

RAS 11156

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

DOCKETED 02/08/06

SERVED 02/08/06

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

February 8, 2006

MEMORANDUM AND ORDER
(Administrative Matters Relative to Mandatory Hearing)

In anticipation of the upcoming "mandatory hearing" in this proceeding, scheduled to be held the week of March 6, 2006, in Hobbs, New Mexico, regarding the December 2003 application of Louisiana Energy Services, L.P., (LES) for a license under 10 C.F.R. Part 70 to construct and operate a uranium enrichment facility -- the National Enrichment Facility (NEF) -- near Eunice, New Mexico, the Licensing Board provides the following guidance regarding administrative matters related to that hearing, as well as the limited appearance statement sessions the Board will hold in conjunction with that hearing:

A. Prefiled Testimony, Exhibits, and Related Matters

1. Order and Manner of Presentation of Evidence. Because the focus of the mandatory hearing, and the related findings the Board must make with regard to the LES application, is on the NRC staff's safety and environmental review with regard to that application, the staff will present its testimony and evidence first, followed by LES. As the Board noted during the January 25, 2006 prehearing conference with LES and the staff, prefiled direct testimony should address the specific Board questions and areas of concern identified during that call, as

well as those discussed at the conclusion of the October 2005 evidentiary hearing, and should further provide any background or supporting information that will assist the Board in making its mandatory findings. See Tr. at 3203.¹ The parties should structure the presentation of this prefiled testimony, as well as any oral presentations during the mandatory hearing, in the manner they believe will best assist the Board in making its findings.

The parties have also indicated they anticipate, subject to the extent of the Board's inquiry, the evidentiary hearing sessions can be completed in two to three days. Because of the uncertainties inherent in attempting to predict the time required for litigation, relative to the availability of witnesses, the parties should be prepared both to accelerate the hearing schedule as well as to accommodate any extensions, and should be prepared to have their respective witnesses available for the entirety of March 6-8, 2006. In addition, the parties should plan for the possibility that a particular daily hearing schedule might be extended into the early evening if such an extension would facilitate completing a particular topic area.

As a related matter, the parties have previously indicated that portions of the hearing may need to be closed to the public due to the need to discuss proprietary or otherwise sensitive information, or that additional hearing sessions might need to be held in a secure

¹ The Board memorialized the questions/areas of concern discussed during the January 25 prehearing conference in a January 30, 2006 memorandum and order. See Licensing Board Memorandum and Order (Memorializing Board Questions/Areas of Concern for Mandatory Hearing) (Jan. 30, 2006) (unpublished) [hereinafter January 30 Order]. In addition, at the request of the staff (transmitted to the Board via e-mail on February 3, 2006), the Board held an additional prehearing conference with LES and the staff on February 6, 2006, during which the Board clarified for the staff additional issues related to identified Board questions/areas of concern. The prehearing conference was transcribed by a court reporter, see Tr. at 3214-54, and the questions/issues raised by the staff are included as Attachment A to this memorandum and order. In addition to those specific questions, the staff also identified an issue with the MONK8 validation report provided by LES to the staff in that the validation report contains a different k-effective calculation than the LES application. The staff and LES are working to resolve this issue, and will keep the Board updated as to any pertinent developments. See Tr. at 3225-26.

facility in Rockville, Maryland, to facilitate the discussion of classified information. See Tr. at 3207-09. The Board indicated in its January 30, 2006 memorandum and order regarding questions/areas of concern for the mandatory hearing that it would defer any determination about the need for closed sessions until the parties provide their prefiled testimony and evidentiary information. See January 30 Order at 6 & n.5. To assist the Board in making this determination, the parties are directed to file a joint report on or before Friday, February 24, 2006, informing the Board about which portions of the hearing might need to be closed to facilitate the discussion of proprietary/sensitive information, if any, and how much time the parties believe such sessions would require. The Board would prefer that any closed sessions be held at the end of a particular hearing day or, in the alternative, at the conclusion of the mandatory hearing. In addition, that report should inform the Board whether an additional closed session will be required in a secure Rockville facility to discuss any classified information.

