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ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Louisiana Energy Services, L.P.	)	Docket No. 70-3103
	)	
(National Enrichment Facility)	)	

ANSWER OF LOUISIANA ENERGY SERVICES, L.P. TO THE NEW MEXICO ENVIRONMENT DEPARTMENT'S REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.309(h)(1), Louisiana Energy Services, L.P. ("LES"), applicant in this matter, hereby files its answer to the Request for Hearing and Petition for Leave to Intervene ("Petition") filed by the New Mexico Environment Department ("NMED") on March 23, 2004. As discussed below, LES acknowledges that NMED has standing to participate in this proceeding pursuant to 10 C.F.R. 2.309(d)(2). Indeed, as reflected in the Commission's regulations, a State in which a facility is proposed to be located is presumed to have an interest that, in turn, obviates the need for a demonstration of standing. In addition, LES recognizes the important role of NMED, as a state regulator, with respect to the enrichment facility proposed to be located in southeast New Mexico. For this reason, LES believes that three of the five proposed contentions raised by NMED should be admitted in this proceeding. The remaining two proposed contentions raise issues already decided by the Commission in its Order in this docket (described below) and are therefore not within the scope of issues appropriate for a hearing before the Atomic Safety and Licensing Board ("Licensing Board"). In

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the spirit of cooperation that exists between LES and the NMED, however, LES intends to address these issues with the NMED staff as a part of the overall licensing process.

II. BACKGROUND

On December 12, 2003, LES submitted an Application for the specific Nuclear Regulatory Commission ("NRC") license necessary to authorize construction and operation of the National Enrichment Facility ("NEF"), a gas centrifuge uranium enrichment facility, to be located in Lea County, New Mexico. If granted, the license will authorize LES to construct and operate the facility, which will enrich uranium for conversion into fuel to be used in nuclear power reactors. A license would be issued in accordance with 10 C.F.R. § 70.31(d), upon appropriate findings that the facility would not be inimical to the common defense and security or constitute an unreasonable risk to the health and safety of the public.[1] A Notice of Hearing[2] and Commission Order were published in the *Federal Register* on February 6, 2004.[3] In response to the Notice, NMED filed its Petition on March 23, 2004. The Commission Order addressed several important threshold issues, defining the scope of issues that are the subject of this NRC proceeding.

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1 Licenses would also be issued under 10 C.F.R. Parts 30 and 40 for possession and use of source and byproduct materials.

2 Pursuant to Section 193(b) of the Atomic Energy Act of 1954, as amended ("AEA"), a hearing on this application is required.

3 In the Matter of Louisiana Energy Services, L.P. (National Enrichment Facility); Notice of Receipt of Application for License; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order, 69 Fed. Reg. 5873 (Feb. 6, 2004) ("Order").

III. STANDING

NMED states that it is an agency of the State of New Mexico and that it "has the authority to serve as agent for the State in matters of environmental management and consumer protection in which the United States is a party." (NMED Petition ¶ 2.) Further, NMED states that the Governor of New Mexico has designated NMED as the single representative for the State in this matter. (*Id.* ¶ 3.) As such, in accordance with 10 C.F.R. § 2.309(d)(2), NMED need not address the standing requirements of 10 C.F.R. § 2.309(d)(1).[4]

LES does not contest NMED's standing in this proceeding. The Commission has long acknowledged the benefits of participation in licensing proceedings by interested States. *See. e.g., Fansteel Inc.* (Muskogee, Oklahoma Site), CLI-03-13, 58 NRC 195, 202 (2003). LES respects the right of the State to participate in this proceeding where its issues relate to public health and safety or the protection of the environment within the zone of interests of the Atomic Energy Act of 1954, as amended ("AEA") or the National Environmental Policy Act of 1969 ("NEPA").

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[4] LES would note that subsequent to the filing of this petition by the New Mexico Environment Department, the Commission received a second Request for Hearing and Petition to Intervene from the Attorney General of New Mexico (*see The New Mexico Attorney General's Request for Hearing and Petition for Leave to Intervene*, April 5, 2004). In the petition filed by NMED, the petitioner states that "[t]he Governor of the State of New Mexico has designated NMED as the single representative for the State for the hearing in this matter." In the petition filed by the New Mexico Attorney General, the petitioner states that the Attorney General is the "statutorily designated representative of the State in which LES's proposed Facility is to be located . . ." (p. 2 of Petition). The appearance of two parties on behalf of the State of New Mexico is addressed in a Memorandum and Order from the ASLB established to preside over this proceeding.

