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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION

September 8, 2004 (11:13AM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.  
National Enrichment Facility

ASLBP No. 04-826-01-ML

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**BRIEF ON BEHALF OF PETITIONERS  
NUCLEAR INFORMATION AND RESOURCE SERVICE/  
PUBLIC CITIZEN  
IN RESPONSE TO  
PETITIONS FOR RECONSIDERATION  
FILED BY  
ATTORNEY GENERAL OF NEW MEXICO  
AND  
NEW MEXICO ENVIRONMENT DEPARTMENT**

Petitioners Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") file this Memorandum in response to (a) the Petition for Reconsideration filed by the Attorney General of New Mexico ("AGNM") on August 24, 2004 and (b) the Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration filed by the New Mexico Environment Department ("NMED") on August 27, 2004.

NIRS/PC do not oppose the motions by the AGNM and the NMED. Neither do NIRS/PC now address the specific procedural questions raised in connection with the attempts by the AGNM and NMED to advance certain contentions. NIRS/PC file this Memorandum solely to point out that, in this proceeding concerning the licensing of a major new facility in the State of

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New Mexico, which involves several unanswered questions as to the safety of plant operations and waste disposition, it is highly appropriate for agencies of the government of the State of New Mexico to participate before the Commission.

Earlier this year, in adopting new rules of procedure, the Commission, in new rule 10 CFR 2.309(d)(2), specifically granted state governments standing to raise contentions with respect to facilities to be licensed to operate within their borders. The Commission noted that this was a significant change:

“A significant change, relative to the former requirement in Sec. 2.714, is that a State . . . who wishes to be a party in a proceeding for a facility which is located within its boundary are explicitly relieved of the obligation to demonstrate standing in order to be admitted as a party.” 69 Fed. Reg. 2182, 2221 (Jan. 14, 2004).

Further, the Commission noted that its rules specifically authorize separate participation by state agencies, where state law gives such authority:

“Where a State’s constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding, the Governor and the other State official/government body will be considered separate potential parties.” (id. 2222).

Such procedural changes underscore the commitment to allow state entities to participate in proceedings where their constituents’ interests are at stake.

NIRS/PC request that the Commission, in ruling on the pending petitions for reconsideration, give all appropriate weight to the rights accorded State agencies under the rules to represent the interests of citizens of their State.

Respectfully submitted,



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August 31, 2004

## CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on August 31, 2004, the foregoing Brief on Behalf of Petitioners Nuclear Information and Resource Service /Public Citizen in Response to Petitions for Reconsideration filed by Attorney General of New Mexico and New Mexico Environment Department was served by electronic mail and by first class mail upon the following:

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