2. Service, Form, and Quantity of Documentary Materials. All prefiled testimony and exhibits should be served on the Board, the Office of the Secretary, and the other parties to the mandatory hearing 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), and December 21, 2004 protective order relative to other sensitive/protected materials, see Licensing Board Memorandum and Order (Protective Order) (Dec. 21, 2004) at 3 (unpublished).

This includes providing each member of the Board with hard copies of all prefiled exhibits.²

Pursuant to the Board's January 30 memorandum and order, party prefiled direct testimony and associated evidentiary materials should be filed on or before Friday, February 24, 2006.³

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

3. 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 the staff offers (and has admitted) a certain portion of a staff report regarding the LES facility, LES should not then offer into evidence the same portion of the report. Instead, LES would rely on the document already proffered by the staff.

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 the

² The parties are reminded to produce all evidentiary material they intend to rely on at the evidentiary hearing, including information previously provided to the Board pursuant to its request for certain documents related to the LES application. See Licensing Board Memorandum and Order (Response to Joint Motion for Clarification Regarding Mandatory Hearing-Related Materials) (Sept. 7, 2005) (unpublished); Licensing Board Memorandum and Order (Memorializing Results of Prehearing Conference) (Aug. 12, 2005) (unpublished); see also Tr. at 1693-1737.

³ In that memorandum and order, the Board further requested that if the prefiled testimony and/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. See January 30 Order at 5 n.4.

other party in the proceeding. In each instance this is found to be the case, the parties should determine, based on the schedule under which presentations will be made, 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.⁴

b. Exhibit Order and Numbering. Each party should number their prefiled exhibits consistent with the numbering scheme it will be utilizing in the context of the February 2006 evidentiary hearing. In this regard, exhibit numbers should continue sequentially from each party's last numbered exhibit identified in the context of the planned February 2006 hearing, i.e. parties should not provide exhibits with numbers that duplicate those of exhibits already identified and admitted/rejected in this proceeding. However, to ensure the exhibits identified and admitted/rejected in the first instance in the mandatory hearing can be readily distinguished from exhibits identified and admitted for the contested portion of this proceeding, the arabic number for each exhibit introduced for the first time in the mandatory hearing should have appended to it the suffix "-M". Moreover, to the extent any party wishes to rely on any exhibit previously identified and admitted as part of the contested portion of this proceeding, that exhibit should retain the same number it was given when previously identified.

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.

⁴ 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 the other party who identified the item as a duplicate document or thereafter evidenced an intent to rely upon it in prefiled direct testimony.

4. 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 this regard, to the extent possible the parties should utilize the exhibit list template included in Attachment B to this order, and complete the party exhibit number, witness/panel, and description fields, including an ADAMS accession number to the extent it is available for the document (or portion of the document) that will be proffered, as well as an indication in **bold** type of any proprietary/sensitive 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 the prefiled direct testimony for a particular witness or witness panel to the Court Reporter/Clerk at the hearing at the time the witness/panel is presented.⁵ 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 party prior to the hearing, in addition to the copies provided to counsel for the other party, 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

⁵ 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.

evidentiary material at the hearing.⁶ However, as to any exhibit first submitted at the hearing, in addition to the copies provided to counsel for the other party, a party should submit an original and two 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.

Additionally, as it did in the context of the evidentiary hearings on contested issues in this proceeding, 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 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 (circle the appropriate designation); exhibit number (per the sponsoring party's numbering scheme with the addition of the suffix "-M"); 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 mandatory hearing sessions and should return them to the Court Reporter/Clerk at the conclusion of those sessions.

⁶ As with prefiled testimony, Board members will rely on the copies of exhibits already provided to the Board.

