

RAS 11119

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 01/30/06

SERVED 01/30/06

ATOMIC SAFETY AND LICENSING BOARD

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

January 30, 2006

MEMORANDUM AND ORDER

(Memorializing Board Questions/Areas of Concern for Mandatory Hearing)

On January 25, 2006, the Licensing Board held a prehearing conference with applicant Louisiana Energy Services, L.P., (LES) and the NRC staff regarding certain subject matter areas and specific related questions upon which the Board requires presentations from the staff and/or LES in the context of the mandatory hearing in this proceeding. See Tr. 3180-3213. As requested by LES and the staff, see Tr. at 3193-94, we below reduce to writing the Board questions and areas of concern discussed during that prehearing conference.¹ In addition, the Board memorializes below certain administrative matters related to the mandatory hearing.

¹ The Board indicated in an August 2005 scheduling order that it would provide its mandatory hearing-related written questions to LES and the staff by January 27, 2006. Last week, however, both LES and the staff received copies of the transcript to the January 25, 2006 prehearing conference in which the questions set forth in section I were conveyed to the parties, thereby alleviating the need for the Board to provide this issuance by no later than January 27.

I. BOARD QUESTIONS/AREAS OF CONCERN FOR THE MANDATORY HEARING

A. Safety Matters

10 C.F.R. § 2.104(b)(2)(i) requires the Board, in the context of the mandatory hearing, to determine “whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission’s staff has been adequate to support” license issuance. The Board takes that charge to mean that we are, in legal parlance, to determine whether the record enables the Board to conclude that the staff had a reasonable basis for its conclusions with regard to its safety review of the LES application. To assist the Board in its review, the staff and LES are to make presentations to the Board addressing the following specific questions/issues, as well as any other background or supporting material the parties believe will assist the Board in making its findings with regard to the staff’s safety review:

1. The Board understands that the staff followed the procedures in NUREG-1520 (Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility) (SRP). This SRP is generic for Fuel Cycle Facilities, and is not directed at Enrichment Facilities. Therefore, the staff is requested to provide the Board with a written presentation describing, subsection by subsection, how this generic SRP was adapted to apply to the LES enrichment facility application. Where a subsection was directly applicable, the testimony should so indicate (i.e., with regard to subsection 3.5.2.2 - this guidance is directly applicable) and where a subsection is not directly applicable, the testimony should indicate how the guidance of the particular subsection was adapted to the National Enrichment Facility (NEF) application, and the rationale for that adaptation mechanism. For expedience, the presentation may make a general statement regarding subsections that were directly applicable, and discuss explicitly only those subsections that were not directly applicable.
2. The Board understands there are few, if any, Regulatory Guides that are directly applicable for an enrichment facility license application. The staff is requested to identify each Regulatory Guide used by LES, the subsections of the SRP toward which that Regulatory Guide was applied, and the rationale of the staff in indicating to LES, or in finding, that such Regulatory Guide was applicable.
3. In addition, the staff is requested to indicate each subsection for which a Regulatory Guide would, in a customary fuel cycle facility application (such as an

application for a fuel fabrication facility) have been applicable, but for the NEF no Regulatory Guide was appropriate, and how the staff addressed (and directed LES to address) the matters covered by that subsection.

4. The Commission has directed the staff to investigate whether amendment of 10 C.F.R. Part 61 is required to properly address the issue of disposal of depleted uranium from an enrichment facility. In the context of its decommissioning funding plan, LES will be providing a surety, in the form of a bond, covering all decommissioning costs expected during the term of that bond. The size of that bond will be determined *a priori* upon the basis of conditions at the time of issuance or renewal. The current sizing of that bond is proposed to be based upon near-surface disposal of depleted uranium. If the Commission determines, at a future date, that near-surface disposal of depleted uranium from an enrichment facility such as the NEF is no longer appropriate, how will the bond be modified to accommodate the accompanying change in decommissioning costs? What mechanisms will be put in place at the issuance of the license to ensure that LES, which is a “single purpose” entity with no assets outside its ownership of the NEF, has the wherewithal to, and actually provides, the increased bond amount?
5. From Table 7-3 of the Monk 8 Verification/Validation report, revision 1, the Board sees that the criticality calculations for the items relied on for safety (IROFS) concerning pipe works involve hydrogen to uranium (H/U) ratios from 12 to 14. How does the staff compute the bias allowance for these cases, given the spreads indicated in Figure 6.3 of that report? Is the number in the Safety Evaluation Report (SER) correct?
6. How does the staff justify acceptance of IROFS for depleted uranium hexafluoride (DUF_6) mixtures with no hydrogen (except in the reflector) when, according to the second full paragraph in section 6.1 (page 29) of the report, the H/U ratio varied between 0.102 to 1378 in the calculations used for verification?
7. The staff is requested to correlate the IROFS discussed in the SER with the cases listed in Table 7-3 of the report. Are all IROFS adequately represented in the table?
8. The Board requests that LES provide information regarding the following three matters:
 - (a) Which cases in Table 7-3 of the Monk 8 report correspond to no hydrogen moderation, i.e., DUF_6 only?
 - (b) Which critical experiments were analyzed to validate the code for such cases?
 - (c) In performing such validation work, how were the unresolved resonances treated?

In addition to the above questions, LES and the staff are reminded that their respective prefiled direct testimony should address those questions and areas of concern identified by the Board at the conclusion of the October 2005 evidentiary hearing in this proceeding. See Tr. at 3167-76.

