UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-04-14

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Paul B. Abramson
Dr. Charles N. Kelber

In the Matter of	Docket No. 70-3103-ML
LOUISIANA ENERGY SERVICES, L.P.	ASLBP No. 04-826-01-ML
(National Enrichment Facility)	July 19, 2004

MEMORANDUM AND ORDER
(Rulings Regarding Standing, Contentions, and Procedural/Administrative Matters)

Before the Licensing Board are three requests of petitioners seeking to intervene in this proceeding regarding the application of Louisiana Energy Services, L.P., (LES) for authorization to possess and use source, byproduct, and special nuclear material in order to enrich natural uranium to a maximum of five percent uranium-235 (U^{235}) by the gas centrifuge process. LES proposes to do this at a facility -- denominated the National Enrichment Facility (NEF) -- to be constructed near Eunice, New Mexico. Two of the petitions were filed by governmental entities associated with the State of New Mexico -- the New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM) -- while the third was submitted by two public interest organizations, the Nuclear Resource and Information Service and Public Citizen (NIRS/PC).

For the reasons set forth below, we find that all the petitioners have established the requisite standing to intervene in this proceeding and each has submitted at least one admissible contention concerning the LES application. Accordingly, we admit each petitioner as

a party to this proceeding. Further, given the policy and/or legal issues relating to several of our contention admission determinations, we refer several of these rulings to the Commission for its consideration. Finally, we outline certain procedural and administrative rulings, including the designation of "lead" parties for certain of the admitted contentions, all of which are set forth in an appendix to this decision.

I. BACKGROUND

A. LES Application, the Proposed NEF, and Applicant LES

In an effort to obtain a thirty-year 10 C.F.R. Part 70 license to operate its proposed NEF, on December 12, 2003, LES filed with the agency an application that includes a safety analysis report (SAR), an environmental report (ER), an emergency plan (EP), a physical security plan (PSP) and a fundamental nuclear material control plan (FNMCP). The enrichment process at the facility, which is intended to produce commercial nuclear power plant fuel, is described in the application as follows:

> The primary function of the facility is to enrich natural uranium hexafluoride (UF_6) by separating a feed stream containing the naturally occurring proportions of uranium isotopes into a product stream enriched in ^{235}U and a tails stream depleted in the ^{235}U isotope. The feed material for the enrichment process is uranium hexafluoride (UF_6) with a natural composition of isotopes ^{234}U, ^{235}U, and ^{238}U. The enrichment process is a mechanical separation of isotopes using a fast rotating cylinder (centrifuge) based on a difference in centrifugal forces due to differences in molecular weight of the uranic isotopes. No chemical changes or nuclear reactions take place. The feed, product, and tails streams are all in the form of UF_6.

[LES] NEF SAR at 1.1-7 (Rev. 0 Dec. 2003) [hereinafter SAR]. Further, to perform this process, the LES facility would incorporate a number of structures on a 543-acre site, including (1) three separations building modules, each of which consists of two cascade halls that, in turn, each contain eight cascades consisting of hundreds of centrifuges capable of producing a total of

approximately 500,000 separative work units (SWU) per year; (2) a centrifuge assembly building, which is used to put together each centrifuge prior to moving it into a cascade hall and inserting it into a cascade; (3) a cylinder receipt and dispatch building, which is used to receive and store cylinders sent to the plant containing UF_6 feedstock, to store and dispatch to customers cylinders containing enriched UF_6, and to store and dispatch filled uranium byproduct cylinders (UBCs) to the UBC storage pad; and (4) the UBC storage pad, which is used to store cylinders containing UF_6 that is depleted in U^{235}. See SAR at 1.1-3 to -6.

In its application, LES also describes its general corporate structure and financial qualifications. According to the application, the LES limited partnership is comprised of two general partners -- Urenco Investments, Inc., (Urenco) and Westinghouse Enrichment Company, L.L.C. -- and six limited partners. Funding for the facility, the application indicates, is to be derived from equity contributions by the partners' parents and affiliates of at least thirty percent of project costs with firm commitments of funds for the remainder. Additionally, LES states that it will require long-term enrichment contracts (i.e., five years) with prices sufficient to cover construction and operation costs, including a return on investment, to be in place prior to proceeding with the project. See id. at 1.2-1 to -4.

B. Hearing Requests/Intervention Petitions and Responses

1. Initial Petitions and Supplemental Filings

In a January 30, 2004 issuance, CLI-04-3, 59 NRC 10 (2004) (69 Fed. Reg. 5873 (Feb. 6, 2004)), the Commission provided notice of the receipt and availability of the LES application, including the accompanying ER, and of the opportunity for a hearing on the application. Additionally, the Commission provided instructions on a number of matters related to any potential adjudication, including the determination of contentions, discovery management, and scheduling.

Several entities responded by filing hearing requests/intervention petitions asking to be admitted as a party to any proceeding conducted on the application. On March 23 and April 5, respectively, NMED and the AGNM each submitted a petition to intervene pursuant to 10 C.F.R. § 2.309(a). See [NMED] Request for Hearing and Petition for Leave to Intervene (Mar. 23, 2004) [hereinafter NMED Petition]; [AGNM] Request for Hearing and Petition for Leave to Intervene (Apr. 5, 2004) [hereinafter AGNM Petition]. Both challenged certain aspects of the LES application. Additionally, NIRS/PC filed a joint intervention petition on April 6, 2004. See Petition to Intervene by [NIRS/PC] (Apr. 6, 2004) [hereinafter NIRS/PC Petition]. NIRS/PC oppose the grant of the LES application.

In its January 30 issuance, the Commission indicated that it would rule upon the standing of any petitioners and the admissibility of any contentions regarding National Environmental Policy Act (NEPA) environmental justice matters. See CLI-04-3, 59 NRC at 13-15. In memoranda to the Chief Administrative Judge dated April 1 and 6, 2004, noting they did "not raise issues of standing or environmental justice," the Commission referred the respective NMED and AGNM petitions for appointment of a presiding officer. See Memorandum to Chief Administrative Judge G. P. Bollwerk, III, from A. Vietti-Cook, NRC Secretary (Apr. 1, 2004); Memorandum to Chief Administrative Judge G. P. Bollwerk, III, from J. S. Walker, Acting NRC Secretary (Apr. 6, 2004); see also CLI-04-15, 59 NRC __, __ (slip op. at 1-2) (May 20, 2004).

With its April 15, 2004 designation, 69 Fed. Reg. 22,100 (Apr. 23, 2004), this Licensing Board issued an initial prehearing order that same day in which both NMED and the AGNM were directed to supplement their initial filings by categorizing each of their already-submitted issue statements within at least one of three groups, i.e., as a technical contention (TC) relating primarily to the SAR; an environmental contention (EC) relating primarily to the ER; or a

miscellaneous contention (MC) that does not fall into one of those two categories. Additionally, the two petitioners were asked to examine the contentions of the other and identify which, if any, were appropriate for co-sponsorship or adoption under 10 C.F.R. § 2.309(f)(3). See Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 15, 2004) at 2-3. Seven days later, the Licensing Board scheduled an initial prehearing conference for June 15, 2004, in the Hobbs, New Mexico area. See Licensing Board Memorandum and Order (Scheduling Initial Prehearing Conference) (Apr. 22, 2004) at 1.

NMED and the AGNM timely submitted a joint supplement to their earlier-filed petitions to intervene with regard to the potential similarities of their respective contentions, as well as separate supplemental requests for hearing in which they categorized each of their filed contentions. See [NMED] and [AGNM] Supplement to Petitions for Leave to Intervene to Designate Similar Contentions (Apr. 23, 2004) [hereinafter NMED/AGNM Joint Supplement to Petitions]; Supplemental Request of the [AGNM] for Hearing and Petition for Leave to Intervene (Apr. 23, 2004) [hereinafter AGNM Supplemental Request]; NMED's Supplement to Its Petition for Leave to Intervene (Apr. 23, 2004) [hereinafter NMED Supplemental Request]. In their joint submission, while acknowledging some overlap, NMED and the AGNM indicated they did not feel that any of the contentions were sufficiently similar to warrant co-sponsorship. The AGNM did, however, adopt one contention submitted by NMED. See NMED/AGNM Joint Supplement to Petitions at 1-2.

Relative to the NIRS/PC petition, in a May 20, 2004 order, CLI-04-15, 59 NRC at __ (slip op. at 1-2), the Commission found that these petitioners had standing and had not raised any environmental justice issues. It thus referred their petition to the Licensing Board as well. The Board then directed NIRS/PC to supplement their initial filing by categorizing each of their already-submitted contentions within the previously-specified three groups and asked that all

the petitioners examine the contentions of the other petitioners and identify which, if any, they wished to adopt. See Licensing Board Order (Supplements Regarding Contentions) (May 24, 2004) at 1. NIRS/PC provided such a supplement on May 27, 2004, in which they sorted their contentions and indicated they did not wish to adopt any of the other petitioners' contentions. See Supplement to Petition to Intervene on Behalf of [NIRS/PC] (May 27, 2004) at 1-5 [hereinafter NIRS/PC Supplemental Request].

2. Responses to Petitions to Intervene

Both LES and the staff submitted pleadings responding to the above-mentioned petitions and supplemental filings of the petitioners. LES, while acknowledging that each of the three petitioners had standing to participate in the proceeding, opposed each of the contentions submitted by the AGNM and NIRS/PC, but indicated that, in its view, NMED had offered at least one admissible contention. See Answer of [LES] to the [NMED] Request for Hearing and Petition for Leave to Intervene (Apr. 19, 2004) [hereinafter LES NMED Petition Response]; Answer of [LES] to the Requests for Hearing and Petitions for Leave to Intervene of the [AGNM] and [NIRS/PC] (May 3, 2004) [hereinafter LES AGNM and NIRS/PC Petition Response].