C. Miscellaneous Matters

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

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 Friday, February 24, 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 and Limited Appearance Sessions. Each party should advise the Board's law clerk by Friday, February 24, 2006, as to who and how many of its counsel/authorized representatives plan to attend the March 6-8, 2006 evidentiary hearing sessions. To this end, because the Board may determine that certain portions of the evidentiary hearing need to be conducted in closed session, the parties should provide the Board's law clerk with two separate lists: (1) those counsel/authorized representatives that plan to attend any public hearing sessions; and (2) those counsel/authorized representatives that plan to attend any closed hearing sessions. Individuals not named on the closed hearing session attendance list may not be admitted to any closed portion of the hearing. In addition, any counsel/authorized representatives (excluding counsel/representatives for the staff) wishing to attend any closed hearing session must have executed a nondisclosure declaration in accord with paragraph K of the Board's May 21, 2004 protective order for proprietary information and/or paragraphs 1 and 2 of the Board's December 21, 2004 protective order for certain sensitive information.

In addition, as the Board noted in its January 26, 2006 notice, in conjunction with the mandatory hearing the Board will entertain oral limited appearance statements from members of the public during two sessions currently scheduled for Sunday, March 5, 2006, from 3:00 to 5:00 p.m. Mountain Standard Time (MST) and Monday, March 6, 2006, from 7:00 to 9:00 p.m. MST. The parties should provide the Board's law clerk, on or before February 24, with a list of those counsel/authorized representatives that plan to attend the Sunday afternoon and/or Monday evening limited appearance sessions.

4. Opening Statements By Counsel. To the extent they wish to do so, at the outset of the mandatory hearing the Board will afford one counsel for each of the parties making an evidentiary presentation a total of 30 minutes to present a summary of that party's anticipated evidentiary presentations/proof relative to the findings the Board must make in connection with the mandatory hearing. The order of party opening statements will be the same as that specified in section A.1 above for party evidentiary presentations.

5. Hearing Status Telephone Number. If any events beyond the Board's control (e.g., inclement weather) require 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 BOARD⁷

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

February 8, 2006

⁷ 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.

ATTACHMENT A

Clarifications on Mandatory Hearing Questions

1. ASLB Order Question 5

Table 7-3 of the validation report contains calculations used to verify that the same input file run on two different computers with the same computer code options will have statistically similar results. The validation report was not used to evaluate accident sequences for which IROFS were designated. Instead, the risk matrix described in the ISA was used for this purpose. The Staff intends to address this issue by explaining the process by which IROFS were developed and reviewed by the Staff as well as the nuclear criticality safety program commitments required for this type of license application and the scope of the review performed by the Staff. Additionally, the Staff intends to discuss the validation report and its significance. Is this sufficient to answer the Board's question?

In the validation report, specific calculational results may show a positive bias (i.e., k-eff calculated > 1.0). Even if the final result of combining all the specific calculations result in an overall positive bias, LES assumed the bias to be zero for all cases. Is the Board asking whether a separate bias should be calculated for a subset of the calculations, i.e., for low H/U ratios?

2. ASLB Order Question 6

Because uranium with no moderation/hydrogen at enrichment less than 5.0 wt.% U-235, including depleted uranium, cannot go critical under any operating condition that can be encountered at a gas operated enrichment facility, no IROFS for depleted uranium have been identified. Is there a typographical error in the question?

As in the clarification above, there is no relationship between the information in the validation report and IROFS.

3. ASLB Order Question 7

See clarifications noted above for ASLB Order Questions 5 and 6.

4. ASLB Order Question 8a and 8b

Uranium, including depleted uranium, with no moderation/hydrogen at enrichment less than 5.0 weight percent U-235 cannot go critical. Is there a typographical error in the question?

5. ASLB Order Question 8c

The validation was based on thermal neutron interactions. Unresolved resonances do not apply to these cases.

6. October Hearing Questions

We have tried to extract the mandatory hearing questions from the October hearing transcript. Would the ASLB clarify if the following questions address the issues raised in the transcript or if these questions need to be modified to resolve ASLB concerns?

