

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Nuclear Information and Resource Service and
Public Citizen,
Petitioners,

-against-

Petition for Review

U.S. Nuclear Regulatory Commission and
the United States of America,
Respondents.

**PETITION ON BEHALF OF
NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN
FOR REVIEW OF ACTION OF THE NUCLEAR REGULATORY COMMISSION**

The Petitioners herein are Nuclear Information and Resource Service and Public Citizen (collectively, "NIRS/PC"). Petitioners hereby petition the Court for review pursuant to the Hobbs Act, 28 U.S.C. Sec. 2341 *et seq.*, of the order of the Nuclear Regulatory Commission issued on June 23, 2006, specifically, a license under the Atomic Energy Act, 42 U.S.C. Sec. 2011 *et seq.*, which authorizes the construction and operation of a uranium enrichment plant by the applicant, Louisiana Energy Services, L.P. ("LES"). Respondent is the U.S. Nuclear Regulatory Commission (the "Commission" or "NRC"). In addition, under 28 U.S.C. Sec. 2344, the United States is also a Respondent. (See Fed. R. App. P. 15(a)(2)(B)).

Under the Hobbs Act, an agency order granting a license ordinarily constitutes the requisite "final order" under 28 U.S.C. Sec. 2342(4). *City of Benton v. NRC*, 136 F.3d 824, 825 (D.C. Cir. 1998); *Massachusetts v. NRC*, 924 F.2d 311, 322 (D.C. Cir.), *cert. denied*, 502 U.S.

899 (1991); *Natural Resources Defense Council v. NRC*, 680 F.2d 810, 815 & n.11 (D.C. Cir. 1982). In the present instance, NIRS/PC and LES have both filed petitions for administrative review by the Commission of the most recent ruling of the Atomic Safety and Licensing Board (the "Board") on contested issues, and these petitions are now pending before the Commission. However, under NRC rules, the filing of a petition for Commission review does not stay the effectiveness of a ruling by the Board, and a license shall issue based on the Board's direction. 10 C.F.R. Sec. 2.103, 2.340(b), 2.340(c), 2.341(e). Further, NIRS/PC moved for a stay, which was denied by the Board (Order, June 23, 2006), and within hours, the NRC issued a license. The Commission has, in the interim, extended its time to rule upon the pending petitions for Commission review until August 23, 2006, more than 60 days after the date of the license. (Order, July 21, 2006). The Hobbs Act requires that a petition for judicial review be filed within 60 days after the order on review. 28 U.S.C. Sec. 2344. Caselaw indicates that judicial review should proceed in similar circumstances. *Sierra Club v. NRC*, 862 F.2d 222, 225 (9th Cir. 1989).

Order under review:

- a. The agency order under review is a license issued by the NRC under the Atomic Energy Act of 1954 to LES, authorizing the construction and operation of a uranium enrichment plant. A copy of the license is attached hereto (dated June 23, 2006).

Review sought herein embraces the underlying orders of the NRC, viz:

- b. The Commission's decision on review of the rulings of the Board concerning environmental issues, CLI-05-28, 62 NRC 721 (Nov. 21, 2005),
- c. The Commission's decision on review of the rulings of the Board concerning environmental impacts of disposal of depleted uranium and on summary disposition cross-motions, CLI-06-15, ___ NRC ___ (June 2, 2006), and

d. The Commission's decision by the Board in its Third Partial Initial Decision on Safety-Related Contentions, LBP-06-15, ___ NRC ___ (May 31, 2006). As noted, this order is the subject of pending petitions for review by the Commission. The NRC has nevertheless issued the license referred to above.

Copies of the above-listed orders are attached hereto in publicly available form. Review is sought as to the orders incorporating proprietary information.

2. Venue is based upon 28 USC Sec. 2343, under which statute venue is proper in this Court.

3. Relief is sought on the grounds that the orders under review are arbitrary and capricious, an abuse of discretion, and contrary to the terms of the Atomic Energy Act, 42 USC Sec. 2011 *et seq.*, the National Environmental Policy Act, 42 USC Sec 4321 *et seq.*, the Administrative Procedure Act, 5 USC Sec. 701 *et seq.*, and regulations issued pursuant to those statutes.

4. Petitioners seek an order from this Court, vacating the license in issue and remanding this proceeding to the NRC.

Pursuant to Rule 15(d), Fed. R. App. P., sufficient additional copies of this Petition for Review are included to enable the Clerk to serve each Respondent.

Respectfully submitted,



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August 14, 2006

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**PETITIONERS' CORPORATE DISCLOSURE STATEMENT
ON BEHALF OF
NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN**

Pursuant to Rule 26.1, Fed. R. App. P., Petitioners certify that Petitioners Nuclear Information and Resource Service ("NIRS") and Public Citizen ("PC") are non-profit corporations. Neither NIRS nor PC has any parent company or any subsidiary or affiliate that has issued shares to the public.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure, the undersigned attorney of record certifies that on August 14, 2006, the foregoing Petition for Review was served by first class mail upon the following:

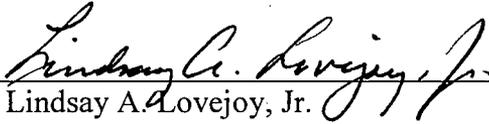
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