The staff responded to each of the petitioners' intervention petitions as well. While likewise indicating its belief that all three of the petitioners had met the requirements to establish standing, the staff asserted that only NMED and NIRS/PC had submitted admissible contentions, opposing all of the contentions submitted by the AGNM. See NRC Staff Response to the [NMED] Request for Hearing and Petition for Leave to Intervene (Apr. 19, 2004) [hereinafter Staff NMED Petition Response]; NRC Staff Response to Request of the [AGNM] for Hearing and Petition for Leave to Intervene (Apr. 30, 2004) [hereinafter Staff AGNM Petition Response]; NRC Staff's Response to Petition to Intervene by [NIRS/PC] (May 3, 2004) [hereinafter Staff NIRS/PC Petition Response].

All three petitioners answered with replies to the LES and staff responses. See Reply in Support of NMED's Petition to Intervene (May 10, 2004) [hereinafter NMED Reply]; Reply by [NIRS/PC] to Answers of Nuclear Regulatory Commission Staff and [LES] (May 10, 2004) [hereinafter NIRS/PC Reply]; [AGNM] Reply in Support of Petition for Leave to Intervene and Request for Hearing (May 24, 2004) [hereinafter AGNM Reply] . Relative to the AGNM, however, prior to filing her reply she requested an extension of time based in part on her purported inability to gain access to proprietary material cited in the LES application. See [AGNM] Motion for Extension of Time (May 5, 2004) at 2-3. Finding that, in contrast to application-related, non-public classified information, there had been no explicit reference in the notice of hearing regarding the process for gaining access to non-public proprietary information, the Board directed that LES should, after Board entry of an appropriate protective order, provide the AGNM with access to the application-referenced proprietary information and that any AGNM reply relative to the contention identified as relevant to that information would not be due until after access was provided. See Licensing Board Memorandum and Order (Ruling on Request for Access to Proprietary Information) (May 12, 2004) at 2-3. The protective order was entered by the Board on May 21, 2004, see Licensing Board Memorandum and Order (Protective Order Governing Disclosure of Protected Materials) (May 21, 2004), and, after receiving the material from LES, the AGNM filed her proprietary information-based reply on June 10, 2004, see [AGNM] Reply in Support of Technical Contention ii of Her Supplemental Petition for Leave to Intervene and Request for Hearing (June 10, 2004) [hereinafter AGNM TC-ii Reply].

Further in the case of NMED and the AGNM, their reply submissions engendered LES and/or staff requests to file surreplies. LES sought permission to file a surreply to the reply of NMED, while the Staff asked for leave to submit surreplies to the replies of both NMED and the AGNM, all of which the Board allowed. See Licensing Board Order (Granting Requests to File

Surreply) (May 20, 2004); Licensing Board Memorandum and Order (Granting Motion for Leave to File Surreply; Requesting Status on Proprietary Material Disclosure) (June 1, 2004). Thereafter, LES and staff submitted their surreplies. See NRC Staff Surreply to Reply of NMED (May 24, 2004) [hereinafter Staff Surreply to NMED]; Surreply of [LES] to Reply in Support of NMED's Petition to Intervene (May 24, 2004) [hereinafter LES Surreply to NMED]; NRC Staff Surreply to [AGNM]'s Reply in Support of Petition for Leave to Intervene and Request for Hearing (June 3, 2004) [hereinafter Staff Surreply to AGNM].

C. Initial Prehearing Conference

Finally, on June 15, 2004, the Licensing Board conducted a one-day prehearing conference with the petitioners, LES, and the staff in Hobbs, New Mexico, during which these participants made oral presentations regarding the admissibility of the thirty-two submitted contentions. See Tr. at 1-277. Additionally, at the conclusion of the prehearing conference, the Board addressed briefly several matters pertaining to scheduling, discovery and summary disposition.[1] See id. at 278-90.

[1] Subsequent to the prehearing conference, acting at the request of the Board, see Tr. at 119, LES submitted an apprisal of the outcome of discussions between the parties regarding the potential resolution of certain contentions proffered by NIRS/PC and the AGNM relating to the contingency factor used by LES in its decommissioning cost estimate. See Notification of Licensing Board of Status of Discussions on Facility Decommissioning Contingency Factor Issue (July 7, 2004) [hereinafter LES Contingency Factor Update]. In this update, LES indicated

NIRS/PC were not satisfied with a 25 percent contingency factor commitment by LES. See id. at 2. Two days later, the AGNM filed her own update regarding the discussions, indicating she was not satisfied by the LES commitment either. See [AGNM] Notification of Licensing Board of Status of Position on Facility Decommissioning Contingency Factor Issue (July 9, 2004) at 1 [hereinafter AGNM Contingency Factor Update].

II. ANALYSIS

Agency regulations have long required that any individual, group, or business or governmental entity that wishes to intervene as a party in an adjudicatory proceeding addressing a proposed licensing action must (1) file a timely written request to intervene; (2) establish that it has standing to intervene; and (3) offer at least one admissible contention that is litigable in the proceeding. See 10 C.F.R. § 2.309(a)-(b).[2] The three intervening participants have all maintained they meet each of these requirements for party status.

A. Standing

[2] Recently, the agency adopted a set of extensive revisions to its 10 C.F.R. Part 2 procedural rules governing the conduct of adjudications. See 69 Fed. Reg. 2182 (Jan. 14, 2004). Under the terms of the revisions, they were to be applicable to any licensing action for which a notice of hearing was issued on or after its effective date of February 13, 2004. See id. at 2182. Although the hearing notice for this proceeding was issued on January 30, the Commission directed that the newly revised Part 2 is applicable to this case. See CLI-04-3, 59 NRC at 12 n.1.

Procedurally, a petitioner seeking to establish that it has standing as of right to participate in an adjudicatory proceeding must provide information in its petition for leave to intervene concerning (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party; (2) the petitioner's property, financial, or other interests in the proceeding; and (3) the potential effect that any decision reached within the proceeding may have on the petitioner's interest. See 10 C.F.R. § 2.309(d)(1)(ii)-(iv). Consistent with its January 2004 issuance in which it indicated it would make all threshold determinations regarding standing, including all petitions filed by governmental entities under 10 C.F.R. § 2.309(d)(2), see CLI-04-3, 59 NRC at 13-15, the Commission made determinations with respect to each of the three petitioners. As was noted previously, see supra p. 4, relative to NMED and the AGNM -- both of which are governed by section 2.309(d)(2) that allows a state entity to file a petition to participate in an agency proceeding involving a proposed facility within its borders without having to establish standing -- in separate memoranda dated April 1 and 6 referring those petitions for Licensing Board consideration, the Commission found no issues as to their standing.[3] So too, noting the close proximity of individual members of each group to the proposed LES facility,[4] and the potential effects that the construction, operation, and decommissioning of the facility could have on those individuals because of their location, in considering the NIRS/PC petition in its May 20, 2004 issuance the Commission determined that the requirements for standing had been

[3] To ensure there was no misunderstanding relative to the requirements of section 2.309(d)(2), see 69 Fed. Reg. at 2222, at the June 15 prehearing conference, we confirmed that both NMED and the AGNM agreed that the other had the requisite state constitutional authority to represent the interests of the State of New Mexico, with NMED acting as the representative of the Governor and the Attorney General appearing in accordance with her independent constitutional prerogatives. See Tr. at 17.

[4] In that regard, NIRS/PC provided supporting declarations from individuals living at distances of between 2.5 and 22 miles from the proposed LES facility. See NIRS/PC Petition at 3.

satisfied as it referred the group's hearing request to the Board for further consideration. See supra p. 5. As such, no further Board consideration of the issue of the standing of any of the petitioners is necessary.

B. Contentions

1. Contention Admissibility Standards

Section 2.309(f) of the Commission's rules of practice specifies the requirements that must be met if a contention is to be deemed admissible. Specifically, a contention must provide (1) a specific statement of the legal or factual issue sought to be raised; (2) a brief explanation of its basis; (3) a concise statement of the alleged facts or expert opinions, including references to specific sources and documents, that support the petitioner's position and upon which the petitioner intends to rely at hearing; and (4) sufficient information demonstrating that a genuine dispute exists in regard to a material issue of law or fact, including references to specific portions of the application that the petitioner disputes, or in the case when the application is alleged to be deficient, the identification of such deficiencies and supporting reasons for this belief. See 10 C.F.R. § 2.309(f)(1)(i), (ii), (v), and (vi). In addition, the petitioner must demonstrate that the issue raised in the contention is both "within the scope of the proceeding" and "material to the findings the NRC must make to support the action that is involved in the proceeding." Id. § 2.309(f)(1)(iii)-(iv). Failure to comply with any of these requirements is grounds for the dismissal of a contention. See Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-99-10, 49 NRC 318, 325 (1999); Arizona Public Service Company (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991).

