

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.
National Enrichment Facility

ASLBP No. 04-826-01-ML

**STATUS REPORT BY PETITIONERS
NUCLEAR INFORMATION AND RESOURCE SERVICE/
PUBLIC CITIZEN
AND
ATTORNEY GENERAL OF NEW MEXICO
REGARDING CO-LEAD PARTY DESIGNATION
AS TO
NIRS/PC CONTENTION EC-5/TC-2
AND
AGNM TECHNICAL CONTENTION 1**

Pursuant to the direction of the Atomic Safety and Licensing Board (the "Board") in a prehearing conference on July 29, 2004, the petitioners Nuclear Information and Resource Service and Public Citizen (collectively, "NIRS/PC") and the Attorney General of New Mexico ("NMAGO") report herein concerning the structure under which NIRS/PC and NMAGO propose to act as co-lead parties with respect to admitted contentions NIRS/PC EC-5/TC-2 and AGNM TC-i.

The Board's Memorandum and Order dated July 19, 2004, admitted the contention of the NMAGO as follows:

- i. The manner in which the disposal security will be calculated is not at all clear. LES states that "LES will provide decommissioning funding assurance for disposition of depleted tails at a rate in proportion to the amount of accumulated tails onsite up to the maximum amount of the tails as described in Section 10.3,

Tails Disposition.” LES Application, 10.2-1. LES states also: “The surety method adopted by LES will provide an ultimate guarantee that decommissioning costs will be paid in the event LES is unable to meet its decommissioning obligations at the time of decommissioning.” LES Application 10.2-1. From these statements it seems that . . . (2) funding would be based on the average cost of disposal of maximum production, even though unit disposal costs will probably be higher if production is lower, . . . and (4) decommissioning the plant before the end of its 30-year operating life could leave tails disposal underfunded because funding had met only the present value of a disposal obligation 30 years in the future.”

The Board admitted this contention as to bases (2) and (4) “albeit only as they challenge the adequacy of the LES contingency factor.” (Order, July 19, 2004, at 22).

The Board’s Memorandum and Order dated July 19, 2004, admitted the contention of NIRS/PC as follows:

3.1 Contention: LES has presented estimates of the costs of decommissioning and funding plan as required by 42 U.S.C. 2243 and 10 CFR 30.35, 40.36, and 70.25 to be included in a license application. See SAR 10.0 through 10.3; ER 4.13.3. Petitioners contest the sufficiency of such presentations, as set forth more specifically herein. . . .

B. Basis: The cost estimate contained in the application is not reasonable and contains several inaccuracies. The stated contingency fee amounts for the LES proposal are only 10% (SAR Table 10.1-1, note 8). This lowers the cost estimates considerably. The report produced by the Lawrence Livermore National Laboratory (Hatem Elyat et al., “Cost Analysis Report for the Long-Term Management of Depleted Uranium Hexafluoride,” UCRL-AR-127650, May 1997) (“LLNL Report”) and described by LES as “the most comprehensive assessment of DUF₆ disposition costs for alternative disposition strategies available in the public domain” (SAR 10.3-1) has contingency fees of 30% for similar facilities and 30-50% for the type of equipment required by the process specified by LES. (LLNL Report § 3.2.2.4, at 30-31). Moreover, funding for major projects such as this is always cheaper when they are done by the government, because the cost of capital for the government is lower than for private companies. The cost of capital is huge on this project (see ER Tables 4.13-2, -3)—about 30%--and reflects the high level of risk associated with the project. Note that the ER (ER 4.13-18) talks at length about a government cost of capital of 6%--an unrealistic figure to project for the capital requirements of a private entity thirty years hence. . . . Moreover, costs to dispose of material [are cited]. Both of these costs are for low-level waste only. If the waste is contaminated at a level that requires higher level disposal options, the costs will increase significantly above LES’s estimates.”

The Board admitted this contention “to the extent it challenges the sufficiency of LES cost estimates as being based on a contingency factor that is too low, a low estimate of the cost of

capital, and an incorrect assumption the costs are for low-level waste only.” (Order, July 19, 2004, at 30).

The two contentions have been consolidated and rephrased by the Board and, together, now state as follows:

“Louisiana Energy Services, L.P. (LES) has presented estimates of the cost of decommissioning and funding plan as required by 42 U.S.C. 2243 and 10 C.F.R. 30.35, 40.36, and 70.25 to be included in a license application. See Safety Analysis Report 10.0 through 10.3; ER 4.13.3. Petitioners contest the sufficiency of such presentations as based on (1) a contingency factor that is too low; (2) a low estimate of the cost of capital; and (3) an incorrect assumption that the costs are for low-level waste only.” (Memorandum and Order, July 19, 2004, Appx. A, at 45).

In its Memorandum and Order dated July 19, 2004, the Board designated NIRS/PC as lead party with respect to this contention (id. 36-27). The Board stated that the lead party has the responsibility related to the contention in question to:

1. conduct all discovery;
2. file and respond to dispositive motions;
3. submit required prehearing briefs;
4. prepare prefiled direct testimony;
5. conduct redirect testimony;
6. provide surrebuttal testimony;
7. prepare proposed findings of fact and conclusions of law.

In connection with the admitted contention, NIRS/PC and NMAGO have agreed to share the above-listed responsibilities as follows: In connection with preparation of items listed above (items 1-7), NIRS/PC and NMAGO shall communicate concerning the positions to be taken in the litigation. If in the course of such discussions it becomes apparent that there is a difference in positions supported by NIRS/PC and NMAGO concerning the contingency factor applicable

in developing cost estimates, then the co-lead parties may each present evidence or argument on such matters through witnesses, discovery responses, briefing, or proposed findings of fact and conclusions of law. In the absence of any such difference, the witnesses, discovery responses, briefing, and proposed findings of fact and conclusions of law shall be presented on behalf of both co-lead parties.

Respectfully submitted,

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August 9, 2004

CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on August 9, 2004, the foregoing status report by Petitioners Nuclear Information and Resource Service and Public Citizen and Attorney General of New Mexico Regarding Co-Lead Party Designation as to NIRS/PC Contention EC-5/TC-2 and AGNM Technical Contention TC-1 was served by electronic mail and by first class mail upon the following:

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