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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

12 January 2006

G. Paul Bollwerk, III  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dr. Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
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Dr. Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
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Washington, D.C. 20555-0001

In re Louisiana Energy Services, L.P., Dkt. No. 70-3103; ASLBP No. 04-826-01-ML

Dear Administrative Judges:

During Dr. Makhijani's cross-examination on October 27, 2005, a question arose concerning production of the printouts of relevant pages from the computer output files that were generated by Dr. Makhijani, Dr. Smith, and Mr. Rice in modeling, using RESRAD and PHREEQC, the performance of depleted uranium disposal sites. This modeling was discussed in the expert report prepared by Dr. Makhijani and Dr. Smith and dated November 24, 2004 (NIRS/PC Ex. 190). ~~Since this report contains proprietary material, it was delivered by hand~~ directly from the Institute for Energy and Environmental Research ("IEER") in hard copy, in a package that, IEER records indicate, included accompanying materials, namely, the current resumes of Dr. John Bredehoeft and Dr. Makhijani and the pages from the output files.

When the issue of production of the pages from the RESRAD and PHREEQC output files arose in the course of Dr. Makhijani's cross examination, I stated, based upon reports to me of  
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the document delivery carried out by IEER in November 2004, and based upon the contents of my own files, which have the expert report, resumes, and hard copies from the printouts, that the pages from the printouts had been produced from IEER to the parties at the same time the expert report itself was delivered, *i.e.*, November 24, 2004, and in the same package. (See Tr. 3030-31, 3035, 3044). Counsel for LES stated, however, that he did not have the printouts. (Tr. 3006, 3033, 3034, 3044-45).

In a letter dated December 6, 2005, counsel for Louisiana Energy Services, L.P. ("LES") further advised the Board that, after investigation, LES has determined that it "never received such files." This statement spurred an investigation by NIRS/PC. I can report to the Board as follows:

1. In November 2004, it was IEER's regular practice to maintain in its files a complete set of the materials sent out of the IEER office in connection with litigated matters. Dr. Smith of IEER has reviewed these IEER files for November 2004, and the files do contain hard copies of the report, resumes, and the RESRAD and PHREEQC printout pages that relate to the modeling discussed in the November 24, 2004, report. Under IEER's practice, the presence of the printout pages indicates that copies of the pages were delivered to all recipients of the report.
2. Dr. Smith of IEER and Ms. Kemp of Public Citizen reviewed files at the Office of the Secretary of the Commission on December 13, 2005. They checked files covering a time span that included the November 24, 2004 report date. The report and resumes, but not the printout pages, were found in the Commission files.
3. In November 2004 the New Mexico Environment Department ("NMED") and the New Mexico Attorney General's Office ("NMAGO") were parties to this proceeding and, under procedures for service of papers and production of documents, would have

received copies of the November 24, 2004 report and the output files. Accordingly, I inquired of the Office of General Counsel of NMED concerning the materials. Tannis Fox, Esq., the NMED lawyer in charge of this matter, reviewed the NMED files of materials produced to NMED. She located the printout pages. They are in NMED's files in the condition in which they were originally produced—i.e., in a package with the November 24, 2004 report and two resumes that accompanied the report. I have myself personally reviewed the RESRAD and PHREEQC printouts in NMED's files. They are the printouts that concern the analyses in the November 2004 report—the items that IEER's records indicate were produced.

4. To seek further confirmation that IEER delivered the printout pages, I inquired of the New Mexico Attorney General's Office. This process was delayed due to the departure of the attorney who had been responsible for the files in this matter. Scott Nicoll, Esq. is the Assistant Attorney General who now has charge of those files, and the files are located in Albuquerque. In discussions with Mr. Nicoll in late December 2005 and early January 2006, by exchanges of e-mail messages, and by fax communications of materials from the files of the N MAGO, I have determined that the N MAGO also has the RESRAD and PHREEQC printout pages that relate to the November 24, 2004 report and that were produced by IEER.

Thus, both the Environment Department and the Attorney General's Office, which were scheduled to receive the printout pages, did receive them and have them in their files to this date. Since in serving documents IEER sends the same materials to everyone on its service lists, it seems quite clear that the printout pages were also sent to LES.

Since LES's letter dated December 6, 2005, states without qualification that NIRS/PC "failed to provide LES with these output files," I am constrained to correct the record and to

report to the Board that the files of the parties to the proceeding indicate that the pages from the output files were, in fact, produced to LES.

Very truly yours,

A handwritten signature in cursive script, reading "Lindsay A. Lovejoy, Jr.".

Lindsay A. Lovejoy, Jr.

cc: All Counsel  
Office of the Secretary