IV. PROPOSED CONTENTIONS

To be admissible in NRC licensing proceedings, proposed contentions must satisfy 10 C.F.R. § 2.309(f)(1), which states that a petitioner must provide:

> (i) a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) a brief explanation of the basis for the contention;
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> (iii) a demonstration that the issue raised in the contention is within the scope of the proceeding;
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> (iv) a demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
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> (v) a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue; and
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> (vi) sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

These provisions "incorporate the longstanding contention support requirements of former 10 C.F.R. § 2.714 — no contention will be admitted for litigation in an NRC

(continued)

Louisiana Energy Servs. (National Enrichment Facility), Memorandum and Order (Initial Prehearing Order), slip op. Apr. 15, 2004.

adjudicatory proceeding unless these requirements are met."[5] Similarly, under longstanding Commission precedent, proposed contentions must fall within the scope of the issues set forth in the notice of hearing. *See Vt. Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 91 (1990) (*citing Pub. Serv. Co. of Ind., Inc.* (Marble Hill Nuclear Generating Station, Units 1 & 2), ALAB-316, 3 NRC 167, 170 (1976).

A. Proposed Contention A: Storage of Depleted Uranium Hexafluoride

In proposed Contention A, NMED raises concerns related to the storage of DUF_6 generated by the operation of the proposed enrichment facility. NMED asserts that:

(1) Storage of DUF_6 for the life of the facility is not acceptable to the State of New Mexico and is contrary to representations made by LES.

(2) LES's proposed storage plan is not sufficiently detailed.

(3) Storage of "highly dangerous" DUF_6 for 30 years may pose a threat to the protection of health and property, and LES has not demonstrated that issuance of a license will not be inimical to the health and safety of the public.

(4) In the event of a default by LES, there would not be adequate financial assurance.

LES believes that the measures proposed in its Application, as discussed in more detail below, fully address the health and safety concerns identified by NMED in this proposed contention in a manner that complies with all applicable regulatory requirements and will ensure the protection of the public health and safety and the environment.[6] Indeed, LES welcomes the opportunity to

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5 Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

6 NMED also raises the concern here that there is not adequate financial assurance to address depleted uranium waste in the event of a "default" by LES. In making this assertion, NMED references Paragraph 5c. of its Petition, which sets forth a proposed contention regarding the adequacy of financial assurance for NEF decommissioning ("Contention C"). That proposed contention is discussed below.

demonstrate to the State of New Mexico and in this proceeding that this is the case. We believe, however, that because of the clear importance of these issues to NMED, and in view of its important role as a representative of the State of New Mexico, NMED should be allowed to raise this issue in this proceeding. Therefore LES supports the admission of this proposed contention.

Nevertheless, although LES is supporting the admission of this proposed contention, it is important to place in context NMED's generally stated concerns that DUF_6 is "highly dangerous;" that storage of DUF_6 on the site for 30 years may pose a threat to public health and safety; and that LES has failed to demonstrate that issuance of the license will not be inimical to the public health and safety. In particular, it is important to understand the extensive measures that will be undertaken by LES to ensure that the storage of DUF_6 in Uranium Byproduct Cylinders ("UBCS") -- during whatever period of time it is stored onsite -- will be done in a manner that ensures that the public health and safety and the environment will be protected and, on this basis, the issuance of a license to LES will not be inimical to the health and safety of the public. These extensive measures, which include detailed handling and storage procedures and practices, are set forth in section 4.13.3.1.1 of the Environmental Report ("ER"). NMED does not explicitly contest the adequacy of any of these very detailed measures.[7] Indeed, NMED offers only a very general observation, with no reference to the specific provisions of the Application or any supporting technical analysis, that the storage of DUF_6 is "highly dangerous."