The application of these requirements has been further developed by NRC case law, as is summarized below:

a. Challenges to Statutory Requirements/Regulatory Process/Regulations

With limited exception, no rule or regulation of the Commission can be challenged in an adjudicatory proceeding. See 10 C.F.R. § 2.335; see also Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit 2), CLI-03-14, 58 NRC 207, 218 (2003). By the same token, any contention that amounts to an attack on applicable statutory requirements or represents a challenge to the basic structure of the Commission's regulatory process must be rejected. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-76, 16 NRC 1029, 1035 (1982) (citing Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974)). Similarly, any contention that seeks to impose stricter requirements than those set forth by the regulations is inadmissible. See Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987); Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), LBP-82-106, 16 NRC 1649, 1656 (1982); Florida Power and Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-01-6, 53 NRC 138, 159 (2001). Additionally, the adjudicatory process is not the proper venue for a petitioner to set forth any contention that merely addresses his or her own view regarding the direction regulatory policy should take. See Peach Bottom, ALAB-216, 8 AEC at 21 n.33.

b. Challenges Outside Scope of Proceeding

All proffered contentions must be within the scope of the proceeding as defined by the Commission in its initial hearing notice and order referring the proceeding to the Licensing Board. See Florida Power and Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-825, 22 NRC 785, 790-91 (1985). As a consequence, any contention that

falls outside the specified scope of the proceeding must be rejected. See Portland General Electric Company (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979).

c. Need for Adequate Factual Information or Expert Opinion as Contention Basis

It is the obligation of the petitioner to present the factual information and expert opinions necessary to support its contention adequately. See Georgia Institute of Technology (Georgia Tech Research Reactor, Atlanta, Georgia), LBP-95-6, 41 NRC 281, 305, vacated in part and remanded on other grounds and aff'd in part, CLI-95-10, 42 NRC 1, and CLI-95-12, 42 NRC 111 (1995). Failure to provide such an explanation regarding the bases of a proffered contention requires the contention be rejected. See Palo Verde, CLI-91-12, 34 NRC at 155. In this connection, neither mere speculation nor bare assertions alleging that a matter should be considered will suffice to allow the admission of a proffered contention. See Fansteel, Inc. (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 203 (2003). If a petitioner neglects to provide the requisite support to its contentions, it is not within the Board's power to make assumptions of fact that favor the petitioner, nor may the Board supply information that is lacking. See Georgia Tech Research Reactor, LBP-95-6, 41 NRC at 305; Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001).

Likewise, providing any material or document as a basis for a contention, without setting forth an explanation of its significance, is inadequate to support the admission of the contention. See Fansteel, CLI-03-13, 58 NRC at 205. Along these lines, any supporting material provided by a petitioner, including those portions of the material that are not relied upon, is subject to Board scrutiny. See Yankee Atomic Electric Company (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 90 (1996); rev'd in part on other grounds, CLI-96-7, 43 NRC 235 (1996). Thus, the material provided in support of a contention will be carefully

examined by the Board to confirm that its does indeed supply an adequate basis for the contention as asserted by the petitioner. See Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station), ALAB-919, 30 NRC 29, 48 (1989), vacated in part on other grounds and remanded, CLI-90-4, 31 NRC 333 (1990).

d. Materiality

In order to be admissible, the regulations require that all contentions assert an issue of law or fact that is material to the outcome of a licensing proceeding, that is to say, the subject matter of the contention must impact the grant or denial of a pending license application. See 10 C.F.R. § 2.309(f)(1)(iv). This requirement of materiality often dictates that any contention alleging deficiencies or errors in an application also indicate some significant link between the claimed deficiency and either the health and safety of the public or the environment. See Yankee Nuclear, LBP-96-2, 43 NRC at 75; see also Pacific Gas & Electric Co. (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 439-41(2002), petition for review denied, CLI-03-12, 58 NRC 185, 191 (2003). Similarly, in the context of a decommissioning funding estimate the Commission has held that, to gain admission of a contention alleging an error in the estimate, the petitioner must also show that there exists no reasonable assurance that the amount in question will be paid by the applicant. See Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 9 (1996).

e. Improper Challenges to Application

All properly formulated contentions must focus on the license application in question, challenging either specific portions of or alleged omissions from the application (including the SAR and ER). See 10 C.F.R. § 2.309(f)(1)(vi). Any contention that fails directly to controvert the application or that mistakenly asserts the application does not address a relevant issue can

be dismissed. See Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), review declined, CLI-94-2, 39 NRC 91 (1994); Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

2. Scope of Contentions

Although licensing boards generally are to litigate "contentions" rather than "bases," it has been recognized that "[t]he reach of a contention necessarily hinges upon its terms coupled with its stated bases." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-899, 28 NRC 93, 97 (1988), aff'd sub nom. Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir.), cert. denied, 502 U.S. 899 (1991); see also Duke Energy Corp. (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), CLI-02-28, 56 NRC 373, 379 (2002). As outlined below, exercising our authority under 10 C.F.R. §§ 2.316, 2.319, 2.329, we have acted to further define and/or consolidate contentions when the issues sought to be raised by one or more of the petitioners appear related or when redrafting would clarify the scope of a contention.

3. Section 2.309 Standards As They Relate to Governmental Entities

Although, as was noted in section II.A above, the standing requirements set forth in section 2.309 explicitly differentiate between governmental and non-governmental petitioners, the other provisions in section 2.309 regarding hearing petitions and associated submissions, including the contentions submitted by petitioners, do not contain such a distinction. See Diablo Canyon, LBP-02-23, 56 NRC at 453-57. The same is true for the other provisions in section 2.309 relating to hearing petitions, including those relating to the scope of a petitioner's section 2.309(h)(2) reply to the responses of an applicant and/or the staff to a hearing request. Nonetheless, in several of their pleadings, NMED and the AGNM have suggested that their status as governmental entities somehow gives them additional latitude to comply with the requirements governing the pleading and amendment of contentions. See NMED's Motion for Extension of Time to File Reply In Support of Petition for Leave to Intervene (Apr. 22, 2004) at 2; AGNM Reply at 2-5.

We, of course, do not dispute the special relationship that exists between state and local governmental entities and their citizens. Indeed, this is the premise of the authority granted to governmental entities under section 2.315(c), which affords an interested governmental entity an opportunity to participate in the evidence formulation process at a hearing (e.g., introduce evidence, interrogate witnesses if party cross-examination is permitted) on an admitted contention without requiring the governmental entity to take a position on the issue. Under the agency's rules of practice, however, that relationship does not provide the basis for the Licensing Board to essentially waive or suspend the requirements governing contention formulation and the late-filed submission of contention amendments or revisions.

Accordingly, in making our rulings below, we do so based on the issue statements provided in the initial NMED and AGNM hearing petitions, as they may have been legitimately

amplified in those petitioners' replies to the LES and staff responses to their hearing petitions. The Commission declared in the statement of considerations that accompanied the recent final rule on the revised 10 C.F.R. Part 2 provisions applicable in this proceeding -- which the Board reiterated in an April 27 issuance -- that all section 2.309(h)(2) replies "should be narrowly focused on the legal or logical arguments presented in the applicant/licensee or NRC staff answer." 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004); see Licensing Board Memorandum and Order (Granting Motion for Extension of Time) (Apr. 27, 2004) at 2 (unpublished). Notwithstanding that Commission declaration, in several instances subsequently submitted NMED and AGNM "reply" filings essentially constituted untimely attempts to amend their original petitions that, not having been accompanied by any attempt to address the late-filing factors in section 2.309(c), (f)(2), cannot be considered in determining the admissibility of their contentions.

Nonetheless, given the status of NMED and the AGNM as governmental entities and the fact that their filings were among the first made under the provisions of the recently amended Part 2 that require a hearing petition to include a petitioner's contentions, we refer several rulings to the Commission dismissing NMED and AGNM contentions in which our ruling on the admissibility of a contention includes a determination not to consider purportedly material supporting information that was first submitted as part of a reply pleading. In doing so, we follow the Commission's direction to us that we refer novel legal or policy issues that would benefit from early Commission consideration. See CLI-04-3, 59 NRC at 15-16.[5]

[5] It is, of course, within the Commission's discretion as to whether to accept these referred rulings in whole or in part.

4. Petitioner Contentions Rulings

a. NMED Contentions

NMED TC-1/EC-1 -- LONG-TERM STORAGE

CONTENTION: In its Application, LES requests to be allowed to buildup or store depleted uranium (DU) in the form of uranium hexafluoride (UF6) throughout the life of the Facility. Application, § 4.13, Environmental Report, vol. 2. The life of the Facility is anticipated to be thirty years.

Buildup of DU waste for thirty years is not acceptable to the State of New Mexico and is contrary to the representations made by LES to the State. Storage of such highly dangerous waste over a thirty year period may pose a threat to the protection of health and property. 10 C.F.R. § 40.32(c). Furthermore, LES's proposed plan for storage of this waste is not sufficiently detailed, and does not demonstrate that issuance of a license will not be inimical to the health and safety of the public. 10 C.F.R. § 40.32(d).

Additionally, the DU waste could become a stockpile of legacy waste and, in the event of a default by LES, could become an above ground waste storage complex, for which adequate financial assurance is not provided. See [Contention TC-2/EC-3] below.

The DU waste should not be stored over the life of the Facility, but should be disposed of in a timely and safe manner.

DISCUSSION: NMED Petition at 2; LES NMED Petition Response at 5-9; Staff NMED Petition Response at 4-6; NMED Supplemental Request at 1; NMED Reply at 2-14; Staff Surreply to NMED at 3-7; LES Surreply at 2-8; Tr. at 130-35, 140-43, 147-53.

RULING: Inadmissible, in that this contention and its supporting bases fail to establish with specificity any genuine dispute with the SAR or the ER; and/or lack adequate factual or expert opinion support. See section II.B.1.c above. Nonetheless, because our ruling includes a determination not to consider information that was first submitted as part of a reply pleading and is purportedly material to the admission of this contention,[6] in accord with section II.B.3 above we refer this ruling to the Commission. See 10 C.F.R. § 2.323(f).

