

RAS 11416

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

DOCKETED 03/27/06

SERVED 03/27/06

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 27, 2006

MEMORANDUM AND ORDER
(Regarding Transcript Corrections and
Other Mandatory Hearing-Related Matters)

Pending before the Licensing Board are (1) a March 16, 2006 motion by applicant Louisiana Energy Services, L.P., (LES) requesting that certain corrections be made to the transcript of the March 6, 2006 mandatory evidentiary hearing in this proceeding; (2) a March 20, 2006 motion from the NRC staff requesting that certain corrections be made to that transcript; (3) a March 24, 2006 letter submitted by the staff providing, pursuant to a March 17, 2006 Board memorandum and order, a version of Staff Exh. 50-M it asserts is suitable for public disclosure;¹ and (4) a March 20, 2006 letter from the staff providing an affidavit from staff witness Rick Nevin, pursuant to a March 13, 2006 Board memorandum and order.

A. Relative to the transcript corrections proposed by LES and the staff, given that none of the parties objected to those proposed corrections, the Board hereby adopts those

¹ Pursuant to the Board's March 17 order, the parties notified the Board orally on March 21, 2006, that the March 6 transcript contained no proprietary information and could be disclosed to public.

corrections and the transcript of the evidentiary hearing held March 6, 2006 is revised per Appendix A to this memorandum and order.

B. As to the availability of Staff Exh. 50-M, which previously has been withheld based on a claim that the exhibit contains proprietary information subject to nondisclosure pursuant to 10 C.F.R. § 2.390, in its March 17 order, the Board directed that the staff and LES should confer and provide the Board with a redacted version of Staff Exh. 50-M, suitable for public disclosure. See Licensing Board Memorandum and Order (Status of Mandatory Hearing-Related Document) (Mar. 17, 2006) at 1 (unpublished). In that order, the Board provided instructions for the parties on implementing a “blackout” method to redact proprietary information, including striking through any headers/footers or other page markings indicating the existence of proprietary/protected information. See id. at 1 n.1. In its March 24 letter and accompanying version of Staff Exh. 50-M, the staff has taken a different approach. First, there is no indication in the staff’s letter that LES, the party to whom the information at issue purportedly is proprietary, concurred in the version of Staff Exh. 50-M submitted by the staff for public release. This is not surprising, given that, rather than providing a copy of that document with certain text blacked out and proprietary markings stricken through, the staff simply replaced the several pages of text included in the proprietary document with a few paragraphs, apparently copied from corresponding pages in the staff SER, indicating that the pages in the original document contained information LES designated as proprietary and outlining the conclusion reached by the staff as a result of its review of that information.

In this instance, the Board’s request for a redacted version of the document is consistent with existing agency guidance that encourages redacted versions of otherwise nonpublic documents. See 10 C.F.R. § 9.19(a); www.nrc.gov/reading-rm/doc-collections/gen-comm/reg-issues/2005/ri200531.pdf. Moreover, it appears to the Board that while portions of

the information in the nonpublic version of Staff Exh. 50-M might be validly withheld pursuant to 10 C.F.R. § 2.390, there are significant portions of the currently withheld pages that, for example, provide a general discussion of applicable agency regulations and NUREGs, which on their face do not suggest a valid justification for not permitting public disclosure.

Accordingly, the staff and LES are directed, on or before Monday, April 3, 2006, to review Staff Exhibit 50-M to segregate information that validly can be withheld from public disclosure from that which should be released to the public, and provide the Board with a publicly-available copy of Staff Exh. 50-M that utilizes the blackout and strike-through methods specified by the Board in its March 17 order.

C. As a related matter, in accordance with a March 13, 2006 Board memorandum and order regarding the February 13, 2006 evidentiary hearing session, on March 15, 2006, LES provided the Board with a copy of Nuclear Information and Resource Service/Public Citizen (NIRS/PC) Exh. 188 that indicates the proprietary status of that document. The Board subsequently provided that copy to the Office of the Secretary for inclusion in the record. As the Board noted in its March 13 memorandum and order, that copy of NIRS/PC Exh. 188 constitutes the official version of that exhibit in lieu of the document previously in the evidentiary record.

D. Finally, with the submission of the March 15, 2006 affidavit of staff witness Rick Nevin affirming his portion of the staff's written testimony relative to the purpose and need for the proposed LES facility, that portion of the testimony placed into the transcript of the March 6

mandatory hearing is adopted as part of the evidentiary record of the mandatory hearing in this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

March 27, 2006

² 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; (3) the New Mexico Environment Department and the Attorney General of New Mexico; and (4) the staff.

Appendix A

Corrections to March 6, 2006 Transcript for Louisiana Energy Services, L.P. Proceeding

Page(s)	Line(s)	Delete	Insert
3512	15	asses	assess
3515	18	Bollwerk	Kelber
3516	9	on the	in the
3517	12	stern to stern	stem to stern
3542	6	use	used
3543	7	second occurrence of "Institute"	
3546	20	N14.9	
3546	20	14.1	N14.1
3555	13	in	and
3557	20	vigor	rigor
3573	12	JOHNSON	KRICH
3574	12	or	to
3576	9	there's	their
3576	24	and	in
3576	24	detailed	detail
3579	18	and	in the
3579	24	that the	
3582	10	signs	size
3583	21	I'm sorry.	I'm sorry?
3602	20	GREEN	FELSHER
3607	16	need	needed
3610	12	Keer	Kier
3610	17	Leo	Leal
3615	11-12	strike in their entirety	

3621	18	fall	fault
3623	5	terministically	deterministically
3623	23	aft	aircraft
3629	20	requirements	requirement
3633	21	HEF	HF
3653	7	70	7
3664	9	Fan Namen	Van Namen
3675	23	Sequoia	Sequoyah
3675	24	Sequoia fuels	Sequoyah Fuels
3676	3	both instances of "Sequoia"	Sequoyah
3676	8-9	Sequoia fuels	Sequoyah Fuels
3681	9	Sequoia	Sequoyah
3682	3	would	

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
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LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103-ML
)	
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(National Enrichment Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REGARDING TRANSCRIPT CORRECTIONS AND OTHER MANDATORY HEARING-RELATED MATTERS) 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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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of March 2006