

LEXSEE 60 NRC 40

In the Matter of LOUISIANA ENERGY SERVICES, L.P.
(National Enrichment Facility)

Docket No. 70-3103-ML; ASLBP No. 04-826-01-ML

NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

60 N.R.C. 40; 2004 NRC LEXIS 166

July 19, 2004

JUDGES: [1]**

Before Administrative Judges: G. Paul Bollwerk, III, Chairman; Dr. Paul B. Abramson; Dr. Charles N. Kelber

OPINION BY: BOLLWERK, III; ABRAMSON; KELBER

OPINION:

[*47] 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).

[*48] For the reasons set forth below, we find that all the petitioners have established the requisite [**2] 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 [**3] 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 [**4] 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 [*49] 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) [**5] 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]; [**6] [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 [*50] 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* , [**7] (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 un-

der 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 [**8] 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 [**9] 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 [*51] 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 [**10] 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 [**11] 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 [**12] Board Memorandum and Order (Ruling on Request for Access to Proprietary [*52] 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. [**13] 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. n1 See id. at 278-90.

n1 Subsequent to the prehearing conference, acting at the request of the Board, see Tr. at 119, LES submitted an appraisal 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].

[**14]

[*53] 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). n2 The three intervening participants have all maintained they meet each of these requirements for party status.

n2 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*.

[**15]

A. Standing

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 [**16] 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. n3 So too, noting the close proximity of individual members of each [*54] group to the proposed LES facility, n4 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 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.

n3 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*.

[**17]

n4 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*.

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), [**18] 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), [*55] CLI-03-14, 58 NRC 207, 218 (2003)*. By the same token, any contention that amounts to an attack [**19] 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 [**20] 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)*. [**21] 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)*. [**56] 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, [**22] 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 it 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 [**23] 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)*.

[**57] 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 [**24] 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)*.

Santa Fe, NM 87501

John W. Lawrence, Esq.
Louisiana Energy Services, L.P.
2600 Virginia Ave., NW, Suite 610
Washington, DC 20037

David M. Pato, Esq.
Stephen R. Farris, Esq.
Christopher D. Coppin, Esq.
Assistant Attorneys General
Glenn R. Smith, Esq.
Deputy Attorney General
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508

Lisa A. Campagna, Esq.
Assistant General Counsel
Westinghouse Electric [**75] Company LLC
P.O. Box 355
Pittsburgh, PA 15230-0355

[ILLEGIBLE WORDS]

Office of the Secretary of the Commission

Dated at Rockville, Maryland, this 19th day of July 2004

Legal Topics:

For related research and practice materials, see the following legal topics:

Administrative Law Agency Adjudication Prehearing Activity Energy & Utilities Law Nuclear Power Industry Licenses & Permits Energy & Utilities Law Nuclear Power Industry U.S. Nuclear Regulatory Commission