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[7] The Application also references the *Depleted Uranium Hexafluoride Management Study* (LES, 1991), which sets forth a detailed plan for the storage of DUF_6 in a safe and cost-effective manner, in accordance with all applicable regulations. The Application also cites extensive cylinder management experience in Europe as a valuable source of information with respect to LES's cylinder management program. NMED's petition contains no reference to these documents and discussion.

For this reason, LES welcomes the opportunity to demonstrate that these measures will fully address the general concern raised by NMED with regard to the storage of DUF_6.

LES also looks forward to the opportunity to respond to NMED's concern regarding the length of time that DUF_6 will be stored onsite. As LES has consistently emphasized --

- LES commits that there will be no disposal or long-term storage (*i.e.*, beyond the 30-year licensed life of the plant) of UBCs in the State of New Mexico. LES will only temporarily store UBCs on the New Mexico site. The NRC license will only allow for storage and not disposal on-site. The concrete pad to be initially constructed on-site for the storage of UBCs will only be of a size necessary to hold a few years worth, no more.

- LES commits to ensuring that a disposal path outside the State of New Mexico is utilized as soon as possible. To that end, LES will aggressively pursue economically viable disposal paths for UBCs stored on-site as soon as they become available. In addition, LES will work with qualified vendors pursuing construction of private deconversion facilities by entering into good faith discussions to provide any such vendor with long-term UBC contracts to assist them in their financing efforts.

- LES will put in place as a part of the NRC license a financial surety bonding mechanism that assures funding will be available in the event of default by LES. This funding would then provide for the decontamination of the LES plant, which includes the ultimate disposal of all UBCs that remain on-site.[8] As required by the NRC, the amount of this bond will escalate yearly to account for both any increase in UBC's stored on-site and any increased cost to dispose of the UBC's (inflation). At full production, LES estimates the size of this bond will increase by $27M/year plus inflation. This would mean that after 20 years, this bond could approach $8800 M.

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8 The financial assurance requirements will also ensure that even where DUF6 is shipped off-site by LES for deconversion, the necessary financial assurance will be in place for the ultimate disposition of such DUF6.

The foregoing commitments, which were first set forth in letters of August 6, 2003[9] and December 6, 2003[10] to the Honorable Bill Richardson, Governor of New Mexico, are explicitly reflected in the LES License Application, thereby committing to the NRC that LES will carry out these actions. For example, Section 3.12.2.1.2.9 ("Depleted UF_6") of the ER states that "[t]he Uranium Byproduct Cylinders (UBCs) will be *temporarily* stored onsite before transfer to a processing facility and subsequent reuse or disposal" (emphasis added). Similarly, Section 4.13.3.1.1 ("Uranium Byproduct Cylinder (UBC) Storage") indicates that only temporary storage will be utilized, and that the NEF will pursue economically viable disposal paths for the UBCs "as soon as they become available." Indeed, this section also states that "[t]he concrete pad to be initially constructed onsite for the storage of UBCs will only be of a size necessary to hold a few years worth of UBCs," and that it will be expanded only if necessary. The preferred options identified in Section 4.13.3.1.3 of the ER ("Depleted DUF_6 Disposition Alternatives") contemplate short-term storage prior to conversion and disposal of the DUF_6 by private sector entities or, as a last resort, by DOE. Finally, Section 10.1.4 ("Decommissioning Strategy") of the Safety Analysis Report ("SAR") makes clear that DUF_6 "may already [be] sold or otherwise disposed of *prior* to decommissioning."[11] Again, NMED

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9 *See* letter, E. James Ferland, LES, to the Honorable Bill Richardson, dated August 6, 2003.

10 *See* letter, E. James Ferland, LES, to the Honorable Bill Richardson, dated December 6, 2003.

11 NMED references Section 4.13 of the ER. The dose calculation in ER Section 4.12.2.1.3 ("Direct Radiation Impacts") does assume a full UBC Storage Pad capacity of 15,727 containers. This assumption of full capacity, however, is used to provide a *bounding analysis* of the potential radiation dose. It should not be construed to suggest that LES necessarily intends to store all accumulated DUF_6 onsite for the licensed life of the proposed facility.

