

September 3, 2004 (12:13PM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
)
LOUISIANA ENERGY SERVICES, L.P.)
)
(National Enrichment Facility))
_____)

Docket No. 70-3103

NMED'S REQUEST FOR CLARIFICATION
ON PARTICIPATING AS AN INTERESTED STATE

The New Mexico Environment Department (NMED) seeks through this request clarification from the Atomic Safety and Licensing Board (Board) as to the procedures to participate as an interested State pursuant to 10 C.F.R. § 2.315(c). NMED is presently participating in this proceeding as a party pursuant to 10 C.F.R. § 2.309 on behalf of the State of New Mexico as representative of the Governor of the State, Bill Richardson. The Board has admitted one of NMED's contentions, in which NMED challenges the adequacy of Louisiana Energy Services, L.P.'s (LES) radiation protection program. The Board has denied admission of NMED's other contentions, including whether LES has put forth a plausible strategy for conversion and disposal of the depleted uranium that would be generated by the LES facility; whether LES's proposal for storage of the depleted uranium on-site adequately protects health, safety and the environment; and whether the depleted uranium is low level radioactive waste. The Board's ruling on the denial of admission of contentions was affirmed by the Commission on August 18, 2004. NMED has moved the Commission for reconsideration of that ruling.

Under 10 C.F.R. § 2.315(c), the presiding officer of a proceeding must afford representatives of an interested State which has not been admitted as a party a reasonable

opportunity to participate in the hearing. The rule further requires the representative of the State to identify those contentions on which it will participate in advance of the hearing.

NMED seeks clarification from the Board on two issues:

1. NMED seeks clarification that it may participate both as a party under 10 C.F.R. § 2.309 on its admitted contention and as an interested State for purposes of other contentions. In NMED's view, NMED should be able to participate in both capacities under the rule. While NMED has been admitted as a party for purposes of litigating the radiation protection program contention, to date NMED has not been admitted as a party for purposes of other contentions. Therefore, if NMED's other contentions are not admitted, NMED should be permitted to participate in both capacities in order that it may raise all issues in which it has an interest.

2. NMED seeks clarification from the Board on the procedural steps it would need to take to participate as an interested State. 10 C.F.R. § 2.315(c) requires an interested State to identify contentions on which it will participate in advance of the hearing. NMED seeks clarification from the Board as to how and when it would enter its appearance as an interested State and how and when it would identify the contentions on which it would participate.

NMED has contacted counsel for the other parties. The New Mexico Attorney General and Nuclear Resource and Information Service and Public Citizen do not oppose this motion. LES supports NMED's participation as an interested state under 10 C.F.R. § 2.315(c). Nuclear Regulatory Commission Staff will respond to the motion in writing.

Therefore, NMED requests clarification from the Board on the two issues outlined above.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing pleading was served by mail and, as indicated by an asterisk (*), by electronic mail on this 27th day of August, 2004.

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