expressed during the December 21, 2005 telephone conference.

Monday, February 13, 2006,² in the Licensing Board Panel's Rockville, Maryland Hearing Room. Given the parties' anticipated need to present testimony and evidence containing proprietary information, the entirety of the hearing will be conducted in closed session.

In anticipation of the above-scheduled evidentiary hearing session, the Board provides the following administrative directives:

A. Prefiled Testimony, Exhibits, and Related Matters

1. Order and Manner of Presentation of Evidence. The parties have indicated they anticipate the evidentiary hearing session can be completed in no more than two days. See Joint Report at 3. Because of the uncertainties inherent in attempting to predict the time required for litigation, the parties should be prepared to have their respective witnesses available for the entirety of February 13 and 14, 2006. In addition, the parties should plan for the likely possibility that the hearing session might extend into the evening if such an extension would facilitate completing the evidentiary session in one day. As to the order of party presentations, as the party with the burden of proof under 10 C.F.R. § 2.325, LES will present its testimony and evidence first, followed by the staff, followed by NIRS/PC.

2. Schedule for Party Filings. Party prefiled testimony, supporting evidentiary materials, and any motions in limine related thereto, shall be filed in accordance with the schedule set

² Although the Board's December 13, 2005 scheduling order tentatively set the week of January 23, 2006, for the hearing, as was reflected in the parties' December 16, 2005 joint report, see Joint Report at 2-3, various conflicts with the schedules of counsel and potential witnesses failed to produce any consensus regarding a two-day period for the hearing. During the December 21, 2005 telephone conference, after further exploring the feasibility of various weekday and weekend dates between January 20 and 31, 2006, and February 8-15, 2006, (the February 1-7, 2006 period was unavailable because of a scheduling conflict for one of the Board members), the February 13 starting date was set.

Relative to this evidentiary hearing, the Board will issue an additional order regarding the schedule for the parties' supplemental proposed findings of fact and conclusions of law within the next two weeks.

forth in the Board's December 13, 2005 memorandum and order.³ See December 13 Order at 3-4. In addition, cross-examination plans and party outline summaries should be filed on or before Monday, February 6, 2006.

3. Service, Form, and Quantity of Documentary Materials. All prefiled testimony and exhibits should be served on the Board, the Office of the Secretary, and other parties to the proceeding in accordance with the Board's April 15, 2004 initial prehearing order, see Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 15, 2004) at 4-6 (unpublished), and, as applicable, the Board's May 21, 2004 protective order relative to proprietary materials, see Licensing Board Memorandum and Order (Protective Order Governing Disclosure of Protected Materials) (May 21, 2004) at 7 (unpublished). This includes providing each member of the Board with hard copies of all prefiled exhibits.⁴

In this regard, however, to cut down on the volume of paper produced in this proceeding, the Board strongly encourages that for all prefiled testimony and exhibits the parties provide hard copy versions to the Board in a double-sided format. It is the Board's

³ The parties should note, however, as discussed during the December 21, 2005 conference call, the January 17 and January 19, 2006 filing dates established in that schedule refer, respectively, to in limine motions and responses regarding prefiled rebuttal testimony and supporting evidentiary materials.

⁴ The parties are reminded to produce hard copies of all evidentiary material they intend to rely on at the evidentiary hearing, including textbook references, discovery materials, and portions of the LES application. See Licensing Board Memorandum and Order (Additional Administrative Matters) (Feb. 1, 2005) at 1-2 (unpublished); Licensing Board Memorandum and Order (Regarding NIRS/PC Prefiled Testimony and Exhibits) (Jan. 18, 2005) (unpublished). Additionally, the parties are reminded that when exhibits are being provided in conjunction with prefiled testimony: (1) 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; and (2) 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. See Licensing Board Memorandum and Order (Ruling on In Limine Motions Regarding Prefiled Exhibits and Rebuttal Testimony) (Oct. 20, 2005) at 10 (unpublished).

understanding that the Office of the Secretary will accept a double-sided format for hard copy submissions as well.

4. Filing of Prefiled Exhibits

a. Duplicate Exhibits. Only one copy of each item of documentary material should be offered as evidence in this proceeding. For example, if LES offers (and has admitted) a certain portion of a staff report regarding the LES facility, the staff should not then offer into evidence the same portion of the report. Instead, the staff would rely on the document already proffered by LES.