does not identify the basis for its belief that LES is not fully committed to meeting the commitments that have been made to the Governor of New Mexico and the NRC. As should be evident from the foregoing, LES is fully committed to the approach set forth in the letters of August 6, 2003 and December 6, 2003. For this reason, LES welcomes the opportunity to further address this issue as well, should this proposed contention be admitted. As should be evident from the discussion above, the measures that have been proposed by LES relative to the on-site storage of DUF_6 are comprehensive and fully comply with all applicable regulatory requirements. Indeed, LES is confident that these measures will ensure that the public health and safety and the environment will be fully protected

Nevertheless, LES recognizes the unique and important role that the State of New Mexico plays as the representative of its citizens. Moreover, with respect to this particular proposed contention, LES understands NMED's concerns, particularly as they relate to ensuring that issues that touch on the public health and safety of New Mexico's citizens, as well as the environment of New Mexico, are addressed in an open and thorough manner. While LES believes, for the reasons discussed above, that the approach set forth in the Application is sound and consistent with all applicable regulatory requirements -- requirements that have been put in place to protect the health and safety of the public and the workers, as well as the environment -- we nevertheless recognize the right of the State of New Mexico to raise this issue. For this reason, LES supports the admissibility of this contention.

B. Proposed Contention B: Treatment of Depleted Uranium Hexafluoride as a Potential Resource

In proposed Contention B, NMED asserts that the DUF_6 generated by the LES enrichment process may not be classified as a "resource," as LES has not identified any use or economically viable market for this material. In this regard, it further contends that the material

should be classified as a "waste," and that the Application should therefore provide for timely and safe disposal of this waste. In this proposed contention, NMED raises an issue that is not within the scope of the proceeding as previously defined by the Commission, and, accordingly, LES must oppose the admissibility of this contention.

In its February 6, 2004 Order, the Commission stated:

> As to the treatment of the disposition of depleted uranium hexafluoride tails (depleted tails) in these environmental documents, *unless* LES demonstrates a use for the uranium in the depleted tails as a potential resource, the depleted tails may be considered waste. [12]

This statement makes clear that absent an identified use for the DUF_6, it will be treated as a waste. The Application is wholly consistent with the approach in the Commission's Order. Indeed, the Application includes an explicit commitment that LES will make a determination as to whether the depleted uranium is a resource or a waste and notify the NRC as to its determination (*see* Section 4.13.3.1.3 of the ER). Insofar as NMED is contending that DUF_6 cannot be classified as a resource under any circumstances, it is contesting a specific provision of the Commission's February 6, 2004 Order.

There is also no requirement in the Order that LES identify a specific use or economically viable market for DUF_6 at this juncture. Indeed, the Commission's Order simply provides that if LES does not find a use for the uranium in the DUF_6 as a potential resource, the DUF_6 would be considered waste by the NRC at that time.

It appears that the principal concern underlying NMED's second contention is that a designation of DUF_6 as a "resource" by LES may preclude "timely and safe disposal" of what, in reality, is ultimately a waste. Petition at 3. Pursuant to the Commission's Order,

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12 *See* 69 Fed. Reg. 5,877 col. 3 (emphasis added).

however, unless LES demonstrates a use for the DUF_6, it will be considered waste. *See* 69 Fed. Reg. 5877, col. 3. Further, the potential for such a classification in no way discharges LES from its regulatory obligation to ensure safe storage *and* ultimate disposal of DUF_6 upon cessation of facility operations. As the Commission provided in its Order, LES, under any scenario, "must [] address the health, safety, and security issues associated with the storage of depleted uranium tails on site pending removal of the tails for disposal or DOE dispositioning." *See* 69 Fed. Reg. 5,877 col. 3. In recognition of this fact, LES addressed the potential impacts associated with *storage and disposal* of depleted uranium in the Application. *See, e.g.*, ER §§ 4.13.3.1.1, 4.13.3.1.5. Moreover, in the Application, LES provides assurance that "[a]ny UF_6 tails remaining onsite will be removed during decommissioning" (SAR § 10.1.6.1), and that "[t]here will be no onsite disposal of solid waste at the NEF." ER § 4.13.

LES understands the concern that NMED has raised in this contention and commits to continue to work with NMED to address these questions as part of the licensing process. This issue, however, is squarely addressed by the Commission in its Order of February 6, 2004. As this Order establishes the scope of the proceeding, NMED's contention is outside the legally-binding terms of the Order itself and should properly be dealt with through other avenues available in the licensing process. In fact, LES commits to working with NMED to address this issue as part of the licensing process. Nevertheless, LES must oppose the admissibility of this proposed contention in this proceeding.

