

RAS 11332

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

DOCKETED 03/13/06

SERVED 03/13/06

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

March 13, 2006

MEMORANDUM AND ORDER

(Regarding Transcript Corrections;

Public Availability of February 2006 Hearing Transcript and Exhibits; Closing
Record of October 2005 and February 2006 Evidentiary Hearings)

Pending before the Licensing Board are (1) a February 24, 2006 motion by applicant Louisiana Energy Services, L.P., (LES) requesting that certain corrections be made to the transcript of the February 13, 2006 evidentiary hearing session in this proceeding; (2) a February 24, 2006 letter from intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) submitting a list of proposed corrections to the February 13 transcript; and (3) a March 1, 2006 joint report submitted on behalf of LES, NIRS/PC, and the NRC staff requesting that certain party exhibits be withheld from public disclosure because they contain information proprietary to LES.

Relative to the transcript corrections proposed by LES and NIRS/PC, given that none of the parties objected to those proposed corrections,¹ the Board hereby adopts those corrections

¹ In this regard, the parties are once again reminded that Internet e-mail pleadings are not favored by the Board, and, in the future, e-mail should be reserved for transmitting electronic copies of motions and pleadings rather than as a substitute for such filings.

and the transcript of the evidentiary hearing held February 13, 2006, is revised per Appendix A to this memorandum and order.

As for the availability of the transcript and certain exhibits from the February 13 evidentiary hearing session, in accord with the parties' March 1 joint report, and with the approval of the Board, the Office of the Secretary will place in the docket of this proceeding and make publically available via the agency's ADAMS electronic document search and retrieval system the following documents that previously have been withheld based on claims that the transcript/exhibits could contain proprietary information subject to nondisclosure pursuant to 10 C.F.R. § 2.390: (1) a publically-available version of the February 13, 2006 evidentiary hearing transcript;² and (2) Staff Exh. 48 and NIRS/PC Exhs. 280, 281, and 287, in their entirety.

As a related matter, in their joint report the parties request that NIRS/PC Exh. 188, which was admitted in connection with the October 2005 evidentiary hearing in this proceeding, be withheld from public disclosure as containing proprietary information. While that exhibit was properly identified and withheld in connection with that hearing, it was later inadvertently excluded from a November 15, 2005 joint report by the parties requesting that the proprietary status of certain exhibits be maintained, and accordingly was made publically-available by the Office of the Secretary.³ Because the proprietary markings on that exhibit were stricken before

² As was the case with the publically-available version of the transcripts from the October 2005 evidentiary hearing sessions, because of formatting changes resulting from the addition of headers to identify the transcript as publically-available, the pagination of the publically available version of the transcript and the previously proprietary version is not identical. Accordingly, for purposes of preparing their proposed findings and conclusions, the parties should use the pagination in the hard-copy, formerly proprietary version of the transcript that was provided by the court reporting service.

³ In fact, on February 27, 2006, counsel for LES informed the Board via e-mail that the parties' November 15 joint report had erroneously failed to identify NIRS/PC Exh. 188 as one of
(continued...)

it was made publically-available, LES and NIRS/PC should confer and, on or before Monday, March 20, 2006, LES or NIRS/PC should provide the Board with a copy of NIRS/PC Exh. 188 that indicates the proprietary status of that document, which will then constitute the official version of NIRS/PC Exh. 188 in lieu of the document currently in the evidentiary record.⁴

Finally, the Board indicated in a February 16, 2006 memorandum and order that it would defer closing the record of the October 2005 and February 2006 evidentiary hearing sessions pending Board determinations regarding corrections to and/or redaction of the transcript and exhibits from the February 2006 session.⁵ Based on the Board's determinations herein, and the fact that a portion of the record dealing with contention NIRS/PC EC-4 has already been closed, see LBP-06-08, 63 NRC __, __ n.12 (slip op. at 10 n.12) (Mar. 3, 2006), the Board now closes

³(...continued)

the documents that should continue to be withheld from public disclosure as containing proprietary information. The following morning, the Office of the Secretary reinstated the protected status of that document on ADAMS, and has since withheld it from public disclosure pending the resolution of the status of that document.

⁴ In addition, the following exhibits admitted in connection with the October 2005 or February 2006 evidentiary hearings contain proprietary information and will continue to be withheld from public disclosure: LES Exhs. 86-91, 94, 95, 98, 105, and 110; and NIRS/PC Exhs. 100, 190, 221, 224, 229, 233, 234, 236, 237, 242, 243, 270, 271, and 284.

⁵ In a February 21, 2006 letter to the Board, NIRS/PC requested that the record remain open with regard to two contentions litigated at the October 2005 and February 2006 evidentiary hearing sessions, namely contentions NIRS/PC EC-5/TC-2 and EC-6/TC-3. See Letter from L. A. Lovejoy, Counsel for NIRS/PC, to the Licensing Board (Feb. 21, 2006). NIRS/PC has not demonstrated any valid reason for leaving the record open at this juncture, and the Board therefore declines to do so. Should NIRS/PC see a reason for the Board to reopen the record as to any particular issue at a future time, nothing in this order precludes them from making such a motion pursuant to 10 C.F.R. § 2.326.

the evidentiary record of the October 2005 and February 2006 hearing sessions as to contentions NIRS/PC EC-3/TC-1, NIRS/PC EC-5/TC-2, and NIRS/PC EC-6/TC-3.⁶

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁷

Original Signed By
G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

March 13, 2006

⁶ The Board also notes that, after reviewing the transcript of the February 13, 2006 hearing session, it appears that a prefiled staff exhibit (labeled number 47) and associated exhibit list were bound into the transcript as attachments to the staff's direct testimony. Those attachments do not constitute a portion of the evidentiary record, and should not be relied on as such by any of the parties.

⁷ 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.

Appendix A

Corrections to February 13, 2006 Transcript for Louisiana Energy Services, L.P. Proceeding

Page(s)	Line(s)	Delete	Insert
3272	22	is	has
3284	21	DUF-6	DUF6
3288	23	tri-annual	triennial
3290	6	that the escalated	the escalation
3292	15-16	[paragraph break]	
3294	10	actually	actual
3297	21	aught	ought
3313	7	deconvnert	deconvert
3314	14-15	thru-put	throughput
3314	19	thru-put	throughput
3319	21	here's	there's
3319	22	calculate	calculate it
3327	23	10CFR 70.25	10 CFR 70.25
3330	19	WITNESS KRICH:	MR. LOVEJOY:
3331	14	and	in
3331	23	110	110 million
3334	1	any one cylinder	any cylinders
3342	9	LNI	LMI
3344	5	emotion	a motion
3345	7	for	or
3346	1	dubbing	doubling
3346	4	aught	ought
3361	19	10CFR 70	10 CFR 70
3364	2	the panel that	
3370	8	Lamotis	Le Motais

Page(s)	Line(s)	Delete	Insert
3384	11	Institution	Institute
3384	17	Institution	Institute
3386	19	it's	its
3388	10	cylinders on a daily basis	
3461	4	thru-put	throughput

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 (REGARDING TRANSCRIPT CORRECTIONS; PUBLIC AVAILABILITY OF FEBRUARY 2006 HEARING TRANSCRIPT AND EXHIBITS; CLOSING RECORD OF OCTOBER 2005 AND FEBRUARY 2006 EVIDENTIARY HEARINGS) 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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Washington, DC 20555-0001

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Docket No. 70-3103-ML
LB MEMORANDUM AND ORDER (REGARDING TRANSCRIPT
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 13th day of March 2006