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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 RESPONSE TO LES' ANSWER
REGARDING WITHHOLDING PURPORTEDLY PROPRIETARY
INFORMATION RELATED TO LES' DEPLETED URANIUM TAILS
DISPOSITION COST ESTIMATE**

The Attorney General hereby submits its response to LES' Answer regarding the availability of proprietary information in support of Technical Contention ii. The Attorney General believes that the Urenco information withheld as proprietary served as a basis for LES' ultimate cost estimate for disposal, and hence is necessary to enable the Attorney General to properly plead her second technical contention under the Nuclear Regulatory Commission's regulatory standards. See 10 C.F.R. § 2.309(f) (explaining that a contention must include, among other things, a specific statement of the issue of law or fact to be raised or controverted, a demonstration that the issue is material to the findings the NRC must make regarding the action subject to the proceeding, and sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact). Withholding this information, that by LES' admission was

relied upon in establishing its cost estimate for the disposition of depleted uranium tails, not only undercuts the Attorney General's ability to address the complete basis of LES' cost estimate and inhibits this Board's ability to ultimately make the findings necessary with respect to this contention, but is contrary to LES' repeated assertions and guarantees of maximum transparency in this licensing proceeding. See, e.g., LES Answer to AGNM Petition to Intervene and Request for Hearing at 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");¹ (3) *information for 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.") (emphasis added).

Moreover, the withheld Urenco information is the only information listed by LES as coming from a company with "operational experience with respect to the disposition of depleted uranium tails." See LES Answer to AGNM Petition to Intervene and Request for Hearing at 51. LES has not stated, nor does the Attorney General have any knowledge to the contrary, that any of the other information upon which LES relied in deriving its cost estimate to dispose of depleted uranium tails was generated from a private company with "operation experience" disposing of such tails. Certainly,

¹ In accord with the Answer of [LES] to [NMAG]'s Motion for Extension of Time, the New Mexico Attorney General's Office will be contacting LES to obtain the information regarding the UDS contract with the DOE. Answer of [LES] to [NMAG]'s Motion for Extension of Time at 5 ("In fact, LES will provide to the AG a copy of the information relied on by LES in the formulation of its cost estimate.").

proceeding without this information does nothing to advance the transparency of this licensing proceeding.

CONCLUSION

The Attorney General respectfully requests that this Board order LES to provide this information withheld as proprietary. The Attorney General, however, submits that if this request to require that LES provide this purportedly 'proprietary' information is declined by the Board, she will seek to obtain this material informally through LES as represented to the Commission in its Answer to the Attorney General's Motion for Extension of Time. See Answer of LES to AGNM Motion for Extension of Time (May 7, 2004) at 7 (providing that LES "will endeavor to provide the information to the AG[NM] earlier [than discovery]"). The Attorney General recognizes, however, that without an order from this Board, LES is under no obligation to provide this information.

Therefore, the New Mexico Attorney General requests that the Urenco information be produced to her by LES pursuant to an appropriate confidentiality agreement or order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NEW MEXICO ATTORNEY GENERAL'S RESPONSE TO LES' ANSWER REGARDING WITHHOLDING PURPORTEDLY PROPRIETARY INFORMATION RELATED TO LES' DEPLETED URANIUM TAILS DISPOSITION COST ESTIMATE have been served upon the following persons by electronic mail, facsimile, and/or first class U.S. mail this 11th day of May, 2004:

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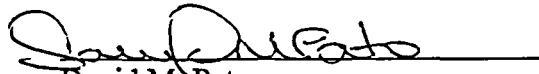
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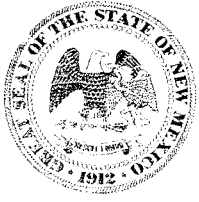
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May 11, 2004

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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 RESPONSE TO LES' ANSWER REGARDING WITHHOLDING PURPORTEDLY PROPRIETARY INFORMATION RELATED TO LES' DEPLETED URANIUM TAILS DISPOSITION COST ESTIMATE 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,

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