C. <u>Proposed Contention C: Adequacy of Financial Assurance for Facility Decommissioning</u>

Contention C raises two issues, as follows:

(1) The cost estimate for decommissioning the facility fails to include the cost of conversion.

(2) The cost estimate for disposal of DUF_6 and the financial assurance associated with that cost are not adequate and do not meet NRC regulatory requirements.[13]

With respect to the first part of the contention, NMED's assertion is simply incorrect. In the Application, LES estimates the *total* depleted uranium disposition cost for the NEF to be $5.50 per Kg U, an estimate which explicitly encompasses conversion, transportation, and disposal costs. *See* SAR Section 10.3 and Table 10.3-1; ER Section 4.13.3.1.6 and Tables 4.13-2 to 4.13-7. Indeed, SAR Section 10.3 provides that:

> Waste processing and disposal costs for UF_6 tails are currently estimated to be $5.50 per kg U, or $5,500 per MT U. This unit cost was obtained from four sets of cost estimates for the *conversion* of DUF_6 to DU_3O_8 and the *disposal* of the DU_3O_8 product, and the *transportation* of DUF_6 and DU_3O_8 (emphasis added).

The second part of the contention is a specific challenge to the adequacy of LES's cost estimate for disposition of DUF_6 and financial assurance for decommissioning.[14] NRC regulations mandate that sufficient funds be set aside by Part 70 license applicants to ensure decommissioning of the site. In the case of LES, decommissioning encompasses the disposition of any DUF_6 remaining onsite at the end of facility operations. Indeed, DUF_6 tails disposition costs constitute the bulk of LES's estimated total decommissioning costs. *See* SAR Table 10.1-

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13 As noted above, in Paragraph 5a. of its Petition (*i.e.*, in NMED's first contention), NMED states that, in the event of a default by LES, adequate financial assurance is not provided. Consistent with the State's cross-reference to Paragraph 5c., LES considers that statement to be part of NMED's third contention regarding the adequacy of financial assurance for facility decommissioning and addresses it accordingly.

14 NMED challenges only the estimated cost of DUF_6 disposition of $731,181,000. *See* SAR Table 10.1-1. NMED does not appear to challenge the other components of LES's decommissioning cost estimate, *i.e.*, its total decommissioning cost estimate of $824,629,000. NMED incorrectly cites the total estimate as $850,000,000 and the cost of DUF_6 disposition as $736,000,000, respectively.

1. The Application also contains a detailed discussion of the basis for LES's tails disposition cost estimate of $731,181,000. *See* ER § 4.13.3.1.6; SAR § 10.3.[15]

Again, LES recognizes the unique and important role that the State of New Mexico plays as the representative of its citizens. Moreover, with respect to this particular proposed contention, LES understands NMED's concerns, particularly as they relate to ensuring that issues that touch on the public health and safety of New Mexico's citizens, as well as the environment of New Mexico, are addressed in an open and thorough manner. As stated above, LES reiterates that it is committed to continuing to work with NMED in a cooperative manner to address the question that NMED has raised in this proposed contention as part of the ongoing licensing process. While LES believes that the approach set forth in the Application is sound and consistent with all applicable regulatory requirements -- requirements that have been put in place to protect the health and safety of the public and the workers, as well as the environment -- we nevertheless recognize the right of the State of New Mexico to raise this issue. For this reason, LES supports the admissibility of this contention.

D. Proposed Contention D: Economic Viability of the Proposed Facility

Proposed Contention D, in summary fashion, claims that the Application is deficient because it does not include any information on the "economic viability" of the proposed facility. NMED asserts that:

> (1) 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.

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15 NMED cites ER Section 4.13-10 in Paragraph 5c. of its Petition. There is no ER section or table bearing that title.

(2) In the event that the facility is not economically viable, the State will inherit the facility and its waste should LES default on decommissioning the facility.