- a. How will the financial assurance mechanism deal with the possibility that there will be an outstanding bond for X dollars and suddenly there will be an increase in the cost of one of the major elements, and the possibility that the licensee might be unable to bear the additional cost?
- b. Provide a quantitative analysis, preferably a fault-tree diagram, of the probability of significant water vapor intrusion with respect to criticality safety.
- c. Provide a discussion of the interaction of hot hydrofluoric acid with the aluminum fluoride layer on the aluminum tubes in the case of significant water vapor intrusion. Will the aluminum fluoride in the presence of water vapor transform to aluminum oxide plus hydrogen fluoride? Will any resulting aluminum oxide flake off or will it continue to adhere as a different type of passivating layer?
- d. Provide a discussion of the interaction of hydrogen fluoride with the various seals that are present. Are they attacked and degraded or are they some form of fluorinated compound (e.g., Teflon) that is impervious to attack?
- e. Are any of the optimum criticality estimates referred to in the Safety Analysis Report at low, that is, ten to one or less hydrogen to uranium ratios?
- f. Provide a copy of the revised MONK8 validation report and put a tab in at the discussion of optimum hydrogen to uranium ratios. Provide a discussion of the bias of the MONK8 results at the low level hydrogen to uranium ratios, that include a negative as well as positive bias, and may be inadequate in that case.
- g. How was the MONK8 code with the Jef 2.2 cross-sections validated and verified for use with unmoderated cores? Describe the treatment of the inherent randomness of the unresolved cross-section in the discussion of unmoderated volume cases. How does the MONK8 code treat unresolved cross-sections?
- h. If there is a fire in an electrical cabinet, how is the retained heat dissipated? After a fire is extinguished by an inert gas, fires have been found to re-ignite after the cabinet is opened. What steps are taken to address re-ignition?

Is Question a, above, the same as ASLB Order Question 1 on financial assurance?

Is it acceptable to address Question b, above, using a qualitative approach rather than a quantitative approach? 10 CFR Part 70 does not require any quantitative approaches.

In Question d, above, LES intends to provide details of seal materials. This information will be submitted as "Export Control Information" that will need to be withheld from the public. The

ASLB should understand that any discussion of this information at the evidentiary hearing will need to be done in closed session.

In Question e, above, note that under dry conditions, criticality is not possible at the assay levels applicable to the LES facility.

In Question f, above, this appears to be similar to ASLB Order Question 5. Note that an overall positive bias is not used by LES nor is it allowed by NRC.

Is Question g, above, the same as ASLB Order Question 8?

7. Adequacy of Chapter 5

Will answering the above questions, including the background discussion discussed with regard to Question 5, address the deficiencies in Chapter 5 of the Staff's Safety Evaluation Report (SER)? If not, could the Board provide guidance on what additional information the Staff should provide in its testimony to supplement the SER?

8. ASLBP Order NEPA Question 1

The Environmental Report (ER) provided by LES includes a detailed market analysis of supply and demand for enrichment services under numerous different market scenarios (in 1.1.2.4) and details commercial considerations and other implications of each scenario (in 1.1.2.5). The Staff has not viewed these types of market analyses necessary in addressing the purpose and need for proposed projects. Does the Board believe these aspects of the ER must be addressed by the Staff in order to provide an adequate purpose and need statement?

9. ASLB Order NEPA Question 2

Note that the uranium hexafluoride cylinder rupture is considered to be highly unlikely and IROFS are applied to prevent the accident. The accident was analyzed in the environmental impact statement only to show worst-case impacts in the event that the highly unlikely accident occurs. Should the staff include a discussion of the IROFS that are in place to prevent the accident or should the staff focus on those measures that would mitigate the impacts if the unlikely event occurs?

ATTACHMENT B

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 (ADMINISTRATIVE MATTERS RELATIVE TO 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 (ADMINISTRATIVE
MATTERS RELATIVE TO 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 8th day of February 2006