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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Administrative Judges:
Thomas S. Moore, Chairman
Richard F. Cole
Frederick J. Shon

1 SERVED MAY 27 1994

In the Matter of

LOUISIANA ENERGY
SERVICES, L.P.

(Claiborne Enrichment Center)

Docket No. 70-3070-ML

ASLBP No. 91-641-02-ML
(Special Nuclear
Material License)

May 26, 1994

ORDER

(Ruling on Intervenor's Motion to Consolidate
Contentions for Hearing)

We have before us the motion of Intervenor, Citizens Against Nuclear Trash (CANT), to consolidate for hearing contentions B and Q with contention J so that the former two contentions will be heard in the second phase of the licensing hearing instead of the first phase. The first hearing session is currently scheduled to begin July 18, 1994, in Shreveport, Louisiana. Contention B deals with the Applicant's decommissioning plan and alleges, inter alia, "that the decommission funding plan does not contain reasonable estimates for decommissioning nor does it adequately describe the underlying decommissioning strategy."¹

¹ LBP-91-41, 34 NRC 332, 338 (1991).

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Contention Q questions whether the Applicant is financially qualified to build and operate the Claiborne Enrichment Center.² Finally, contention J challenges the adequacy of the Applicant's Environmental Report and claims, inter alia, that the Applicant has failed to provide adequate decommissioning cost estimates and to demonstrate there is a need for the facility.³ For the reasons set forth below, we grant CANT's consolidation motion.

In its consolidation motion and a reply that we ordered filed, CANT asserts that these contentions raise overlapping factual issues. CANT states that it will be calling several of the same expert witnesses from Maryland, Oregon, and Iowa, to testify on these three contentions. Thus, CANT claims that it will be inefficient and costly for it, as a nonprofit organization of very limited means, to bring these witnesses to Louisiana twice to testify at each phase of the hearing. In addition, CANT raises the specter of conflicting testimony from its witnesses because discovery is still ongoing on contention J; the prospect of contradictory Licensing Board findings; and the likelihood of res judicata problems in the event these contentions are not heard at the same time.

² 34 NRC at 358.

³ 34 NRC at 349-50.

The Applicant, Louisiana Energy Services, and the NRC Staff oppose CANT's motion. Reading contentions B, Q, and J very narrowly, the Applicant argues that the contentions are distinct and overlap little, if at all. Further, the Applicant argues that any potential problem of conflicting testimony is not a matter of concern to the Licensing Board but rather "[c]onsistent and factually correct testimony is Intervenor's, and the witnesses', responsibility."⁴ Finally, the Applicant asserts that CANT's motion merely seeks to delay a decision on the Applicant's license and that any delay imposes an unwarranted and unnecessary hardship on the Applicant. The Staff, although recognizing that an overlap exists between contentions B and J, argues that CANT has failed to demonstrate any exceptional circumstances that warrant upsetting the current hearing schedule.

Initially, we note that we are not persuaded by the Applicant's argument that delay inevitably will result from hearing contentions B and Q in the second phase of the hearing. According to the Applicant, that will leave more issues for resolution in the second phase of the hearing and hence take longer for us to issue a decision. We not only disagree with the Applicant's premise, but we do not share the Applicant's pessimism about the Board's decision making process.

⁴ Applicant's Answer Opposing Intervenor's April 21, 1994, Motion to Consolidate Hearing Issues (May 6, 1994) at 13.

By the same token, we do not find CANT's claims regarding res judicata problems persuasive. Much more convincing is CANT's complaint about the expense of bringing the same geographically dispersed expert witnesses to the hearing site for both phases of the hearing. This proceeding could have gone forward at a single extended hearing session concluding sometime in 1995. Instead, the hearing was bifurcated in an attempt to speed the licensing process. Bifurcation, however, was not intended to penalize CANT financially. Nor could CANT reasonably be expected to have foreseen these circumstances at the time it agreed to bifurcate the hearing.

Also weighing heavily in favor of consolidation is our concern about the risk of contradictory findings presented by overlapping issues heard at different phases of the hearing. At a minimum, as even the Staff concedes, there is an overlap between contentions B and J that currently are scheduled to be heard at different phases of the hearing. Further, we anticipate issuing a partial initial decision on the first phase of the hearing before conducting an evidentiary session on the second phase. In these circumstances, our responsibility to consider all the record evidence on a matter objectively and fairly counsels that we avoid having evidence on overlapping issues heard at widely separated sessions of the hearing. As a matter of sound case management, all the evidence on these contentions should be heard at the second phase of the hearing.

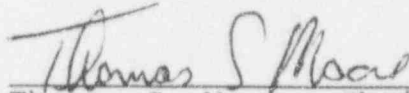
Finally, we note that it will help the Board in its preparation for the upcoming hearing to have contentions B and Q heard in the second phase of the hearing. The first phase of the hearing is scheduled to begin July 18, 1994, and the parties' direct testimony is due to be filed on July 1, 1994.

Unfortunately, the Licensing Board Panel is scheduled to move from its current quarters to the agency's new building in early July, which will have the effect of severely restricting the amount of time the Board will have available to review the prefiled direct testimony prior to the commencement of the first hearing session. Given this administrative intrusion into the Board's preparation time for the hearing, having contentions B and Q heard in the second phase of the hearing ultimately will help the parties by ensuring the Board has adequate time to consider their submissions as it prepares for the various other issues that will be heard.

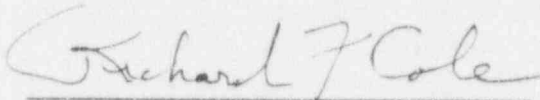
For all of these reasons, CANT's motion is granted.

IT IS SO ORDERED.

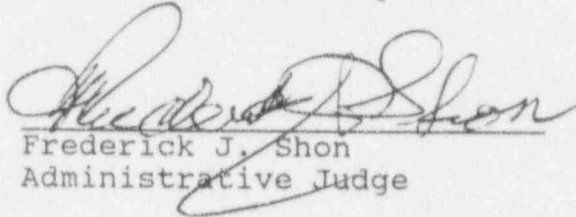
FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Thomas S. Moore, Chairman
Administrative Judge



Richard F. Cole
Administrative Judge



Frederick J. Shon
Administrative Judge

Bethesda, Maryland,

May 26, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(Claiborne Enrichment Center
SNM License)

Docket No.(s) 70-3070-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (RULING ON INT MOTION have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas S. Moore, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Eugene Holler, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Diane Curran, Esquire
6935 Laurel Avenue, Suite 204
Takoma Park, MD 20912

W. H. Arnold
President
Louisiana Energy Services, L.P.
2600 Virginia Avenue, N.W., Suite 608
Washington, DC 20037

Peter G. LeRoy
Licensing Manager
LES - c/o Duke Engineering and
Services, Inc.
PO Box 1004
Charlotte, NC 28201

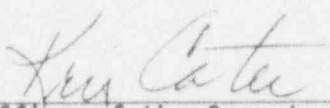
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LB ORDER (RULING ON INT MOTION

J. Michael McGarry, III, Esq.
Counsel for LES
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005

Nathalie M. Walker, Esq.
Robert B. Wiygul, Esq.
Sierra Club Legal Defense Fund, Inc.
400 Magazine Street, Suite 401
New Orleans, LA 70130

Ronald Wascom
Deputy Assistant Secretary
Office of Air Quality & Rad. Protection
Dept. of Environmental Quality
P.O. Box 82135
Baton Rouge, LA 70884

Dated at Rockville, Md. this
27 day of May 1994


Office of the Secretary of the Commission