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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

NEW MEXICO ATTORNEY GENERAL'S
MOTION FOR EXTENSION OF TIME

The Office of the New Mexico Attorney General ("Attorney General") respectfully requests an extension until June 2, 2004 to file its response to Nuclear Regulatory Commission Staff ("Staff") and to Louisiana Energy Services, L.P. ("LES"). Granting the requested extension should not cause an undue delay in this docket and will permit the Attorney General the requisite time to analyze fully and properly the issues raised by Staff and LES.

NRC Staff, the New Mexico Information and Resource Service, the New Mexico Environment Department, and Public Citizen do not oppose this motion. Counsel for LES withholds comment at this time.

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Template = SECY-041

SECY-02

BACKGROUND

On January 30, 2004, the Nuclear Regulatory Commission ("Commission") entered a Notice of Hearing and Commission Order in the Matter of Louisiana Energy Services, L.P., in Docket No. 70-3103, in which it imposed a "30-month milestone schedule for this proceeding." 69 Fed. Reg. 5873. In this order, the Commission required that the Licensing Board not grant extensions of time absent "unavoidable and extreme circumstances." *Id.* at 5877. The Board recently granted an extension of time to the New Mexico Environment Department by Order dated April 27, 2004. Consideration of the unavoidable and extreme circumstances to which the Attorney General has been subject weighs strongly in favor of granting the Attorney General an extension of time also.

DISCUSSION

As an initial matter, LES' failure to provide all of the documents upon which it relies to arrive at its current cost estimate of \$5.50 per kgU for disposition of depleted Uranium Hexafluoride is an "unavoidable" and "extreme" circumstance, which has precluded the Attorney General's ability to address in a complete responsive manner LES' grounds in support of its application. While recognizing that "certain information was withheld as proprietary," LES nonetheless asserts "the Application does provide detailed information about how LES derived its cost estimate." Answer of Louisiana Energy Services, L.P., to the Requests for Hearing and Petitions for Leave to Intervene of the New Mexico Attorney General and Nuclear Information and Resource Service and Public Citizen, at p. 48 ("LES Answer").

LES' assertion is not reasonably tenable. The documents LES has withheld as proprietary, namely the information from UDS and Urenco, have been expressly identified as a basis for LES's estimate for disposition. See, e.g., LES Answer at p.51 ("The \$5.50 per kgU figure presented in the Application is based on LES's consideration of four sets of relevant cost information: (1) a 1997 study by the Lawrence Livermore National Laboratory ("LNLL"); (2) the Uranium Disposition Services ("UDS") contract with the Department of Energy ("DOE"); (3) information from Urenco, which has operational experience with respect to the disposition of depleted uranium tails; and (4) depleted uranium tails disposition cost estimates submitted to the NRC in connection with the Claiborne Enrichment Center ("CEC") license application in June 1993."). Even Staff has had difficulty discerning the manner in which LES derived its cost estimate without having had access to the information LES refuses to disclose. See, e.g., NRC Staff Response to Request of the New Mexico Attorney General for Hearing and Petition for Leave to Intervene, at p.9 ("Indeed, many of the reasons cited by the AG are merely obvious conditions, such as the absence of a deconversion plant in the United States, which necessarily bring a certain lack of precision into any process of estimating costs. The existence of these conditions do not mean that the LES estimate is unsound – only that the process of estimating the cost may be more difficult."). Moreover, if it is a question of the sensitivity of the withheld materials, the Attorney General can easily enter into an appropriate confidentiality agreement to safeguard this proprietary information.

As further consideration for an extension of time, the Attorney General would submit that it is unreasonable to require her to respond to the 110 page answer by LES, which because of technical difficulties was not effectively served on the Attorney

General until the morning of May 4, 2004. See LES Answer, pp. 1-110. Certainly, the Attorney General did not anticipate the overwhelmingly negative response to her Petition to Intervene and Request for Hearing, believing that both Staff and LES would recognize the critical importance of the participation and valuable insight that New Mexico's Attorney General would bring to this proceeding.

As a final matter, the Attorney General has been subject to additional unavoidable and extreme circumstances by virtue of having had a substantial portion of her current budget vetoed by the Governor of New Mexico, thereby exposing the office to an inability to meet even its most basic obligations. It was within the midst of this budget crisis that the Attorney General's petition to intervene was due in this proceeding. Unable to obtain timely supporting expert testimony, the Attorney General in good faith filed her Petition believing that, because of the immense importance of the Attorney General's participation in this case, given LES' application to locate an uranium enrichment facility in New Mexico and the Commission's recognition of the importance of the forum state's participation in licensing proceedings, it would suffice to provide grounds for her intervention in this proceeding. Additionally, the Attorney General believes that her contentions are sufficiently specific so as to put both LES and NRC Staff on notice as to what they will have to defend against or oppose. See, e.g., Sierra Club v. NRC, 862 F.2d 222 (9th Cir. 1988); Kansas Gas & Elec. Co., LBP-84-1, 19 NRC 29, 34 (1984) (explaining that a contention is sufficiently specific if the applicant and NRC Staff are sufficiently put on notice that they know at least generally what they will have to defend against or oppose). Moreover, in this very proceeding, the Commission made clear that it "do[es] not expect the Licensing Board to sacrifice fairness and sound

decision-making to expedite any hearing granted on this application." 69 Fed. Reg. at 5876.

CONCLUSION

An extension of time should be granted in this instance because the issues in this docket are incredibly complex, because the New Mexico Attorney General has not had necessary information presented by LES to adequately respond to its allegation that its cost estimates and disposal strategy are plausible, and because of the extreme and unavoidable circumstance of having to operate under severe budget constraints. Additionally, the licensing filing and the answers by Staff and LES to the Attorney General's Petition for Leave to Intervene are voluminous, and need to be carefully studied by the Attorney General and her expert witnesses to determine their potential impact. An extension of time to file a response to Staff and to LES will not unduly delay the proceeding nor will it prejudice the other parties to this proceeding. The Attorney General's Office, however, would be severely prejudiced by the denial of this Motion. For all these reasons, the Attorney General respectfully requests this Board to grant her requested extension of time in which to respond to the answers of Staff and LES.

Respectfully submitted,

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NUCLEAR REGULATORY COMMISSION
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CERTIFICATE OF SERVICE

I hereby certify that copies of the New Mexico Attorney General's Motion for Extension of Time have been served upon the following persons by electronic mail, facsimile, and/or first class U.S. mail this 5th day of May, 2004:

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

Dear Rulemaking and Adjudications Staff:

Enclosed is the original and three copies of the NEW MEXICO ATTORNEY
GENERAL'S MOTION FOR EXTENSION OF TIME for filing in the above matter.
The New Mexico Attorney General would appreciate it if you would kindly file, endorse
and return a copy in the enclosed self-addressed, stamped envelope provided herewith.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, reading "David M. Pato".

David M. Pato
Assistant Attorney General
New Mexico Attorney General's Office

Enclosures