[6] In this regard, NMED submitted information regarding (1) the LES proposal for treatment and disposition of depleted UF_6 material as a "plausible" strategy, see NMED Reply at 2-7; (2) failure of the LES application to demonstrate that storage of the depleted UF_6 material for up to 30 years and beyond will not be inimical to the public health and safety; see id. at 7-12;

NMED EC-2 -- WASTE CLASSIFICATION AND DISPOSAL

CONTENTION: Section 4.13.3.1.3 of the Application states that LES may classify the DU waste as resource material instead of waste. The waste generated by LES's uranium enrichment process, UF6 or uranium oxide waste, should not be classified as resource material. LES has not identified any use or economically viable market for this material. Therefore the material cannot be properly categorized as resource material. The material should be categorized as a waste, and the Application should adequately provide for timely and safe disposal of this waste.

DISCUSSION: NMED Petition at 2-3; LES NMED Petition Response at 9-11; Staff NMED Petition Response at 6-7; NMED Supplemental Request at 1-2; Tr. at 21-34, 49-77, 84-87.

RULING: Inadmissible, in that this contention, as it contests the acceptability of a proposed disposal strategy recognized by the Commission in its January 30, 2004 hearing opportunity notice as one that is "plausible," see CLI-04-3, 59 NRC at 22, represents an impermissible challenge to the Commission's regulations or rulemaking-associated generic determinations; fails to raise a material factual or legal dispute; and/or falls outside the scope of this proceeding. See section II.B.1.a, b, d above.

NMED TC-2/EC-3 -- FINANCIAL ASSURANCE

CONTENTION: The proposed financial assurance amounts set forth in the Application are inadequate. Sections 4.13-10 and 10.3 of the Application set forth a cost estimate to decommission the Facility of $850,000,000.00 and a cost estimate of approximately $736,000,000.00 to dispose of the total DU.

The cost estimate provided in the Application fail[s] to include the cost of conversion to uranium oxide and is based upon a disposal rate of $2.51 per pound of DU. Radiation specialists from NMED contacted outside entities (including Thomas Gray and Associates and US Ecology) to determine the actual cost, based on a price scale or regulated rate, to dispose of the amounts of DU set forth in the Application. NMED's review found the actual cost for disposal to be between $1,900,000,000.00 and $7,200,000,000.00. The cost estimate for the

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and (3) the adequacy of the LES emergency plan, see id. at 12-14.

disposal of the DU, and the financial assurance associated with that cost, therefore are not adequate and do not meet the requirements [of] 10 C.F.R. § 70.25(a), (e).

DISCUSSION: NMED Petition at 3; LES NMED Petition Response at 11-13; Staff NMED Petition Response at 7-8; NMED Supplemental Request at 2; Tr. at 18.

RULING: This contention was withdrawn by NMED. See Tr. at 18.

NMED TC-3/EC-4 -- RADIATION PROTECTION PROGRAM

CONTENTION: The Application does not comply with the requirements of 10 C.F.R. § 20.1101 because it fails to provide sufficient information to demonstrate the establishment of an adequate radiation protection program. Specifically, the Application is deficient in providing the technical bases for monitoring and assessing effluent discharge, and in estimating occupational and public radiation doses. See e.g. Application, §§ 4.6, Safety Analysis Report, vol. 4; 4.12, Environmental Report, vol. 2; 6.0, Safety Analysis Report, vol. 4; see 10 C.F.R. § 20.1101(b); Nuclear Regulatory Guidance Document 4.14 (setting forth the need for discharge and dosage information prior to and during operations of the uranium processing facility). The radiation dose quantities are provided, but are not supported by calculation protocols, formulae, or variables (e.g., occupancy factors, seasonal variations, diffusion coefficients). This additional information must be provided in order to verify the information in the Application.

DISCUSSION: NMED Petition at 3-4; LES NMED Petition Response at 15-19; Staff NMED Petition Response at 10; NMED Supplemental Request at 2; Tr. at 204-11.

RULING: Admissible, in that the contention and its supporting bases are sufficient to establish a genuine material dispute adequate to warrant further inquiry.

NMED MC-1 -- ECONOMIC VIABILITY

CONTENTION: The Application does not set forth any information regarding the economic viability of the proposed Facility. The economic viability cannot be evaluated without LES providing market projections and a business plan that take into consideration the market need for enriched uranium and a realistic cost of waste disposal. The economic viability of the proposed Facility is of critical importance to the State of New Mexico in light of the fact it is the State that will inherit the Facility and its waste should LES default on decommissioning the Facility or clean-up if its venture proves to be economically unsound.

DISCUSSION: NMED Petition at 3; LES NMED Petition Response at 13-15; Staff NMED Petition Response at 8-10; NMED Supplemental Request at 2; Tr. at 154-55, 160-61, 165-75.

RULING: Inadmissible, in that this contention and its supporting bases fail to establish with specificity any genuine dispute with any aspect of the financial qualifications showing of

LES in its application; lack adequate factual or expert opinion support; and constitute a general challenge to the financial assurance obligations relating to decommissioning and disposal imposed by 10 C.F.R. §§ 70.23(a)(5), 70.25, see Louisiana Energy Services, L.P. (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 308 (1997), so as to be an impermissible challenge to the Commission's regulations. See section II.B.1.a, c above.

b. AGNM Contentions

AGNM TC-i -- DISPOSAL SECURITY

CONTENTION: The manner in which the disposal security will be calculated is not at all clear.

DISCUSSION: AGNM Petition at 5-6; AGNM Supplemental Request at 2-3; Staff AGNM Petition Response at 4-8; LES AGNM and NIRS/PC Petition Response at 60-65; AGNM Reply at 14-19; Staff Surreply to AGNM at 6-7; Tr. at 155-56, 161-75; LES Contingency Factor Update at 1-2; AGNM Contingency Factor Update at 1-2.

RULING: Admitted, in that its bases (2) and (4) are sufficient to establish a genuine material dispute adequate to warrant further inquiry, albeit only as they challenge the adequacy of the LES contingency factor. The balance of the contention's bases, including bases (1) and (3), fail to provide sufficient support for the contention in that they lack adequate factual or expert opinion support; fail to raise a material factual or legal dispute; and/or constitute a general challenge to the financial assurance obligations related to decommissioning and disposal imposed by 10 C.F.R. §§ 70.23(a)(5), 70.25, see Claiborne, CLI-97-15, 46 NRC at 308, so as to be an impermissible challenge to the Commission's regulations. See section II.B.1.a, c, d above.

Because of the similarities that exist, the Board will consolidate this contention with the admitted aspects of contention NIRS/PC EC-5/TC-2. See infra pp. 28-29. The Board sets forth the consolidated contention at p. 41 of Appendix A to this memorandum and order.

AGNM TC-ii -- DISPOSAL COST ESTIMATES

CONTENTION: The bases for LES's cost estimates are suspect and the actual cost of disposing of tails will exceed the $5.50 per [kilogram uranium (kgU)] estimated by LES.

DISCUSSION: AGNM Petition at 6-7; AGNM Supplemental Request at 3-4; Staff AGNM Petition Response at 8-9; LES AGNM and NIRS/PC Petition Response at 48-52; AGNM Reply at 14-19; Staff Surreply to AGNM at 6-7; AGNM TC-ii Reply at 1-3; Tr. at 88-95, 102-28; LES Contingency Factor Update at 1-2; AGNM Contingency Factor Update at 1-2.

RULING: Admitted, as supported by bases sufficient to establish a genuine material dispute adequate to warrant further inquiry, but limited to challenges to LES cost estimates to the extent they are based on the Urenco contract and the LES cost estimates developed in connection with its Louisiana application. The balance of the contention's bases fail to provide adequate support for the contention in that they fail to establish with specificity any genuine dispute with the SAR; fall outside the scope of this proceeding; and/or lack adequate factual or expert opinion support. See section II.B.1.b, c above.

A revised version of this contention incorporating this ruling is set forth at p. 40 of Appendix A to this memorandum and order.

AGNM EC-i -- FOREIGN OWNERSHIP

CONTENTION: If LES's proposed Uranium Enrichment Facility is not economically viable, the 90% majority owners, which are foreign entities, may simply abandon their investment.

DISCUSSION: AGNM Petition at 2-3; AGNM Supplemental Request at 5; Staff AGNM Petition Response at 9-10; LES AGNM and NIRS/PC Petition Response at 60-65; Tr. at 211-13.

RULING: Inadmissible, in that this contention and its supporting bases lack adequate factual or expert opinion support; and/or impermissibly challenge the Commission's decommissioning regulations. See section II.B.1.a, c above.

AGNM EC-ii -- ON-SITE STORAGE

CONTENTION: The storage of large amounts of depleted uranium tails in steel cylinders, which would remain in outdoor storage on concrete pads for "a few years" poses a distinct environmental risk to New Mexico.

DISCUSSION: AGNM Petition at 3; AGNM Supplemental Request at 5-6; Staff AGNM Petition Response at 10-12; LES AGNM and NIRS/PC Petition Response at 42-44; AGNM Reply at 20-24; Staff Surreply to AGNM at 7-8; Tr. at 135-40, 143-47, 149-50, 153.

RULING: Inadmissible, in that this contention and its supporting bases fail to establish with specificity any genuine dispute with the ER; and/or lack adequate factual or expert opinion support. See section II.B.1.c above. Nonetheless, because our ruling includes a determination not to consider information that was first submitted as part of a reply pleading and is purportedly material to the admission of this contention,[7] in accord with section II.B.3 above we refer this ruling to the Commission. See 10 C.F.R. § 2.323(f).

