

March 17, 2006

DOCKETED  
USNRC

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

March 17, 2006 (2:01pm)

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

**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

---

**REPLY  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
SUBMITTED ON BEHALF OF INTERVENORS  
NUCLEAR INFORMATION AND RESOURCE SERVICE  
AND PUBLIC CITIZEN  
BASED UPON EVIDENCE TAKEN ON FEBRUARY 13, 2006  
(COST OF CAPITAL, CYLINDER MANAGEMENT)**

**Preliminary statement**

The following Reply Proposed Findings of Fact and Conclusions of Law are submitted on behalf of Nuclear Information and Resource Service and Public Citizen, Intervenors herein ("NIRS/PC"), pursuant to the orders of the Atomic Safety and Licensing Board (the "Board") dated January 11, 2006 and February 16, 2006.

NIRS/PC here respond to proposed findings of fact and conclusions of law submitted by the Applicant, Louisiana Energy Services, L.P. ("LES") and by Commission Staff on March 1, 2006. The present submissions are limited to questions of (a) the cost of capital and (b) cylinder management that were heard on February 13, 2006.

NIRS/PC submit that the findings of fact and conclusions of law submitted by LES and Commission Staff are largely anticipated by NIRS/PC's own submission dated February 28, 2006 ("NIRS/PC 2006 proposed FFCL"). NIRS/PC present the following reply:

**a. Cost of capital: proposed findings of fact.**

1. LES repeatedly asserts that any inadequacies in its estimates of decommissioning costs may be repaired by periodic adjustments. (LES 2006 proposed FFCL 3.24, 3.27 at 14, 16). Commission Staff make the same claim. (NRC Staff 2006 proposed FFCL 3.8 at 4). As NIRS/PC have shown, the periodic adjustment process is not intended to relieve the parties from the obligation to present an accurate cost estimate. In particular, when the prospective licensee is a special purpose entity with negligible other assets, and when future adjustments may be large, it is critical to arrive at an accurate initial estimate. (See NIRS/PC 2006 proposed FFCL 36-38 at 12-14).
2. LES previously advanced various theories under which the cost of capital to construct a deconversion plant during the life of the NEF—LES's proposed "plausible strategy"—would be met by supposed operating and maintenance allowances and escalation estimates; however, NIRS/PC showed that such theories have no substance. (See NIRS/PC 2006 proposed FFCL 39-41 at 14-15). Now LES has openly abandoned such arguments. (LES 2006 proposed FFCL 3.31 at 17-18).
3. LES asserts that it has "never stated categorically that it will build a deconversion facility in 2012." (LES 2006 proposed FFCL 3.34 at 20). However, it is indisputable that such a plan was offered by LES as its "plausible strategy," on the basis of which cost estimates must be made. (See NIRS/PC 2006 proposed FFCL 32-33 at 11).

4. LES states that its cost estimate is “supported by the NRC Staff.” (LES 2006 proposed FFCL 1.2 at 2). However, Commission Staff have submitted no proposed findings that support LES on the question of cost of capital.

**b. Cylinder management: proposed findings of fact.**

5. LES acknowledges that it has “committed to add \$0.60 per kgU to its current cost estimate to address the putative cost of DUF6 cylinder management.” (LES 2006 proposed FFCL 3.7 at 6)(See also NRC Staff 2006 proposed FFCL 3.6 at 3). Thus, it is agreed that at least this amount must be added to the deconversion cost estimate.
6. LES asserts that it would be the practice continually to reuse cylinders, so that to apply the cylinder cleaning cost estimate to the entire DUF6 inventory would constitute a “worst case” assumption. (LES 2006 proposed FFCL 3.8 at 7).  
  