To this end, the parties should consult with one another and determine whether any of the prefiled exhibits a party intends to offer into evidence would otherwise be duplicated by another party in the proceeding. In each instance this is found to be the case, the parties should determine, based on the order of party presentations, which party will first offer the exhibit into evidence. The other party intending to use that material as an exhibit should revise its evidentiary submissions to reference the initial submitting party's exhibit number.⁵ Additionally, the parties should follow this practice relative to any exhibits utilized in the first instance during the evidentiary hearing itself (e.g., during cross-examination).

b. Exhibit Order and Numbering. Each party should number their prefiled exhibits consistent with the numbering scheme it utilized in the context of the February and October 2005 evidentiary hearings. In this regard, exhibit numbers should continue sequentially from each party's last numbered exhibit identified in the context of the October 2005 hearing (i.e., parties should not provide exhibits with numbers that duplicate those of

⁵ When duplicate pre-filed party exhibits have been identified, the party that is recognized as the one that initially will offer the document must, if it subsequently decides not to offer the item, provide timely notice of its intent to all other parties who identified the item as a duplicate document or thereafter evidenced an intent to rely upon it in prefiled direct or rebuttal testimony.

exhibits already identified and admitted/rejected in this proceeding). To the extent, however, that any party wishes to rely on any exhibit previously identified and admitted/rejected in the February or October 2005 hearing and the parties agree that there will be no objection to the admissibility of that exhibit in the upcoming evidentiary hearing, that exhibit should retain the same number it was given when previously identified. On the other hand, should any party wish to rely on any exhibit previously identified in the February or October 2005 hearings, but the parties cannot agree that there will be no objection to its admissibility, such exhibit should be numbered alpha-numerically with the number corresponding to the number of the previously-identified exhibit, followed by the letter "A" or other such letter as appropriate (e.g., October 2005 exhibit "Staff 100" becomes "Staff 100A").

In addition, to the extent possible the parties should order and number their prefiled exhibits in the sequence the parties plan to identify, and present testimony referring to, each exhibit.

c. Exhibits in Electronic Format. Certain parties to the February and October 2005 evidentiary hearings filed several prefiled exhibits in electronic format on compact disc and we can foresee parties to this proceeding will elect to submit exhibits in this format in the context of the upcoming evidentiary hearing. If a party reaches agreement with another party that this an acceptable format for exchanging prefiled exhibits, they can forgo providing additional hard copies to that party.⁶ Moreover, if the parties create electronic versions of their exhibits for service on other parties, those should be provided in that format to the Board as

⁶ In this regard, while universal resource locator (URL) citations to evidentiary materials clearly are useful references to show where certain materials can be found (and, with agreement among the relevant parties, might suffice among the parties in lieu of a separate paper or electronic copy), these URL citations cannot be used as a substitute for the hard copy versions of the prefiled exhibit that must be provided to the Board or the Office of the Secretary or submitted to the Court Reporter/Clerk during the hearing when the item is first formally identified for the evidentiary record.

well as in a format that makes each exhibit a separate file (e.g., each exhibit as a separate .pdf file). Nonetheless, in accord with the Board's April 15, 2004 initial prehearing order, regardless of length, hard copies of each prefiled documentary exhibit must be sent to the Board members and the Office of the Secretary.

5. Exhibit List. At the time they submit the exhibits associated with their prefiled direct testimony, each party should provide Board law clerk Bethany Engel (e-mail address: ble@nrc.gov) with an electronic copy of their prefiled exhibit list for this portion of the proceeding. In addition, concurrent with the filing of prefiled rebuttal testimony and any revised prefiled direct or rebuttal testimony, each party should provide the Board's law clerk with an updated exhibit list. In that regard, to the extent possible the parties should utilize the exhibit list template included as Attachment A to the Board's September 14, 2005 memorandum and order, and complete the party exhibit number, witness/panel, and description fields, including a designation in **bold** type for any proprietary/protected status.

B. Document Handling at the Evidentiary Hearing

At the evidentiary hearing, the parties should present their documentary materials in the form and quantities specified below:

1. Testimony. A party should submit two single-sided hard copy versions of both the prefiled direct and rebuttal testimony for a particular witness or witness panel to the Court Reporter/Clerk at the time the witness/panel is presented.⁷ Although strongly discouraged, if a party sees a compelling need to make any revisions to the prefiled testimony that were not submitted to the Board and the other parties prior to the hearing, in addition to the copies

⁷ Board members will rely on the copies of the prefiled testimony they have already received and need not be given an additional copy at the time the testimony is presented at the hearing.

provided to counsel for the other parties, that party should provide three copies to the Board and two to the Court Reporter/Clerk.