AGNM EC-iii -- "PLAUSIBLE STRATEGIES" FOR WASTE DISPOSAL

CONTENTION: In its current application LES has identified two "plausible" approaches for waste disposal: (1) a plan under which other private investors would construct a "deconversion" plant to change the depleted UF6 into U3O8, whereupon the U3O8 would be buried in an exhausted uranium mine, LES Application, 4.13-7 to -8, and (2) a plan under which, pursuant to Sec. 3113 of the U.S. Enrichment Corporation (USEC) Privatization Act, LES would require the Department of Energy (DOE) to accept for conversion and to dispose of the depleted UF6 as low-level radioactive waste at a price determined by DOE. LES Application, 4.13-7 to -8. Further, NRC's scheduling order dated February 6, 2004 states that a plan to transfer depleted tails to DOE for disposal tails pursuant to Sec. 3113 of the USEC Privatization Act constitutes a "plausible strategy" for dispositioning such waste. 69 Fed. Reg. at 5877.

[7] In this regard, the AGNM submitted information regarding the purported failure of the ER to discuss the impact of (1) the facility on the sand dune lizard, a state-listed threatened species, see AGNM Reply at 21; and (2) the indefinite storage of depleted UF_6 on the environment and the public health and safety, see id. at 22-24.

DISCUSSION: AGNM Petition at 4-5; AGNM Supplemental Request at 6-7; Staff AGNM Petition Response at 12-13; LES AGNM and NIRS/PC Petition Response at 45-47; AGNM Reply at 6-14; Staff Surreply to AGNM at 5-6; Tr. at 34-42, 49-75, 77-80, 84-87.

RULING: Inadmissible, in that this contention as it contests the acceptability of a proposed disposal strategy recognized by the Commission in its January 30, 2004 hearing opportunity notice as one that is "plausible," see CLI-04-3, 59 NRC at 22, represents an impermissible challenge to the Commission's regulations or rulemaking-associated generic determinations; fails to raise a material factual or legal dispute; and/or falls outside the scope of this proceeding. See section II.B.1.a, b, d above. Nonetheless, because our ruling includes a determination not to consider information that was first submitted as part of a reply pleading and is purportedly material to the admission of this contention,[8] in accord with section II.B.3 above we refer this ruling to the Commission. See 10 C.F.R. § 2.323(f).

AGNM EC-iv -- SECURITY FOR DISPOSAL COSTS

CONTENTION: Security for disposal costs must be provided.

DISCUSSION: AGNM Petition at 5; AGNM Supplemental Request at 8; Staff AGNM Petition Response at 13-14; LES AGNM and NIRS/PC Petition Response at 60-65; AGNM Reply at 14-19; Staff Surreply to AGNM at 6-7; Tr. at 155-56, 161-75; LES Contingency Factor Update at 1-2; AGNM Contingency Factor Update at 1-2.

[8] In this regard, the AGNM submitted information regarding the application of the Commission's "waste confidence" decisions to depleted uranium tails. See AGNM Reply at 6-14.

RULING: Inadmissible, in that this contention and its supporting bases lack adequate factual or expert opinion support; fail properly to challenge the LES ER; and/or impermissibly challenge the Commission's decommissioning regulations. See section II.B.1.a, c, e above.

AGNM EC-v -- NEED FOR ENRICHMENT SERVICES

CONTENTION: LES has not adequately demonstrated the need for its enrichment services for the purposes of the Environmental Impact Statement.

DISCUSSION: AGNM Petition at 8; AGNM Supplemental Request at 8; Staff AGNM Petition Response at 14; LES AGNM and NIRS/PC Petition Response at 80-92; Tr. at 176-77.

RULING: This contention was withdrawn by the AGNM. See Tr. at 176-77.

AGNM MC-i -- DEFINITION OF "PLAUSIBLE STRATEGY"

CONTENTION: The State requests the opportunity to explore the definition of a "plausible strategy" for disposal of LES waste.

DISCUSSION: AGNM Petition at 3; AGNM Supplemental Request at 9; Staff AGNM Petition Response at 15; LES AGNM and NIRS/PC Petition Response at 44-45; AGNM Reply at 6-14; Staff Surreply to AGNM at 5-6; Tr. at 34-42, 49-75, 77-80, 84-87.

RULING: Inadmissible, in that this contention, as it contests the acceptability of a proposed disposal strategy recognized by the Commission in its January 30, 2004 hearing opportunity notice as one that is "plausible," see CLI-04-3, 59 NRC at 22, represents an impermissible challenge to the Commission's regulations or rulemaking-associated generic determinations; fails to raise a material factual or legal dispute; and/or falls outside the scope of this proceeding. See section II.B.1.a, b, d above. Nonetheless, because our ruling includes a determination not to consider information that was first submitted as part of a reply pleading and is purportedly material to the admission of this contention,[9] in accord with section II.B.3 above we refer this ruling to the Commission. See 10 C.F.R. § 2.323(f).

[9] In this regard, the AGNM submitted information regarding the application of the

AGNM MC-ii -- FINANCIAL QUALIFICATION

CONTENTION: Financial qualification of LES must include contractual commitments that will pay for decommissioning and waste disposal, which requires the NRC to determine the actual costs of waste disposal and how it could be adequately financed.

DISCUSSION: AGNM Petition at 7-8; AGNM Supplemental Request at 9-10; Staff AGNM Petition Response at 15-17; LES AGNM and NIRS/PC Petition Response at 65-67; Tr. at 155-56, 161-75.

RULING: Inadmissible, in that this contention, as it contests the acceptability of the financial qualifications funding commitment recognized by the Commission in its January 30, 2004 hearing opportunity notice as one that will "satisfy the requirements of Part 70," CLI-04-3, 59 NRC at 23, represents an impermissible challenge to the Commission's financial qualifications regulatory scheme; lacks adequate factual or expert opinion support; fails to raise a material factual or legal dispute; and/or falls outside the scope of this proceeding as it contests NRC staff post-licensing verification activities. See section II.B.1.a, b, c, d above.

c. NIRS/PC Contentions

NIRS/PC EC-1 -- IMPACTS UPON GROUND AND SURFACE WATER

Commission's "waste confidence" decisions to depleted uranium tails. See AGNM Reply at 6-14.

CONTENTION: Petitioners contend that the Environmental Report ("ER") contained in the application does not contain a complete or adequate assessment of the potential environmental impacts of the proposed project on ground and surface water, contrary to the requirements of 10 C.F.R. 51.45.[10]

DISCUSSION: NIRS/PC Petition at 19-23; LES AGNM and NIRS/PC Petition Response at 7-15; Staff NIRS/PC Petition Response at 8-9; NIRS/PC Reply at 3-5; NIRS/PC Supplemental Request at 1; Tr. at 254-62.

RULING: Admitted, as supported by bases sufficient to raise genuine issues of material fact adequate to warrant further inquiry.

NIRS/PC EC-2 -- IMPACT UPON WATER SUPPLIES

CONTENTION: Petitioners contend that the ER contained in the application does not contain a complete or adequate assessment of the potential environmental impacts of the proposed project upon water supplies in the area of the project, contrary to 10 C.F.R. 51.45.

To introduce a new industrial facility with significant water needs in an area with a projected water shortage runs counter to the federal responsibility to act "as a trustee of the environment for succeeding generations," according to the National Environmental Policy Act (NEPA) § 101(b)(1) and 55 U.S.C. § 4331(b)(1). To present a full statement of the costs and benefits of the proposed facility the ER should set forth the impacts of the NEF on groundwater supplies.

DISCUSSION: NIRS/PC Petition at 24; LES AGNM and NIRS/PC Petition Response at 16-17; Staff NIRS/PC Petition Response at 9-10; NIRS/PC Reply at 5-6; NIRS/PC Supplemental Request at 1-2; Tr. at 262-69.

[10] As originally set forth by NIRS/PC, this contention had several additional paragraphs that were described as "background." NIRS/PC Petition at 19-20. Because these paragraphs are clearly part of the basis for this contention, we are not including them as part of the body of the contention.

RULING: Admitted, as supported by bases sufficient to raise genuine issues of material fact adequate to warrant further inquiry.

NIRS/PC EC-3/TC-1 -- DEPLETED URANIUM HEXAFLUORIDE STORAGE AND DISPOSAL

CONTENTION: Petitioners contend that LES does not have [a] sound, reliable, or plausible strategy for disposal of the large amounts of radioactive and hazardous Depleted Uranium Hexafluoride ("DUF_6") waste that the operation of the plant would produce. See NRC Order, 69 Fed. Reg. 5873, 5877 (Feb. 6, 2004).[11]

DISCUSSION: NIRS/PC Petition at 25-31; LES AGNM and NIRS/PC Petition Response at 17-37; Staff NIRS/PC Petition Response at 10-13; NIRS/PC Reply at 6-10; NIRS/PC Supplemental Request at 2; Tr. at 42-75, 80-87.

RULING: Admitted, as it is supported by Bases B, C, and D, which are sufficient to establish a genuine material dispute adequate to warrant further inquiry. Basis A is insufficient to support the contention's admission in that it fails to establish with specificity any genuine material dispute with the SAR or the ER; and/or lacks adequate factual or expert opinion support. See section II.B.1.c, d above.

A revised version of this contention incorporating this ruling is set forth at p. 41 of Appendix A to this memorandum and order. Further, because our ruling admitting this contention raises a novel legal or policy question regarding the status of depleted uranium hexafluoride waste as low-level waste, this ruling is referred to the Commission. See 10 C.F.R. § 2.323(f).

NIRS/PC EC-4 -- IMPACTS OF WASTE STORAGE AND DISPOSAL

CONTENTION: Petitioners contend that the LES ER lacks adequate information to make an informed licensing judgment, contrary to the requirements of 10 C.F.R. Part 51. The

[11] As originally set forth by NIRS/PC, this contention had several additional paragraphs that were described as "background." NIRS/PC Petition at 25. Because these paragraphs are clearly part of the basis for this contention, we are not including them as part of the body of the contention.

ER fails to discuss the impacts of construction and operation of deconversion and disposal facilities that are required in conjunction with the proposed enrichment plant.

