

October 12, 2004

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

October 13, 2004 (7:41AM)

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-ML

ASLBP No. 04-826-01-ML

LOUISIANA ENERGY SERVICES, L.P. OPPOSITION TO NEW MEXICO
ATTORNEY GENERAL'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES

I. INTRODUCTION

On October 4, 2004, Intervenor Attorney General of New Mexico ("AGNM") filed a motion to compel Applicant Louisiana Energy Services, L.P. ("LES") to respond to certain interrogatories.¹ LES responded to and stated specific objections to the AGNM's interrogatories on September 23, 2004.² In accordance with the Atomic Safety and Licensing Board ("Licensing Board") Order dated October 5, 2004,³ LES files this response to the AGNM's motion to compel. As indicated by AGNM in her motion, the parties have conferred on this matter but have not been successful in resolving the underlying issues.

¹ "New Mexico Attorney General's Motion to Compel Responses to Interrogatories By Louisiana Energy Services, L.P." (Oct. 4, 2004) ("Motion to Compel")

² "Applicant's Objections and Responses to Interrogatories from New Mexico Attorney General" (Sept. 23, 2004) ("Applicant's Objections and Responses").

³ "Order (Schedule for Responses to Motions to Compel)," October 5, 2004.

II. DISCUSSION

In her motion, the AGNM requests that LES be compelled to respond to the following interrogatories. Below are the LES responses to each such request. Each of the responses below is provided notwithstanding, and without waiving, the objections previously set forth in Applicant's Objections and Responses at 6-9.

- Interrogatory No. 6: In this interrogatory, the AGNM requests that LES "[i]dentify and fully explain, which, if any, of the sources relied upon in calculating [LES's] deleted UF6 *disposal costs* take into account the costs of *long-term storage* of the depleted UF6 on the premises." LES is not persuaded by the AGNM's lengthy justification of the purported relevance of this inquiry into long-term *storage* costs. As stated in LES's objections, Contention AGNM TC-ii is limited to LES's use of information from (1) "the Urenco contract" and (2) LES cost estimates developed in connection with the Claiborne Enrichment Center license application. *Louisiana Energy Servs., L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC ___ (July 19, 2004) (slip op. at 2, Appendix A). In turn, "the scope of discovery is limited to the particular proceeding and the contentions that have been admitted." *See, e.g., Private Fuel Storage, L.L.C.* (Independent Fuel Storage Installation), 2000 WL 1760952 (N.R.C.) (citation omitted). In no respect does the contention, as admitted by the Licensing Board, speak to, or otherwise contemplate, an inquiry into the costs associated with "long-term storage" of depleted uranium. As reflected in Section 4.13.3.1.6, the relevant components of LES's depleted uranium disposition cost estimate include deconversion, transportation, and disposal of the depleted uranium to be generated by the NEF -- not "long-term storage" of that material. Through prior document disclosures and depositions of LES witnesses, LES has made available to the AGNM additional and ample information concerning the relevant components of LES's cost estimate for disposition of depleted uranium.

LES also reiterates the fact that the AGNM first raised the issue of "long-term" or "indefinite" storage costs in a reply pleading.⁴ The AGNM's original contention makes no reference to the issue of long-term or indefinite storage costs. The Commission in this matter has made clear that the Licensing Board is not to consider issues that were first submitted as part of a reply pleading. *See Louisiana Energy Servs., L.P. (National Enrichment Facility)*, CLI-04-25, 60 NRC __ (Aug. 18, 2004) (slip op. at 2-3). In any event, the "ongoing storage, maintenance, security and other costs" referred to by the AGNM in her May 24, 2004 reply are operational costs, not depleted uranium "disposal" or disposition costs within the scope of contention AGNM TC-ii, as admitted. For the foregoing reasons, LES should not be compelled to respond to Interrogatory No. 6.

- Interrogatory No. 7: In this interrogatory, the AGNM asks LES to explain its *position* "regarding the necessity of consideration of the costs of long-term or indefinite storage in the dispositioning of the depleted UF₆." LES's position on this issue is set forth above in LES's response to the AGNM's motion to compel a response to Interrogatory No. 6. In short, LES views any "consideration of the costs of long-term or indefinite storage in the dispositioning of the depleted UF₆" as being outside the scope of Contention AGNM TC-ii, as admitted by the Licensing Board.

