

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

LOUISIANA ENERGY SERVICES, L.P.)

Docket No. 70-3103

(National Enrichment Facility))
)NRC STAFF REQUEST FOR LEAVE TO FILE SURREPLY TO NEW MEXICO
ATTORNEY GENERAL'S REPLY IN SUPPORT OF PETITION FOR LEAVE
TO INTERVENE AND REQUEST FOR HEARINGINTRODUCTION

The NRC Staff ("Staff") hereby requests leave to file a surreply on June 4, 2004, to the filing of the New Mexico Attorney General ("NMAG") submitted on May 24, 2004.¹ The Staff requests the opportunity to reply to NMED's filing because it presents new evidence and new issues to which the Staff has not had the opportunity to respond.

BACKGROUND

The NMAG filed her request to participate in this proceeding and the contentions she wished to litigate on April 5, 2004². Thereafter, pursuant to a Board order, the NMAG supplemented her petition.³ Both the Staff and Louisiana Energy Services, L.P., filed responses to the NMAG's hearing request,⁴ to which the NMAG responded in her Reply.

¹New Mexico Attorney General's Reply in Support of Petition for Leave to Intervene and Request for Hearing ("Reply").

²The New Mexico Attorney General's Request for Hearing and Petition for Leave to Intervene.

³Supplemental Request of the New Mexico Attorney General for Hearing and Petition for Leave to Intervene.

⁴NRC Staff Response to Request of the New Mexico Attorney General for Hearing and Petition for Leave to Intervene, April 30, 2004; Answer of Louisiana Energy Services, L.P. to the Requests for Hearing and Petitions for Leave to Intervene of the New Mexico Attorney General, (continued...)

DISCUSSION

The permissible scope of a reply such as the one filed by the NMAG was explicitly set forth by the Commission in promulgating the recent revisions to the hearing regulations when it said “[a]ny reply should be narrowly focused on the legal and logical arguments presented in the applicant/licensee or the NRC staff answer.” 69 Fed. Reg. 2182, 2203 (January 14, 2004). This limitation was specifically brought to the attention of the petitioners by this Board in an order issued April 27, 2004.⁵ Nevertheless, the NMAG has attempted to use the opportunity to reply to cure the original defects in her contentions by proffering supporting evidence for the first time and citing that evidence as the basis for her contentions. In addition, the NMAG has raised issues which were not encompassed in her original contentions or supporting bases⁶. Because the Staff has not had the opportunity to respond to the newly submitted evidence or issues, the Staff respectfully requests the opportunity to file a surreply. Further, the Staff requests that it be permitted to file a surreply on June 4, 2004, on the grounds that this would not result in any delay to this proceeding.

CONCLUSION

For the reasons stated above, the Staff respectfully requests the opportunity to file a surreply to the NMAG filing of May 24, 2004, in order to address new issues and newly submitted evidence.

Respectfully submitted,

/RA/

Lisa B. Clark
Counsel for NRC Staff

⁴(...continued)
Nuclear Information and Resource Service and Public Citizen, May 3, 2004.

⁵Memorandum and Order (Granting Motion for Extension of Time), slip op. at 2.

⁶For example, the NMAG in her reply alleges that the license application fails to identify whether the location of facility is within the range of a threatened species, the sand dune lizard, Reply at 21. This issue is entirely new to this proceeding.

CERTIFICATION

Pursuant to 10 C.F.R. §2.323(b) I certify that the petitioners and the applicant in this proceeding were contacted regarding this motion. LES indicated that it had not objection to the motion. The New Mexico Environmental Department objected to the motion. Nuclear Information and Resource Service and Public Citizen stated it had no objection without expressing support for the Staff motion. The New Mexico Attorney General objected to the motion and indicated she will respond in writing.

/RA/

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 26th day of May, 2004

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NUCLEAR REGULATORY COMMISSION

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LOUISIANA ENERGY SERVICES, L.P.)

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) ASLBP No. 04-826-01-ML

)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF REQUEST FOR LEAVE TO FILE SURREPLY TO NEW MEXICO ATTORNEY GENERAL'S REPLY IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING and CERTIFICATION" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 26th day of May, 2004.

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/RA/

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