DISCUSSION: NIRS/PC Petition at 31-32; LES AGNM and NIRS/PC Petition Response at 37-42; Staff NIRS/PC Petition Response at 13; NIRS/PC Reply at 10-12; NIRS/PC Supplemental Request at 2; Tr. at 242-54.

RULING: Admitted, as it is supported by Basis A to the extent that basis challenges the ER as failing to evaluate the environmental effects of the construction and operation of a deconversion facility, which is sufficient to establish a genuine material dispute adequate to warrant further inquiry. Basis B is insufficient to support the admission of this contention as it raises issues unrelated to the application so as to fall outside the scope of this proceeding. See section II.B.1.b above.

A revised version of this contention incorporating this ruling is set forth at p. 41 of Appendix A to this memorandum and order.

NIRS/PC EC-5/TC-2 -- DECOMMISSIONING COSTS

CONTENTION: LES has presented estimates of the costs 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 SAR 10.0 through 10.3; ER 4.13.3. Petitioners contest the sufficiency of such presentations.

DISCUSSION: NIRS/PC Petition at 32-34; LES AGNM and NIRS/PC Petition Response at 52-60; Staff NIRS/PC Petition Response at 13-14; NIRS/PC Reply at 13-14; NIRS/PC Supplemental Request at 2; Tr. at 157-59, 161-75, LES Contingency Factor Update at 1-2.

RULING: Admitted, as to its Basis B as sufficient to establish a genuine material dispute adequate to warrant further inquiry 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.[12] The balance of

[12] A portion of this contention may be subject to further litigation on contention NIRS/PC

Basis B and Basis A are insufficient to support the admission of this contention as lacking adequate factual or expert opinion support. See section II.B.1.c above.

A revised version of this contention incorporating this ruling and reflecting the consolidation of this contention with the admitted aspects of contention AGNM TC-i, see supra pp. 20-21, is set forth at p. 41 of Appendix A to this memorandum and order.

NIRS/PC EC-6/TC-3 -- COSTS OF MANAGEMENT AND DISPOSAL OF DEPLETED UF_6

CONTENTION: Petitioners contend that LES's application seriously underestimates the costs and the feasibility of managing and disposing of the depleted UF_6 ("DUF_6") produced in the planned enrichment facility.

DISCUSSION: NIRS/PC Petition at 34-38; LES AGNM and NIRS/PC Petition Response at 68-80; Staff NIRS/PC Petition Response at 14-15; NIRS/PC Reply at 14-18; NIRS/PC Supplemental Request at 2-3; Tr. at 95-114, 118-28.

EC-3/TC-1, as it challenges the potential for categorizing depleted uranium as low-level waste.

RULING: Admitted, as supported by bases sufficient to establish a genuine material dispute adequate to warrant further inquiry.[13]

A revised version of this contention incorporating this ruling is set forth at pp. 41-42 of Appendix A to this memorandum and order.

NIRS/PC EC-7/TC-4 -- NEED FOR THE FACILITY

CONTENTION: Petitioners contend that the Environmental Report ("ER") does not adequately describe or weigh the environmental, social, and economic impacts and costs of operating the National Enrichment Facility ("NEF") (See ER 1.1.1 et seq.).[14]

DISCUSSION: NIRS/PC Petition at 38-43; LES AGNM and NIRS/PC Petition Response at 80-92; Staff NIRS/PC Petition Response at 15-17; NIRS/PC Reply at 18-21; NIRS/PC Supplemental Request at 3; Tr. at 177-203.

RULING: Admitted, as supported by Bases A, B, and F that are sufficient to establish a genuine material dispute adequate to warrant further inquiry, except to the extent that Basis F suggests that the applicant is under an obligation to present a "business plan." Bases D, E, and G, are insufficient to support the admission of this contention in that they fail to establish with specificity any genuine material dispute; and/or fall outside the scope of this proceeding in that the applicant is under no obligation to present either a "business case" or to demonstrate the

[13] A portion of this contention may be subject to further litigation on contention NIRS/PC EC-3/TC-1, as it challenges the potential for categorizing depleted uranium as low-level waste.

[14] As originally set forth in by NIRS/PC, this contention had an additional paragraph that clearly was part of the basis. See NIRS/PC Petition at 39. Accordingly, we are not including it as part of the body of the contention.

profitability of the proposed facility. See section II.B.1.b, d above. Basis C was withdrawn. See NIRS/PC Supplement at 3.

Because this contention by its terms relates only to the LES ER, it is admitted only as an environmental contention. A revised version of this contention incorporating this ruling is set forth at p. 43 of Appendix A to this memorandum and order.

NIRS/PC EC-8/TC-5 -- IMPACT ON NATIONAL SECURITY AND NON-PROLIFERATION EFFORTS

CONTENTION: Petitioners contend that the operation of the proposed LES facility would pose an unnecessary and unwarranted challenge to national security and to global nuclear non-proliferation efforts.

The LES license application does not even address these critical issues to the security, health, and safety of the United States and the entire world. These issues should be addressed under Need for the facility, in both the ER and the EIS, and in all sections relating to the handling of classified information.

DISCUSSION: NIRS/PC Petition at 43-48; LES AGNM and NIRS/PC Petition Response at 92-102; Staff NIRS/PC Petition Response at 17-18; NIRS/PC Reply at 21-25; NIRS/PC Supplemental Request at 3-4; Tr. at 213-40.

RULING: Inadmissible, to the extent that this contention and its supporting bases fail to specify any genuine dispute, including failing to satisfy the criterion regarding the appropriate circumstances under which management character issues may be litigated by showing "some direct and obvious relationship between the character issues and the licensing action in dispute," Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2), CLI-99-4, 49 NRC 185, 189 (1999); impermissibly challenge the Commission's regulations; lack materiality; lack adequate factual or expert opinion support; and fail properly to challenge the LES application, in particular its security provisions. See section II.B.1.a, b, c, d, e above.

NIRS/PC EC-9/TC-6 -- NATURAL GAS-RELATED ACCIDENT RISKS

CONTENTION: Petitioners contend that the Environmental Report ("ER") does not contain a complete or adequate assessment of the potential environmental impacts of accidents involving natural gas transmission facilities. Further, there has been no Integrated Safety Analysis ("ISA") based on module-specific data. 10 C.F.R. 51.45 has not been satisfied.[15]

DISCUSSION: NIRS/PC Petition at 48-51; LES AGNM and NIRS/PC Petition Response at 102-10; Staff NIRS/PC Petition Response at 18-19; NIRS/PC Reply at 25-27; NIRS/PC Supplemental Request at 4; Tr. at 269-77.

RULING: Admitted, as supported by Basis A that is sufficient to establish a genuine material dispute adequate to warrant further inquiry with respect to the alleged inadequacy of the SAR because it does not contain an ISA based on module-specific data. Bases B, C, and D were withdrawn by NIRS/PC. See Tr. at 269-70, 272.

With the withdrawal of Bases B, C, and D, this contention is essentially limited to SAR-related concerns and is admitted as a technical contention. A revised version of this contention incorporating this scope is set forth at p. 43 of Appendix A to this memorandum and order.

[15] As originally set forth by NIRS/PC, this contention had several additional paragraphs that were described as "background." NIRS/PC Petition at 48. Because these paragraphs are clearly part of the basis for this contention, we are not including them as part of the body of the contention.

III. PROCEDURAL/ADMINISTRATIVE MATTERS

As indicated above, each of the three petitioners -- NMED, the AGNM, and NIRS/PC -- are admitted as parties to this proceeding as they each have established standing and have set forth at least one admissible contention. Following below is procedural guidance for further litigating the above-admitted contentions.

A. Lead Parties

Pursuant to 10 C.F.R. § 2.319, the presiding officer possesses the authority to control the prehearing and hearing process by consolidating parties and/or designating a lead party to represent interests held in common by multiple groups, in order to eliminate duplicative or cumulative evidence and arguments. In the instant proceeding, there is one admissible NMED contention that has been adopted by the AGNM and several other admissible contentions that have been consolidated because of their similar subject matter. This being the case, we believe the prudent approach is to designate “lead” parties for the litigation of each of these contentions.

A party designated as the “lead” has the primary responsibility for the litigation of a contention. These litigation responsibilities of the lead party include, absent other instruction from the Board, the conduct of all discovery related to the contention; filing and responding to any dispositive or other motions related to the contention; submitting any required prehearing briefs regarding the contention; preparing prefiled direct testimony, conducting any redirect examination, providing any surrebuttal testimony in connection with the contention; and preparing posthearing proposed findings of fact and conclusions of law regarding the contention. The lead party is responsible for consulting with the other parties involved (i.e., any

party adopting the contention or filing a contention that has been consolidated) regarding the activities related to the litigation of the contention.[16]

If a contention admitted in this proceeding has not been consolidated with any other, the party who proffered that contention is the lead party. For that NMED contention adopted by the AGNM, NMED will serve as the lead party.[17] Further, for those contentions that have been consolidated, we suggest the following lead party designation:

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[16] The Board believes that this communication between the lead party and the other involved parties will serve to protect the interests and concerns of all the parties regarding the contention. Should such consultation fail to yield a resolution to a dispute, those parties involved may request Board intervention. All such requests must be in writing, on the record, and be presented in such a timely fashion that will allow the Board to resolve the matter without requiring the extension of any existing schedules.

