

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RAS 7672

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 04/27/04

SERVED 04/27/04

Before Administrative Judges:

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

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

April 27, 2004

MEMORANDUM AND ORDER
(Granting Motion for Extension of Time)

Pending with the Licensing Board is the April 22, 2004 motion of petitioner New Mexico Environment Department (NMED) for an extension of time until May 14, 2004, to file its reply to the April 19, 2004 answers of applicant Louisiana Energy Services, L.P., (LES) and the NRC staff to NMED's March 23, 2004 hearing petition. In its motion, NMED represents that LES, petitioner Attorney General of New Mexico (AGNM), and petitioners Nuclear Information and Resource Service/Public Citizen (NIRS/PC) do not oppose its request and that the NRC staff was not then taking a position regarding the motion. Thereafter, in an April 26, 2004 response to the NMED motion, the NRC staff indicates that (1) although NMED has styled its pleading as requesting additional time to file a reply to the LES and staff responses to its initial petition, NMED appears to contemplate that it will utilize the opportunity substantively to amend its petition; and (2) if NMED attempts to amend its petition, the staff wishes to be provided an opportunity to submit a response.

Under the terms of the Commission's January 30 order, hearing petitions were to be filed on or before April 6, 2004. See CLI-04-3, 59 NRC 10, 13 (2004). In accord with this

schedule and the terms of 10 C.F.R. § 2.309(h)(2), any replies to answers to any timely petitions would be due no later than May 10, 2004. Under the circumstances, it is apparent that an NMED reply filed by that date will have no impact upon the schedule established by the Commission. Accordingly, the April 22, 2004 NMED time extension request is granted in part in that its section 2.309(h)(2) reply to the LES and staff answers to its hearing petition shall be filed on or before Monday, May 10, 2004.¹

Relative to the NMED motion, we make two additional observations. First, as the Commission noted in its recent Statement of Considerations accompanying the final rule on the revised 10 C.F.R. Part 2 procedural provisions that are applicable to this proceeding, a section 2.309(h)(2) reply “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,

¹ The language in the Licensing Board’s April 15, 2004 initial prehearing order to the effect that “[a] motion for extension of time must . . . demonstrate appropriate cause that supports permitting the extension,” Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 15, 2004) at 7 (unpublished) [hereinafter Initial Prehearing Order], was not intended to modify or supersede the Commission’s direction that “the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances,” CLI-04-3, 59 NRC at 20. Be that as it may, nothing in our action here is inconsistent with that standard in that the extension we grant can be accomplished without any modification of the Commission’s schedule.

Additionally, the Board would remind the participants that its initial prehearing order indicated with regard to the timing of extension motions that such motions should be filed “at least three business days before the due date for the pleading or other submission for which an extension is sought.” Initial Prehearing Order at 7.

2004). Further, if the staff or any other participant after seeing the NMED reply pleading wants an opportunity to file a surreply, it should seek permission to do so on or before noon Eastern Time on Wednesday, May 12, 2004. See Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 15, 2004) at 7 (unpublished).

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD²

/RA/

G. Paul Bollwerk, III
ADMINISTRATIVE JUDGE

Rockville, Maryland

April 27, 2004

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (GRANTING MOTION FOR EXTENSION OF TIME) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of April 2004