2. Exhibits. In accord with 10 C.F.R. § 2.711(h), a party should provide the Court Reporter/Clerk with an original and two hard copies of each document it wishes to utilize as evidentiary material at the hearing.⁸ However, as to an exhibit first submitted at the hearing (e.g., a cross-examination item), in addition to the copies provided to counsel for the other parties, a party should submit an original and two hard copies to the Court Reporter/Clerk and three copies to the Board. Further, when first seeking to have an exhibit identified, the sponsoring party should be prepared to give a brief description of that individual exhibit for the record. Parties are reminded that documents must be submitted in hard copy format, or, at a minimum, in an electronic form capable of being reduced to hard copy form, so as to be capable of being included in the evidentiary record for this proceeding. See Licensing Board Memorandum and Order (Adopting Transcript Corrections and Addressing Other Administrative Matters) (Nov. 29, 2005) at 2-3 (unpublished); Licensing Board Memorandum and Order (Regarding Post-Hearing Administrative Matters) (Nov. 3, 2005) at 1-2 (unpublished).

Additionally, as it did in the context of the February and October 2005 evidentiary hearings, the Board will provide each party with a stamp and a black ink pad to use to pre-mark the original and two copies of each exhibit it will submit during the evidentiary hearing. That stamp includes several items the party will need to have completed before providing the exhibit to the Court Reporter/Clerk, specifically case name (Louisiana Energy Services, L.P.); docket number (70-3103-ML); party name (LES and the staff can circle appropriate designations; NIRS/PC should fill in the blank after the designation "Intervenor"); exhibit number (per the

⁸ As with prefiled testimony, Board members will rely on the copies of exhibits already provided to the Board.

sponsoring party's numbering scheme, e.g. Staff 100); and the witness/panel sponsoring the exhibit or with whom the exhibit will be used. The stamp should be placed in the upper right-hand corner if possible; if not, any location on the first page is acceptable or, if there is no area on the first page where the stamp would fit without obscuring information, by folding over the bottom right hand corner of the first page sufficiently so the stamp can be placed on the back side of the page. The parties should bring the stamp and pad for use with additional exhibits they may seek to introduce during the upcoming evidentiary session and should return them to the Court Reporter/Clerk at the conclusion of those sessions.

C. Miscellaneous Matters

1. Copies of Transcripts. Parties other than the staff (which is covered under the agency's existing court reporting contract) should contact the Court Reporter (Neil R. Gross & Co., 202-234-4433) well before the first day of the evidentiary session to arrange for the number of copies of the daily transcript it requires.

2. Audio/Visual Needs. Any party making an evidentiary presentation that has a special audio/visual display equipment requirement (such as an overhead/computer projector and/or screen) should advise the Board's law clerk by Monday, February 6, 2006. To the degree there are similar needs, the Board may attempt to coordinate party use of such equipment.

3. Counsel/Representative Attendance During Evidentiary Hearing. Each party should advise the Board's law clerk by Monday, February 6, 2006, as to who and how many of its counsel/authorized representatives plan to attend the February 13-14, 2006 evidentiary hearing session. Because the evidentiary hearing will be held wholly in closed session, pursuant to the Board's May 21, 2004 protective order, all counsel/authorized representatives (excluding counsel/representatives for the NRC staff) must have executed a nondisclosure declaration in

accord with paragraph K of that order. Individuals not named on the closed hearing session attendance list may not be admitted to any closed portion of the hearing.

4. Submission of Cross-Examination Plans. The Board requests that when counsel submit their cross-examination plans, which should be broken out by the two topical areas on which evidence will be presented, see supra note 1, as to each witness/panel they provide an estimate of the total amount of time counsel anticipates he/she will need for cross-examination of that witness/panel.

5. Opening Statements By Counsel. To the extent they wish to do so, at the outset of the hearing the Board will afford one counsel for each of the parties making an evidentiary presentation a total of 10 minutes to present a summary of that party's anticipated evidentiary presentations/proof relative to each of the topical areas and associated contentions at issue during the February 2006 hearing session. The order of party opening statements will be the same as that specified in section A.1 above for party evidentiary presentations.

6. Hearing Status Telephone Number. If any event beyond the Board's control (e.g., inclement weather) requires that a particular hearing session be delayed or postponed, the

Board will provide notice to the parties and the public via recorded message that will be available by calling (800) 368-5642, extension 5036, or (301) 415-5036.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁹

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 27, 2005

⁹ 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.

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 (EVIDENTIARY HEARING SCHEDULE AND PREHEARING 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
(EVIDENTIARY HEARING SCHEDULE AND
PREHEARING ADMINISTRATIVE MATTERS)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of December 2005