- Interrogatory No. 8: In this interrogatory, NIRS/PC request that LES Identify and explain the governmental, institutional and operational similarities and differences between the Urenco facility in the Netherlands and the proposed facility in Eunice, New Mexico. LES preserves its original objections to this request. *See Applicant's Objections and Responses* at 6. In particular, LES believes that the NEF license application and the information provided by

⁴ See "New Mexico Attorney General's Reply in Support of Petition for Leave to Intervene and Request for Hearing" (May 24, 2004), at 18.

LES to date through the discovery process (*i.e.*, mandatory disclosures and depositions of LES expert witnesses) provides the AGNM sufficient information to make its own judgment with respect to any "governmental, institutional and operational similarities and differences between the Urenco facility in the Netherlands and the proposed facility in Eunice, New Mexico." In this regard, LES believes that it should not be required to prepare additional documentation and/or analyses beyond those already produced and/or prepared to support its position on this matter. *See* 10 C.F.R. § 2.705(b)(5)(ii).

- Interrogatory No. 9: In this interrogatory, the AGNM requests that LES "[i]dentify and explain the governmental, institutional, and operational similarities and differences between the proposed CEC [Claiborne Enrichment Center] facility and the proposed facility in Eunice, New Mexico." LES maintains its original objections to this request. *See* Applicant's Objections and Responses at 6. In particular, LES objects to this request on the ground that it seeks additional research or analytical work beyond that which is needed to support LES's position with respect to its use of the CEC cost-related data. LES has made clear in depositions conducted to date on this issue that the CEC cost estimate was one source of information that LES used to inform its final cost estimate, not create it. *See* Transcript of October 4, 2004 Deposition of Rod Krich, at 125-27. Moreover, to the extent that the AGNM wishes to obtain information concerning the "governmental, institutional, and operational similarities and differences" between the proposed CEC and NEF, that information is a matter of public record and could be researched by the AGNM herself. For example, the docket for the *Claiborne* proceeding contains, among other things, the Claiborne license application, NRC Staff requests for additional information and LES responses thereto, hearing testimony, adjudicatory decisions, etc. In addition, in Section 2.1.3.2 of the NEF Environmental Report, LES identified operational/design differences between the proposed CEC and NEF plants.

- Interrogatory 10: This interrogatory inquires "whether LES currently has a disposal contract in place for the expected depleted UF₆ from the NEF." LES reasserts its previously-stated objections to this request. See Applicant's Objections and Responses, at 7. In particular, LES states the request lacks a legal or regulatory foundation, insofar as the "plausible strategy" standard does not *require* LES to identify a specific disposal site or to enter into a "disposal contract." See "Answer of Louisiana Energy Services, L.P. to the New Mexico Environment's Request for Hearing and Petition for Leave to Intervene" (Apr. 19, 2004), at 22, 27-29. Cf. *Louisiana Energy Servs., L.P. (National Enrichment Facility)*, CLI-04-25, 60 NRC __ (Aug. 18, 2004) (slip op. at 4) ("While a "plausible strategy" for private conversion of the tails does not mean a definite or certain strategy, to include completion of all necessary contractual arrangements, it must represent more than mere speculation."). Notwithstanding, and without waiving its objections to this request, LES states that it does not have a "disposal contract" in place at this juncture. LES has previously disclosed to the AGNM communications relevant to the potential future procurement of such a contract (e.g., communications with Envirocare) as part of initial mandatory disclosures, and will disclose any future communications or contract(s) (should it enter into one), as appropriate.

- Interrogatories 11: In this interrogatory, the AGNM asks "whether LES currently plans to convert depleted UF₆ on an ongoing basis while the NEF is in operation and, if not, why." As the AGNM herself readily acknowledges in her motion to compel, the premise or concern underlying this interrogatory is that LES's "depleted UF₆ disposal costs [must] take into account the costs of long-term storage of the depleted UF₆ on the premises." As set forth above in connection with Interrogatory Nos. 6 and 7, the purported costs of "long-term" or "indefinite" storage of DUF₆ are outside the scope of contention AGNM TC-ii, as admitted by the Licensing

Board. Accordingly, LES should not be compelled to provide any additional response to Interrogatory No. 11.