In this proposed contention, NMED is raising the issue of LES's financial qualifications. In this regard, it is important to note that the requirement for LES to demonstrate that it is financially qualified to construct and operate the National Enrichment Facility is explicitly set forth in 10 C.F.R. § 70.23. The Commission's Order of February 6, 2004,[16] in turn, provides that adding conditions to the LES license, to require that funding commitments be in place before facility construction and operation, is one acceptable way to satisfy the financial assurance requirements of Part 70. Specifically, the Order provides that:

> In *Louisiana Energy Services* (Claiborne Enrichment Center), CLI-97-15, 46 NRC 294, 309 (1997), the Commission held that the part 70 financial criteria, 10 CFR 70.22(a)(8) and 70.23(a)(5), could be met by conditioning the LES license to require funding commitments to be in place prior to construction and operation. The specific license condition approved in that proceeding, which addressed a minimum equity contribution of 30% from the parents and affiliates of LES partners prior to construction of the associated capacity and having in place long term enrichment contracts with prices sufficient to cover both construction and operating costs, including a return on investment, for the entire term of the contracts prior to constructing or operating the facility, is one way to satisfy the requirements of part 70.

69 Fed. Reg. 5,878.

As LES has clearly stated in its Application (see section 1.2.2 of the SAR), LES intends to demonstrate that it is financially qualified to construct and operate the NEF facility in accordance with the approach set forth in the Order. These criteria, which, as the Order makes clear, were the result of deliberate and thorough consideration by the Commission, simply do not

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16 *Id.*, 69 Fed. Reg. at 5877-78.

require LES to present confidential market projections or business plans to demonstrate the "viability" of its business plan in order to be financially qualified.

While LES understands the concern that NMED has raised in this proposed contention, and commits to continue to work with NMED to address these questions as part of the licensing process, this issue is squarely addressed by the Commission in its regulations and in its Order of February 6, 2004. As this Order establishes the scope of the proceeding, NMED's contention is outside the legally-binding terms of the Order itself and should properly be dealt with through other avenues available in the licensing process. Accordingly, LES must oppose the admissibility of this contention.

E. Proposed Contention E: Compliance with 10 C.F.R. § 20.1101.

In proposed Contention E, NMED contends that:

(1) 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.

(2) The Application fails to provide "the technical bases for monitoring and assessing effluent discharge, and in estimating occupational and public radiation doses."

(3) 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 proposed contention appears to raise an issue appropriately addressed to the radiological safety findings that the NRC is statutorily mandated to make, an area understandably of interest to NMED. The fundamental question to be resolved, however, is whether LES is required to supply the additional "supporting information" requested in the proposed contention and -- even if so -- whether that information is not otherwise available to the public.

At the outset, it is important to recognize what the Application itself provides. LES has specifically and clearly committed, as is required by the NRC, to comply with applicable publicly available NRC guidance on the issues raised by NMED. With respect to radiation surveys and monitoring programs, NRC's Standard Review Plan requires that, in its application, an applicant for a uranium enrichment facility provide a "commitment to implement radiation surveys and monitoring programs." NUREG-1520, "Standard Review Plan for the Review of a License application for a Fuel Cycle Facility" (March. 2002), at § 4.4.7.3. Such a commitment will be acceptable "if the applicant provides data and information in the license application that meet each" of several particular commitments with respect to individual elements of a radiation survey and monitoring program. *Id.* SAR Section 4.7 details LES's commitments with respect to radiation surveys and monitoring. Among other things, LES commits to comply with the guidance set forth in seven NRC Regulatory Guides, one NUREG, and eight American National Standards Institute ("ANSI") standards. *See* SAR at 4.7-1, 4.7-2.

The potential impacts of the project on public and occupational health from the proposed facility as a result of routine gaseous effluents, routine liquid effluents, and direct exposure to radiation (*e.g.*, from handling uranium cylinders) are also addressed in Section 4.12 of the Environmental Report ("ER"). ER Section 4.12.2.1.1 discusses the source term and models used to perform the pathway assessment for gaseous effluents. The section clearly states the origin of LES's dose conversion factors, pathway models, and atmospheric dispersion factors used to calculate the dose from gaseous effluents. Similarly, ER Section 4.12.2.1.2 discusses the source term and release pathway assumptions for routine liquid effluents. Section 4.12.2.1.3 contains the explanation underlying the calculation of the direct dose equivalent. Public and occupational exposure impacts are discussed in greater detail in Section 4.12.2.2, and

accompanying Tables 4.12-5 through 4.12-114. In addition, SAR Section 4.1 provides a detailed description of the NEF radiation protection program for controlling and limiting occupational exposures for plant workers.[17]