However, LES has asserted that cost estimates should be based upon the assumption that deconversion would not be carried out until the end of the NEF’s operating life (LES 2006 proposed FFCL 3.21, 3.27 at 12, 15), in which case it would be most accurate to assume that the cylinder cleaning cost will, in fact, be incurred as to the entire DUF6 inventory.
7. LES asserts that it has presented a cost estimate for cleaning cylinders to free release standards. (LES 2006 proposed FFCL 3.16 at 10). Commission Staff so asserts also. (NRC Staff 2006 proposed FFCL 3.6 at 3-4). However, LES’s witness admitted that he cannot testify to an established process to clean thousands of cylinders, as would be required. (Tr. 3394). Staff testified similarly. (Tr. 3474).
8. LES asserts that it need not show the cost of cylinder disposal. (LES 2006 proposed FFCL 3.12 at 8). However, LES has made no showing of the prospective existence of

a market to absorb 13,000 recycled cylinders, and such a market cannot be assumed.

There is a failure of proof as to the cost of cylinder disposal. (See NIRS/PC 2006 proposed FFCL 75-81 at 27-29).

Respectfully submitted,



Lindsay A. Lovejoy, Jr.  
618 Paseo de Peralta, Unit B  
Santa Fe, NM 87501  
(505) 983-1800  
(505) 983-0036 (facsimile)  
E-mail: [lindsay@lindsaylovejoy.com](mailto:lindsay@lindsaylovejoy.com)

Counsel for Petitioners  
Nuclear Information and Resource Service  
1424 16<sup>th</sup> St., N.W. Suite 404  
Washington, D.C. 20036  
(202) 328-0002

and

Public Citizen  
1600 20<sup>th</sup> St., N.W.  
Washington, D.C. 20009  
(202) 588-1000

March 17, 2006

## CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on March 17, 2006, the foregoing Reply Proposed Findings of Fact and Conclusions of Law submitted on behalf of Intervenors Nuclear Information and Resource Service and Public Citizen based upon Evidence Taken on February 13, 2006 (Cost of Capital, Cylinder Management) was served by electronic mail and first class mail upon the following:

G. Paul Bollwerk, III  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [gpb@nrc.gov](mailto:gpb@nrc.gov)

Dr. Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [pba@nrc.gov](mailto:pba@nrc.gov)

Dr. Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
e-mail: [CKelber@att.net](mailto:CKelber@att.net)

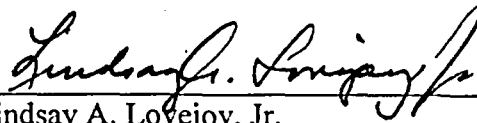
James R. Curtiss, Esq.  
David A. Repka, Esq.  
Martin J. O'Neill, Esq.  
Winston & Strawn  
1700 K St., N.W.  
Washington, D.C. 20006  
e-mail: [jcurtiss@winston.com](mailto:jcurtiss@winston.com)  
[drepka@winston.com](mailto:drepka@winston.com)  
[moneill@winston.com](mailto:moneill@winston.com)  
[aroma@winston.com](mailto:aroma@winston.com)

John W. Lawrence, Esq.  
National Enrichment Facility  
100 Sun Avenue, N.E.  
Albuquerque, NM 87109  
e-mail: [jlawrence@nefnm.com](mailto:jlawrence@nefnm.com)

Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Associate General Counsel for Hearings, Enforcement, and Administration  
e-mail: [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov)  
[lbc@nrc.gov](mailto:lbc@nrc.gov)  
[mjb5@nrc.gov](mailto:mjb5@nrc.gov);  
[jth@nrc.gov](mailto:jth@nrc.gov)

Office of Commission Appellate Adjudication  
Mail Stop O-16C1  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Rulemakings and Adjudications Staff (original and two copies)  
e-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)



---

Lindsay A. Lovejoy, Jr.  
618 Paseo de Peralta, Unit B  
Santa Fe, NM 87501  
(505) 983-1800  
(505) 983-0036 (facsimile)  
e-mail: [lindsay@lindsaylovejoy.com](mailto:lindsay@lindsaylovejoy.com)