

RAS 11128

January 23, 2006

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**DOCKETED
USNRC**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

January 23, 2006 (4:25pm)

**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 JANUARY 18, 2006
MOTION IN LIMINE BY LOUISIANA ENERGY SERVICES, L.P.**

Preliminary statement

This response is submitted on behalf of Intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") in answer to the motion in limine filed by the Applicant, Louisiana Energy Services, L.P. ("LES") on January 18, 2006, with respect to the prefiled rebuttal testimony of Dr. Arjun Makhijani concerning cost of capital and cylinder management, submitted on behalf of NIRS/PC.

Factual background

LES seeks to exclude Dr. Makhijani's statement, specifying the limitations of his rebuttal testimony, and stating that a certain amount of money, representing the costs of constructing and operating a deconversion plant, "does not include CaF₂ disposal or HF neutralization costs." (Makhijani rebuttal at 9). The statement does not contain any additional evidence about the expected costs of CaF₂ disposal or HF neutralization costs. Those matters have already been

discussed in testimony of record. (Makhijani deconversion direct at 11-15; deconversion rebuttal at 6-14). The statement simply says that the amount of money that might be projected by LES to accumulate over 30 years as financial assurance for deconversion would not include funds to meet other expected costs, such as CaF2 disposal or HF neutralization.

Argument

LES's objection should be overruled. The statement by Dr. Makhijani simply establishes the context for his testimony on costs of capital. Dr. Makhijani has testified to the cost of tails dispositioning—viz: deconversion, transportation, and disposal of depleted uranium hexafluoride. Specifically as to deconversion, Dr. Makhijani has stated that the cost should be estimated based upon historical contract prices and should also include the actual costs of transportation, HF neutralization, and CaF2 disposal. (See Makhijani deconversion rebuttal at 17; NIRS/PC Ex. 190 at 47-50 and Table 9). Thus, Dr. Makhijani's testimony as to the cost of capital to construct a facility in accordance with LES's estimate (as shown in NIRS/PC Ex. 188, Att. 1) is qualified by the assumption, *arguendo*, that the LES cost figures are accurate—and the LES figures are *not* accurate, because they do not include the HF neutralization costs nor the actual cost of CaF2 disposal. The testimony that LES objects to simply states that qualification. The accuracy of LES's estimates for those omitted factors has been litigated in other testimony.

Notably, LES (correctly) does not object to Dr. Makhijani's testimony that, under LES's new proposal to defer deconversion until after the NEF's operating life, LES will face additional charges for, inter alia, storage and transportation of DUF6 containers prohibited from onsite storage under LES's agreement with the State of New Mexico. (NIRS/PC Ex. 262). Of course, these additional charges, unaccounted for by LES, are outside the scope of the "cost of capital" that is the genesis of LES's objection, but the testimony is relevant here, because LES has sought

to avoid the cost of capital question by altering its dispositioning strategy, and it is clearly appropriate for Dr. Makhijani to point out that LES's new strategy raises new cost problems. Likewise, Dr. Makhijani has pointed out that, in limiting its calculation of the cost of capital to the cost of financing the items listed in its April 8, 2005 submittal (NIRS/PC Ex. 188), LES has left out several items of deconversion cost—other items that will need to be financed in some way. Such testimony is equally relevant in considering cost of capital.

Conclusion

For the reasons set forth herein, LES's motion in limine should be denied.

Respectfully submitted,



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January 23, 2006

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on January 23, 2006 the foregoing Response on behalf of Intervenor Nuclear Information and Resource Service and Public Citizen to January 18, 2006 Motion in Limine by Louisiana Energy Services, L.P. was served by electronic mail and first class mail upon the following:

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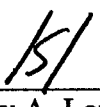
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