B. Environmental Matters

With respect to environmental matters, i.e., matters stemming from the agency's National Environmental Policy Act (NEPA) obligations, 10 C.F.R. § 2.104(b)(2)(ii) likewise requires the Board to determine "whether the review conducted by the Commission pursuant to [NEPA] has been adequate." In addition, the 10 C.F.R. § 2.104(b)(3) requires that the Board make an independent determination regarding three "baseline NEPA issues." To assist the Board in making the required determinations, the staff and LES are to make presentations to the Board addressing the following specific questions/issues, as well as any other background or supporting material the parties believe will assist the Board in making its findings with regard to environmental/NEPA matters:

1. The purpose and need statement in section 1.3 of the staff's Final Environmental Impact Statement (FEIS) for the NEF is insufficient. The approach taken by LES in section 1.1 of its Environmental Report (ER) is adequate; however, it is not sufficient for the staff simply to rely upon the analysis done by LES. The Board requests that the staff make a presentation addressing the topics covered by LES in section 1.1 of the ER, indicating with specificity whether and why it agrees with that presentation.
2. In Appendix C to the FEIS, specifically in section C.4.2.2, the staff provides a discussion of hydraulic rupture of a DUF₆ cylinder in the blending and liquid sampling area, which it presents as the most severe accident with regard to the public health and safety. In that discussion, the staff indicates that LES will provide an emergency plan outlining mitigating actions that could be taken to reduce the consequences of that accident, but presents only the example of securing the heating, ventilation, and air conditioning systems in the area affected by the accident. The staff and LES should provide the Board with information regarding what other mitigating actions are potentially available to reduce the consequences of that type of accident.

II. ADMINISTRATIVE MATTERS

During the prehearing conference, the Board and LES and the staff discussed a few administrative matters related to the mandatory hearing that warrant repeating here.² First, the mandatory hearing is scheduled to begin Monday, March 6, 2006, and the parties anticipate it can be concluded in three days or less. Also, in connection with the mandatory hearing, the Board will hold two limited appearance sessions, on the afternoon of Sunday, March 5, 2006, and the evening of Monday, March 6, 2006. Both the mandatory hearing and limited appearance sessions will be held at the New Mexico Junior College in Hobbs, New Mexico.³ Second, to address a scheduling conflict of one of the Board members, LES and the staff agreed to move up the date for filing their respective prefiled direct testimony to Friday, February 24, 2006.⁴ On or before that date, LES and the staff should also file with the Board any evidentiary materials (with associated exhibits lists) that they intend to proffer in support of prefiled direct testimony. As the Board noted during the prehearing conference, it does not contemplate receiving prefiled rebuttal testimony from LES or the staff, nor does it contemplate the need for cross-examination of staff or LES witnesses by, respectively, LES or the staff.

² The Board will also issue a more comprehensive memorandum and order detailing certain administrative matters relative to the mandatory hearing at a later date.

³ On January 26, 2006, the Board issued a notice detailing the dates, times, and locations of the mandatory hearing sessions and limited appearance sessions, as well as other information related to the those sessions. See Licensing Board Notice (Notice of Hearing and of Opportunity to Make Oral or Written Limited Appearance Statements) (Jan. 26, 2006) (71 Fed. Reg. ____).

⁴ The Board requests that if the prefiled testimony or associated evidentiary material contains any sensitive information that would not permit the information to be e-mailed to the Board members, hard copy versions of the testimony and exhibits be served on the Board members (e.g., by hand or overnight delivery) so as to ensure receipt by 4:30 p.m. Eastern Time on February 24.

Finally, based on the discussion between the Board and the parties about the possibility that some portions of the mandatory hearing may need to be closed to the public due to the potential need to discuss proprietary or otherwise sensitive information, the Board will defer any determination about the need to close portions of the hearing until the parties provide their prefiled testimony and other evidentiary information.⁵

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁶

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

January 30, 2006

⁵ In addition, it is possible that the staff or LES may need to present testimony involving certain classified information, particularly with regard to criticality or physical security. Any presentations involving classified information will not be made in the context of the mandatory hearing in Hobbs, but would instead require the use of a secure room at NRC's Rockville, Maryland headquarters.

⁶ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors Nuclear Information and Resource Service/Public Citizen; (3) the New Mexico Environment Department and the Attorney General of New Mexico; and (4) 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 (MEMORIALIZING BOARD QUESTIONS/AREAS OF CONCERN FOR MANDATORY HEARING) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Lisa B. Clark, Esq.
John T. Hull, Esq.
Margaret J. Bupp, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Tannis L. Fox, Esq.
Deputy General Counsel
Office of General Counsel
Ron Curry, Secretary
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110

Docket No. 70-3103-ML
LB MEMORANDUM AND ORDER (MEMORIALIZING
BOARD QUESTIONS/AREAS OF CONCERN FOR
MANDATORY HEARING)

James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
Amy C. Roma, Esq.
Tyson R. Smith, Esq.
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006

David M. Pato, Esq.
Stephen R. Farris, Esq.
Christopher D. Coppin, Esq.
Assistant Attorneys General
Glenn R. Smith, Esq.
Deputy Attorney General
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508

Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501

Lisa A. Campagna, Esq.
Assistant General Counsel
Westinghouse Electric Company LLC
P.O. Box 355
Pittsburgh, PA 15230-0355

John W. Lawrence, Esq.
Louisiana Energy Services, L.P.
2600 Virginia Ave., NW, Suite 610
Washington, DC 20037

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of January 2006