SAR Section 4.6 pertains to ventilation and respiratory protection programs, and, as is the case with radiation surveys and monitoring programs, sets forth LES's commitments to design and implement such programs consistent with existing NRC guidance. *See* SAR at 4.6-1; NUREG-1520 § 4.4.6.3. Specifically, LES commits to follow the guidance contained in six guidance documents, including two NRC regulatory guides and two ANSI standards.

NMED has not taken issue with *any* of the specific information set forth in the Application, or with *any* of the assumptions used in the underlying technical guidance documents published by the NRC. NMED cites only broadly to SAR Sections 4.6 and 6.0, as well as to Section 4.12 of the Environmental Report. No elaboration is provided in support of the proposition that the Application is deficient with respect to the radiation protection program. NMED simply asserts that further information on the technical bases for the applicable acceptance criteria must be provided. However, this information is inherent in the NRC guidance and criteria. While guidance documents, such as regulatory guides, are not substitutes for regulations, it is well established that compliance with NUREGs, regulatory guides, and other NRC guidance documents will likely result in compliance with regulatory requirements. *See*

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[17] The assumptions underlying the dose equivalent determinations (including uranium source term, exposure-to-dose conversion factors, and ingestion pathway models) are taken from various NRC, Department of Energy, and Environmental Protection Agency guidance documents. The information presented in Section 4.12 is consistent with the level of information requested in NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (Aug. 2003), at § 6.4.12.2. The technical bases for determining the dose equivalents, *i.e.*, the "calculation protocols,

Curators of the Univ. of Mo., CLI-95-8, 41 NRC 386, 397 (1995); *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1299 (1982) ("In the absence of other evidence, adherence to regulatory guidance may be sufficient to demonstrate compliance with regulatory requirements"). Accordingly, reliance on these guidance documents, pursuant to the SRP, and a commitment to meet acceptance criteria (or a demonstration that those criteria are met) seemingly constitutes the extent of LES's obligation — it is not required to provide the technical bases for NRC requirements, guidance documents, or acceptance criteria.[18]

Nevertheless, with regard to this issue, LES recognizes the unique and important role that the State of New Mexico plays as the representative of its citizens. Moreover, with respect to this particular proposed contention, LES understands NMED's concerns, particularly as they relate to ensuring that issues that touch on the public health and safety of New Mexico's citizens, as well as the environment of New Mexico, are addressed in an open and thorough manner. For this reason, LES commits to working cooperatively with NMED to address these questions as part of the licensing process. While LES believes, for the reasons discussed above, that the approach set forth in the Application is sound and consistent with all applicable regulatory requirements -- requirements that have been put in place to protect the health and

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(continued)

formulae, or variables" of concern to NMED, rather than being restated in the application itself, are found in these underlying regulatory guidance documents.

18 NMED also references, without further discussion, "Nuclear Regulatory Guidance Document 4.14." It appears that NMED is referencing NRC Regulatory Guide 4.14, Rev. 1, "Radiological Effluent and Environmental Monitoring at Uranium Mills" (April 1980). This guidance describes programs acceptable to the NRC Staff for measuring and reporting releases of radioactive materials *from uranium mills.* This guidance does not

safety of the public and the workers, as well as the environment -- we nevertheless recognize the right of the State of New Mexico to raise this issue and their strong interest on behalf of the citizens of New Mexico in matters of radiological safety. For this reason, LES supports the admissibility of this proposed contention.

(continued)

apply to uranium enrichment facilities. Pertinent guidance to be applied by LES will result in an environmental monitoring program that complies with 10 C.F.R. Part 20.

V. CONCLUSION

For the reasons set forth above, LES acknowledges NMED's standing to participate in this proceeding. Further, for the specific reasons explained above, LES supports the admission of NMED's proposed contentions A, C and E. LES is opposed to the admission of proposed contentions B and D because they raise matters already resolved by the Commission's Hearing Order. Nevertheless, as stated above, LES commits to addressing these issues with NMED as part of the ongoing licensing process.