[17] Section 2.309(f)(3) provides that if a petitioner "seeks to adopt the contention of another sponsoring [petitioner], the [petitioner] who seeks to adopt the contention must either agree that the sponsoring [petitioner] shall act as the representative with respect to that contention, or jointly designate with the sponsoring [petitioner] a representative who shall have the authority to act for the [petitioners] with respect to that contention." In this instance, in adopting this NMED contention the AGNM did not specifically agree that NMED shall act as the representative for this contention. See NMED/AGNM Joint Supplement to Petitions at 2. Nonetheless, we will assume this is the case, unless within ten days of the entry of this order those two petitioners advise the Board they have agreed to some other arrangement.

NIRS/PC EC-5/TC-2 - AGNM TC-i -- DECOMMISSIONING COSTS: NIRS/PC

Should any designated lead party and the others involved agree that a party other than the one we have suggested serve as the lead party for a contention, they should seek Board approval for the change of the designation.

B. Discovery

Per our discussion at the end of the June 2004 prehearing conference (Tr. at 279-84), and as Commission rules require, as soon as practicable after issuance of this memorandum and order admitting parties and issues, the parties are to meet to discuss their particular claims and defenses and the possibility of settlement or resolution of any part of the proceeding, develop a plan for discovery, and make arrangements for the required disclosures under 10 C.F.R. § 2.704.[18] See 10 C.F.R. § 2.705(f). The discovery plan, which is to be submitted to the presiding officer within ten (10) days of the meeting, must indicate the views of the parties and their proposals regarding (1) any changes that may be needed in the timing, form, or

[18] Pursuant to 10 C.F.R. § 2.704(a), and consistent with the Commission's January 2004 order, see CLI-04-03, 59 NRC at 16, all lead parties, except the staff, are to make available within forty-five (45) days of the issuance of this memorandum and order (1) the name and, if known, the address and telephone number of those individuals likely to possess discoverable information that is relevant to the admitted contentions and their supporting bases; and (2) copies of, or descriptions by category and locations of, all documents, data compilations, and tangible things in the possession, custody, or control of the lead party that are relevant to the admitted contentions and their supporting bases. Where such material is publically available from a different source, it will suffice to provide the location, title and page reference to the relevant document, data compilation or tangible thing.

A party complying with this rule is under a duty to supplement its disclosures within a reasonable time after it learns that the information disclosed is incomplete or incorrect in some material respect, if this additional information has not otherwise been made known during discovery or in writing. See 10 C.F.R. § 2.704(e)(1). Additionally, each section 2.704 disclosure must be signed by at least one attorney of record, certifying that to the best of his or her knowledge, after reasonable inquiry, the information is correct and complete at the time of submission. See 10 C.F.R. § 2.705(g)(1). Finally, the Board will address the timing for disclosures required under section 2.704(b)-(c) in a later issuance.

requirements for disclosures under section 2.704(a);[19] (2) the subjects on which discovery will

[19] In this regard, among the items to be discussed and included in the report should be whether (1) the staff's section 2.336(b) hearing file can be provided electronically via the NRC web site sooner than 30 days from the date of this issuance; and (2) discovery against the staff on environmental issues can begin with issuance of the draft environmental impact statement in September 2004 rather than awaiting the final EIS (and Safety Evaluation Report), now scheduled for issuance in mid-June 2005, see Tr. at 278.

Relative to the staff's hearing file, in accord with 10 C.F.R. § 2.336(b), in creating and providing the hearing file for this proceeding, the staff can utilize one of two options:

1. Hard copy file. The hearing file that is submitted to the Licensing Board and the parties in hard copy must contain a chronologically numbered index of each item contained in it and each file item shall be separately tabbed in accordance with the index and be separated from the other file items by a substantial colored sheet of paper that contains the tab(s) for the immediately following item. Additionally, the items shall be housed in hole-punched three ring binders of no more than four inches in thickness.

2. Electronic file. For an electronic hearing file, the staff shall make available to the parties and the Licensing Board a list that contains the ADAMS accession number, date and title of each item so as to make the item readily retrievable from the agency's web site, www.nrc.gov., using the ADAMS "Find" function. Additionally, the staff should create a separate folder in the agency's ADAMS system, which it should label "Louisiana Energy Services - 70-3103-ML Hearing File," and give James Cutchin of ASLBP and the SECY group (Office of the Secretary) viewer rights to that folder. Once created, the staff should place in that folder copies of the ADAMS files for all the Hearing Docket materials. For documents in ADAMS packages a subfolder should be created into which the package content should be placed. The subfolder should have a title that comports with the title of the package. Thereafter, as part of its notice to the parties and the Licensing Board regarding the availability of the Hearing File materials in ADAMS, the staff should advise the Licensing Board that this process is complete and the "Hearing File" folder is available for viewing. (As an information matter for the parties, once this notice is received, the contents of the folder will be copied so as to make its contents available to an ASLBP-created ADAMS folder that will be accessible to ASLBP personnel only and into a folder that will be accessible by the parties from the NRC web site.)

If the staff thereafter provides any updates to the hearing file, it should place a copy of those items in the"Louisiana Energy Services - 70-3103-ML Hearing File" ADAMS folder and indicate it has done so in the notification regarding the update that is then sent to the Licensing Board and the parties. Additionally, if at any juncture the staff anticipates placing any non-public documents into the hearing file for the proceeding, it should notify the Licensing Board of that intent prior to placing those documents into the "Louisiana Energy Services - 70-3103-ML Hearing File" and await further instructions regarding those documents from the Licensing Board. (Questions regarding the electronic hearing file creation process should be addressed to James Cutchin at 301-415-7397 or jmc3@nrc.gov.)

If the staff decides to utilize option two, as part of the discovery report required under this section it should give notice to the Licensing Board and the parties of that election. If any

be needed, when it should be completed, and whether it should be conducted in phases or limited to particular issues; (3) any changes or additions to existing discovery limitations; and (4) any other orders that should be issued by the presiding officer under section 2.705(c). See id.

The Board will oversee the discovery process through status reports and/or conferences, and expects that each of the parties will comply with the process to the maximum extent possible. Failure to do so may result in appropriate Board sanctions. When a party claims privilege and withholds information otherwise discoverable under the rules, the party shall expressly make the claim and describe the nature of what is not being disclosed to the extent that, without revealing what is sought to be protected, other parties will be able to determine the applicability of the privilege or protection. See 10 C.F.R. § 2.705(b)(4). The claim and identification of privileged materials must occur within the time provided for such disclosure of the withheld materials. See id. Moreover, any attempt to compel discovery by filing a motion with the Board must be preceded by the moving party either conferring or attempting in good faith to confer with the other party in an effort to resolve the dispute without Board intervention. See 10 C.F.R. § 2.705(h)(1).

C. Schedule for Joint Report and Prehearing Conference Call

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party objects to this method of providing the hearing file, it shall file a response within seven days outlining the reasons why access to an electronic hearing file will place an undue burden on that party's ability to participate in this proceeding.

As indicated in section III.B above, the parties are to conduct a meeting to discuss scheduling for discovery. In this connection, on or before Thursday, July 29, 2004, the parties are to file with the Board a report that outlines the resulting discovery schedule. The Board requests also that in the discovery plan the parties provide their views regarding which, if any, of the admitted contentions are subject to summary disposition, along with an appropriate filing schedule for such motions. These suggestions should reflect the summary disposition schedule as set forth in 10 C.F.R. § 2.710 and the Commission's January 30 issuance. See CLI-04-3, 59 NRC at 18-20. Additionally, the report should include party estimates regarding exactly when this case, or any substantial portion of this case (e.g., environmental contentions), will be ready to go to hearing and the time necessary to try each of the admitted contentions if they were to go to hearing.[20] The report should also indicate the status of any settlement negotiations relative to any of the admitted contentions, and whether a "settlement judge" would be helpful in those discussions. Should the parties disagree as to any of these matters, separate views may be included as part of the report.

Following the receipt of the parties' joint report, the Board will conduct a prehearing conference call to discuss scheduling and other matters. This conference call will be held on

[20] Additionally, in the report, LES and the staff should provide their views on how the Board should proceed relative to the "mandatory hearing" findings required of the Board under section II.C-F of the Commission's January 2004 order. See CLI-04-3, 59 NRC at 12-13.

Tuesday, August 3, 2004, beginning at 1:00 p.m. EDT (11:00 p.m. MDT).[21] Additional calling instructions will be issued by the Board at a later date. The Board anticipates this prehearing conference call will last no more than two hours.

IV. CONCLUSION

For the reasons set forth in section II.A, B above, we find that petitioners New Mexico Environment Department, the Attorney General of New Mexico, and Nuclear Information and Resource Service/Public Citizen, previously having been found by the Commission to have standing, have also put forth at least one admissible contention so as to be entitled to party status in this proceeding. The text of their admitted contentions is set forth in Appendix A to this decision. Additionally, because we find they raise novel legal or policy questions, we refer several of our rulings denying and admitting contentions to the Commission for its consideration.

For the foregoing reasons, it is this nineteenth day of July 2004, ORDERED, that:

1. Relative to the contentions specified in paragraph two below, the NMED, AGNM, and NIRS/PC hearing requests are granted and these petitioners are admitted as parties to this proceeding.

[21] Any party that is unable to make itself available for this conference as scheduled should contact counsel for the other parties and provide the Board with agreed alternative times on Tuesday, Wednesday, or Thursday of that week.

2. The following petitioner contentions are admitted for litigation in this proceeding: NMED TC-3/EC-4 (also adopted by the AGNM), AGNM TC-i (as consolidated with contention NIRS/PC EC-5/TC-2), AGNM TC-ii, NIRS/PC EC-1, NIRS/PC EC-2, NIRS/PC EC-3/TC-1 (as supported by Bases B, C, and D), NIRS/PC EC-4 (as supported by Basis A), NIRS/PC EC-5/TC-2 (as consolidated with contention AGNM TC-i), NIRS/PC EC-6/TC-3, NIRS/PC EC-7/TC-4 (as supported by Bases A, B, and F), and NIRS/PC EC-9/TC-6 (as supported by Basis A).