- Interrogatory No. 12: This interrogatory requests "all evidence that supports the belief that the CaF_2 conversion products will be of sufficient purity that they could be sold for unrestricted use." LES restates its objection that this request seeks information that is irrelevant to the admitted contention, in that the final \$5.50 per KgU unit cost figure presented by LES does not assume resale of CaF_2 . See Applicant's Objections and Responses at 7-8. Moreover, LES has indicated its belief that any CaF_2 which might be generated in connection with the deconversion process may be disposed of in a commercial landfill. See Transcript of October 4, 2004 Depositions Robert Pratt and Paul Schneider, at 88-89, 96-100. Notwithstanding, LES refers the AGNM to the U.S. Department of Energy's "Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah Kentucky Site " (June 2004) (Appendix E, "Impacts Associated with HF and CaF_2 Conversion Product Sale and Use") or "Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth Ohio Site" (June 2004) (Appendix E, "Impacts Associated with HF and CaF_2 Conversion Product Sale and Use") for a discussion of the commercial CaF_2 market. See the Department of Energy's DUF_6 Management website at <http://web.ead.anl.gov/uranium/documents/paddeis/index.cfm> or <http://web.ead.anl.gov/uranium/documents/portdeis/index.cfm>.

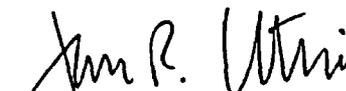
- Interrogatory No. 13: In this interrogatory, the AGNM requests that LES explain how it will "dispose of the conversion products if they are not of sufficient purity that they could be sold for unrestricted use," and to "specify, quantify, and explain in detail the additional costs that LES will incur if the conversion products are not of sufficient purity that they could be sold for unrestricted use." As set forth above in connection with Interrogatory No. 12, LES does not

assume resale of CaF₂, and has indicated its belief that any CaF₂ which might be generated in connection with the deconversion process is not radioactively-contaminated and can be disposed of in a commercial landfill. *See* Transcript of October 4, 2004 Depositions of Robert Pratt and Paul Schneider, at 88-89, 96-100. The aspect of Interrogatory No. 13 related to hypothetical additional costs that might be involved if the CaF₂ is "not of sufficient purity" and cannot be disposed of in a commercial landfill calls for speculation. It seeks information that is beyond the scope of LES's testimony in this proceeding.

III. CONCLUSION

For the reasons set forth above, the AGNM motion to compel additional responses to the interrogatories identified above should be denied.

Respectfully submitted,



James R. Curtiss, Esq.
Martin J. O'Neill, Esq.
WINSTON & STRAWN LLP
1400 L Street, N.W.
Washington, DC 20005-3502
(202) 371-5700

John W. Lawrence, Esq.
LOUISIANA ENERGY SERVICES, L.P.
One Sun Plaza
100 Sun Lane NE, Suite 204
Albuquerque, NM 87109
(505) 944-0194

Dated at Washington, District of Columbia
this 12th day of October 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the "LOUISIANA ENERGY SERVICES, L.P. OPPOSITION TO NEW MEXICO ATTORNEY GENERAL'S MOTION TO COMPEL RESPONSES TO INTERROGATORIES" in the captioned proceeding have been served on the following by e-mail service, designated by **, on October 12, 2004 as shown below. Additional service has been made by deposit in the United States mail, first class, this 12th day of October 2004.

Chairman Nils J. Diaz
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Edward McGaffigan, Jr.
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary**
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
(original + two copies)
e-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Counsel**
Attn: Associate General Counsel for
Hearings, Enforcement and
Administration
Lisa B. Clark, Esq.**
Angela B. Coggins, Esq.**
Mail Stop O-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: OGCMailCenter@nrc.gov
e-mail: lbc@nrc.gov
e-mail: abcl@nrc.gov

Ron Curry, Esq.
Tannis L. Fox, Esq.**
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110
e-mail: tannis_fox@nmenv.state.nm.us

Administrative Judge
Paul B. Abramson**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: pba@nrc.gov

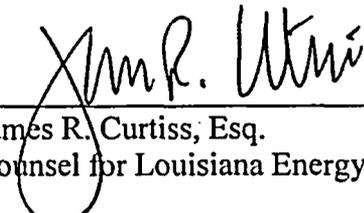
Administrative Judge
G. Paul Bollwerk, III, Chair**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: gpb@nrc.gov

Administrative Judge
Charles N. Kelber**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: cnk@nrc.gov

David M. Pato, Esq.**
Stephen R. Farris, Esq.**
Glenn R. Smith, Esq.**
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508
e-mail: dpato@ago.state.nm.us
e-mail: sfarris@ago.state.nm.us
e-mail: gsmith@ago.state.nm.us

Lindsay A. Lovejoy, Jr.**
618 Pasco de Peralta, Unit B
Santa Fe, NM 87501
e-mail: lindsay@lindsaylovejoy.com

Lisa A. Campagna**
Assistant General Counsel
Westinghouse Electric Co., LLC
P.O. Box 355
Pittsburgh, PA 15230-0355
e-mail: campagla@westinghouse.com


James R. Curtiss, Esq.
Counsel for Louisiana Energy Services, L.P.