Respectfully submitted,

James R. Curtiss, Esq.
David A. Repka, Esq.
WINSTON & STRAWN LLP
1400 L Street, N.W.
Washington, DC 20005-3502
(202) 371-5700

John W. Lawrence, Esq.
LOUISIANA ENERGY SERVICES, L.P.
2600 Virginia Avenue, N.W.
Suite 610
Washington, DC 20037

Dated at Washington, District of Columbia
this 19th day of April 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
Louisiana Energy Services, L.P.	)	Docket No. 70-3103
	)	
(National Enrichment Facility)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	James R. Curtiss
Address:	Winston & Strawn LLP 1400 L Street, N.W. Washington, DC 20005
E-Mail:	jcurtiss@winston.com
Telephone Number:	(202) 371-5751
Facsimile Number:	(202) 371-5950
Admissions:	District of Columbia Court of Appeals
Name of Party:	Louisiana Energy Services, L.P.

James R. Curtiss
Winston & Strawn LLP
Counsel for Louisiana Energy Services, L.P.

Dated at Washington, District of Columbia
this 19th day of April 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
Louisiana Energy Services, L.P.	)	Docket No. 70-3103
	)	
(National Enrichment Facility)	)	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	David A. Repka
Address:	Winston & Strawn LLP 1400 L Street, N.W. Washington, DC 20005
E-Mail:	drepka@winston.com
Telephone Number:	(202) 371-5726
Facsimile Number:	(202) 371-5950
Admissions:	District of Columbia Court of Appeals
Name of Party:	Louisiana Energy Services, L.P.

David A. Repka
Winston & Strawn LLP
Counsel for Louisiana Energy Services, L.P.

Dated at Washington, District of Columbia
this 19th day of April 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)		
	)		
Louisiana Energy Services, L.P.	)	Docket No.	70-3103-ML
	)		
(National Enrichment Facility)	)	ASLBP No.	04-826-01-ML

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	John W. Lawrence
Address:	Louisiana Energy Services, L.P. 2600 Virginia Ave., N.W., Suite 610 Washington, D.C. 20037
E-Mail:	jlawrence@nefnm.com
Telephone Number: Facsimile Number:	(202) 222-0391 (202) 337-2421
Admissions:	District of Columbia Court of Appeals Court of Appeals of Maryland
Name of Party:	Louisiana Energy Services, L.P.

John W. Lawrence
Counsel for Louisiana Energy Services, L.P.

Dated at Washington, District of Columbia
this 16th day of April 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Louisiana Energy Services, L.P.	)	Docket No. 70-3103
	)	
(National Enrichment Facility)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "ANSWER OF LOUISIANA ENERGY SERVICES, L.P. TO THE NEW MEXICO ENVIRONMENT DEPARTMENT'S REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE" in the captioned proceeding have been served on the following by e-mail service, designated by **, on April 19, 2004, as shown below. Additional service has been made by deposit in the United States mail, first class, this 19th day of April, 2004.

Chairman Nils J. Diaz
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Edward McGaffigan, Jr.
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary**
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
(original + two copies)
e-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Counsel**
Attn: Associate General Counsel for
Hearings, Enforcement and
Administration
Mail Stop O-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: OGCMailCenter@nrc.gov

Ron Curry
Clay Clarke**
Tannis L. Fox
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110
e-mail: clay_clarke@mnenv.state.nm.us

Administrative Judge
G. Paul Bollwerk, III, Chair**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: gpb@nrc.gov

David M. Pato, Esq.**
Assistant Attorney General
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508
e-mail: dpato@ago.state.nm.us

Lisa A. Campagna**
Assistant General Counsel
Westinghouse Electric Co., LLC
P.O. Box 355
Pittsburgh, PA 15230-0355
e-mail: campagla@westinghouse.com

Administrative Judge
Paul B. Abramson**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: poa@nrc.gov

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: cnk@nrc.gov

Lindsay A. Lovejoy, Jr.**
618 Pasco de Peralta, Unit B
Santa Fe, NM 87501
e-mail: lindsay@lindsaylovejoy.com

James R. Curtiss
Counsel for Louisiana Energy Services, L.P.