3. The following petitioner contentions are rejected as inadmissible for litigation in this proceeding:[22] NMED TC-1/EC-1, NMED EC-2, NMED MC-1, AGNM EC-i, AGNM EC-ii, AGNM EC-iii, AGNM EC-iv, AGNM MC-i, AGNM MC-ii, and NIRS/PC EC-8/TC-5.

4. In accordance with 10 C.F.R. § 2.323(f), the following Board's contention admission determinations are referred to the Commission: NMED TC-1/EC-1, AGNM EC-ii, AGNM EC-iii, AGNM MC-i, and NIRS/PC EC-3/TC-1.

5. The parties are to make the submissions required by section III above in accordance with the schedule established herein.

6. In accordance with the provisions of 10 C.F.R. § 2.311, as it rules upon intervention petitions, any appeal to the Commission from this memorandum and order must be taken within ten (10) days after it is served.

THE ATOMIC SAFETY

[22] The following contentions were withdrawn by the respective petitioners: NMED TC-2/EC-3, AGNM EC-v, NIRS EC-7/TC-4 (Basis C) and NIRS/PC EC-9/TC-6 (Bases B, C, and D).

AND LICENSING BOARD[23]

Original Signed By
G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Original Signed By
Paul B. Abramson
ADMINISTRATIVE JUDGE

Original Signed By
Charles N. Kelber
ADMINISTRATIVE JUDGE

Rockville, Maryland

July 19, 2004

[23] Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) petitioners NMED, the AGNM, and NIRS/PC; and (3) the staff.

APPENDIX A

ADMITTED CONTENTIONS

1. NMED TC-3/EC-4 -- RADIATION PROTECTION PROGRAM

CONTENTION: The Application does not comply with the requirements of 10 C.F.R. § 20.1101 because it fails to provide sufficient information to demonstrate the establishment of an adequate radiation protection program. Specifically, the Application is deficient in providing the technical bases for monitoring and assessing effluent discharge, and in estimating occupational and public radiation doses. See e.g. Application, §§ 4.6, Safety Analysis Report, vol. 4; 4.12, Environmental Report, vol. 2; 6.0, Safety Analysis Report, vol. 4; see 10 C.F.R. § 20.1101(b); Nuclear Regulatory Guidance Document 4.14 (setting forth the need for discharge and dosage information prior to and during operations of the uranium processing facility). The radiation dose quantities are provided, but are not supported by calculation protocols, formulae, or variables (e.g., occupancy factors, seasonal variations, diffusion coefficients). This additional information must be provided in order to verify the information in the Application.

2. AGNM TC-ii -- DISPOSAL COST ESTIMATES

CONTENTION: The bases for Louisiana Energy Services, L.P.'s (LES) cost estimates are suspect and the actual cost of disposing of tails will exceed the $5.50 per kilogram uranium (kgU) estimated by LES utilizing information relating to (1) the Urenco contract; and (2) LES cost estimates developed in connection with its Louisiana application.

3. NIRS/PC EC-1 -- IMPACTS UPON GROUND AND SURFACE WATER

CONTENTION: Petitioners contend that the Environmental Report contained in the application does not contain a complete or adequate assessment of the potential environmental impacts of the proposed project on ground and surface water, contrary to the requirements of 10 C.F.R. 51.45.

4. NIRS/PC EC-2 -- IMPACT UPON WATER SUPPLIES

CONTENTION: Petitioners contend that the Environmental Report (ER) contained in the application does not contain a complete or adequate assessment of the potential environmental impacts of the proposed project upon water supplies in the area of the project, contrary to 10 C.F.R. 51.45.

To introduce a new industrial facility with significant water needs in an area with a projected water shortage runs counter to the federal responsibility to act "as a trustee of the environment for succeeding generations," according to the National Environmental Policy Act § 101(b)(1) and 55 U.S.C. § 4331(b)(1). To present a full statement of the costs and benefits of

the proposed facility the ER should set forth the impacts of the National Enrichment Facility on groundwater supplies.

5. NIRS/PC EC-3/TC-1 -- DEPLETED URANIUM HEXAFLUORIDE STORAGE AND DISPOSAL

CONTENTION: Petitioners contend that Louisiana Energy Service, L.P., (LES) does not have a sound, reliable, or plausible strategy for private sector disposal of the large amounts of radioactive and hazardous Depleted Uranium Hexafluoride ("DUF_6") waste that the operation of the plant would produce in that:

(A) The statement (LES Environmental Report (ER) 4.13-8) that a ConverDyn partner, General Atomics, "may have access to an exhausted uranium mine . . . where depleted U_3O_8 could be disposed" represents a grossly inadequate certitude for a "plausible strategy" determination, particularly for a radioactive and hazardous substance which has been accumulating in massive quantities in the United States for fifty-seven years without a plausible disposal program.

(B) Similarly, the statement that "discussions have recently been held with Cogema concerning a private conversion facility" (ER 4.13-8) is without substance.

(C) The disposition of depleted uranium must be addressed based on the radiological hazards of this material that require that it be disposed of in a deep geological repository.

6. NIRS/PC EC-4 -- IMPACTS OF WASTE STORAGE AND DISPOSAL

CONTENTION: Petitioners contend that the Louisiana Energy Services, L.P. Environmental Report (ER) lacks adequate information to make an informed licensing judgment, contrary to the requirements of 10 C.F.R. Part 51. The ER fails to discuss the environmental impacts of construction and lifetime operation of a conversion plant for the Depleted Uranium Hexafluoride ("UF_6") waste that is required in conjunction with the proposed enrichment plant.

7. NIRS/PC EC-5/TC-2 - AGNM TC-i -- DECOMMISSIONING COSTS

CONTENTION: Louisiana Energy Services, L.P., (LES) has presented estimates of the costs 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.

8. NIRS/PC EC-6/TC-3 -- COSTS OF MANAGEMENT AND DISPOSAL OF DEPLETED UF_6

CONTENTION: Petitioners contend that the Louisiana Energy Services, L.P., (LES) application seriously underestimates the costs and the feasibility of managing and disposing of the Depleted Uranium Hexafluoride ("DUF_6") produced in the planned enrichment facility in that:

(A) LES's reliance on the Lawrence Livermore National Laboratory (LLNL) Report as a basis for LES's cost estimate for deconversion and disposal is not justified given the report states its cost estimates as medians.

(B) LLNL cost estimates are based on travel distances of 1000 kilometers or 620 miles (§ 4.1.3, at 37; id. 92), but the data presented in the LES application show that travel over 1000 miles would be required to convert the DUF_6 at Paducah, Kentucky or Portsmouth, Ohio, and travel of an additional 1000 miles (Environmental Report (ER) Table 4.13-1) would be required to get the material to a disposal site.

(C) In LLNL's projections of the cost of decommissioning, it is assumed that materials such as steel used in the construction could be recycled. (See ER 4.13-17). Thus, it is assumed that such material would not constitute waste. However, such an assumption cannot be made.

(D) Significant revenues are assumed from the sale of calcium difluoride ("CaF_2")– $11.02 million per year (ER 4.13-17, Table 4.13-2; LLNL Report at 50). These assumptions are unfounded and cannot be incorporated in the calculation of the cost of decommissioning.

(E) A problem arises with respect to disposal of CaF_2. It is not known whether the CaF_2 will be contaminated with uranium. Such contamination would prevent the resale of the CaF_2 and would require that such material be disposed of as low-level waste.

(F) There is an even more significant risk that the magnesium difluoride ("MgF_2") would also be contaminated. The LLNL report states that MgF_2 generated in decommissioning may be contaminated. (§ 6.3.2, at 119). Such contamination would require that such material be disposed of as radioactive waste. Such disposal would raise the cost of decommissioning by more than $400 million. (See Table 6.17, at 120).

(G) LES's "preferred plausible strategy" for the disposition of depleted UF_6 is the possible sale to a "private sector conversion facility" followed by disposal of deconverted U_3O_8 in a "western U.S. exhausted underground uranium mine." (ER 4.13-8). Such a conversion strategy cannot be accepted as plausible given that no such conversion facility exists nor is it likely to be built to suit LES's timing and throughput requirements.

(H) The mine disposal option advanced by LES (ER 4.13-11) cannot be considered plausible given the single mine identified in the application opposes use of its property and storage of the waste in a such mine will not be realistically approvable if DUF_6 is not considered low-level waste.

(I) The "engineered trench" method of waste disposal proposed by LES is not likely to be acceptable (ER 4.13-11, -19) if DUF_6 is not considered low-level waste.

9. NIRS/PC EC-7 -- NEED FOR THE FACILITY

CONTENTION: Petitioners contend that the Environmental Report (ER) does not adequately describe or weigh the environmental, social, and economic impacts and costs of operating the National Enrichment Facility (See ER 1.1.1 et seq.) in that:

(A) Louisiana Energy Services, L.P.'s (LES) presentation erroneously assumes that there is a shortage of enrichment capacity.

(B) LES's statements of "need" for the LES plant (ER 1.1) depend primarily upon global projections of need rather than projections of need for enrichment services in the U.S.

(C) LES has referred to supply and demand in the uranium enrichment market (ER 1.1), but it has not shown how LES would effectively enter this market in the face of existing and anticipated competitors and contribute some public benefit.

10. NIRS/PC TC-6 -- NATURAL GAS-RELATED ACCIDENT RISKS

CONTENTION: Petitioners contend that the Safety Evaluation Report does not contain a complete or adequate assessment of accidents involving natural gas transmission facilities in that there has been no Integrated Safety Analysis based on module-specific data.