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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

October 14, 2004 (7:40AM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

ANSWER OF LOUISIANA ENERGY SERVICES, L.P., TO NRC STAFF MOTION TO COMPEL AND TO ESTABLISH DEADLINES FOR SUPPLEMENTARY RESPONSES

I. INTRODUCTION

On October 7, 2004, the Nuclear Regulatory Commission ("NRC") Staff filed a document that includes a motion requesting two things: (1) that the Atomic Safety and Licensing Board ("Licensing Board") compel Nuclear Information and Resource Service/Public Citizen ("NIRS/PC") to respond to certain interrogatories served on NIRS/PC by the NRC Staff on September 9, 2004¹; and (2) that the Licensing Board establish a deadline in this proceeding of November 12, 2004, for supplementation by NIRS/PC of inadequate interrogatory responses.² LES herein supports the Staff's motion to compel. LES also supports the motion for a date

¹ "NRC Staff's First Set of Interrogatories and Requests for Admission to NIRS/PC," dated September 9, 2004 ("Staff Discovery").

² "NRC Staff Motion to Compel NIRS/PC Responses to Interrogatories and Establish Deadlines for Supplementary Responses and Response to Motion for Modification of Deposition Schedule on Behalf of NIRS/PC," dated October 7, 2004 ("Staff Motion"). As indicated by the title, the Staff Motion also included a response to a NIRS/PC motion, dated October 5, 2004, to modify the deposition schedule. The Licensing Board has ruled, by "Memorandum and Order (Ruling on Motion to Modify Deposition Schedule)" of October 12, 2004, on the latter matter and LES does not address that matter further here.

certain by which NIRS/PC must provide supplementation of all of its discovery responses. However, LES maintains that good faith discovery responses should be submitted by the current deadline for completion of discovery — October 18, 2004.

II. DISCUSSION

A. NRC Staff Motion to Compel

The NRC Staff first moves to compel NIRS/PC to respond to the September 9, 2004 Staff Discovery. Staff Motion, at 2-3. The Staff's specific request that NIRS/PC identify its witnesses, provide a summary of expected testimony, and identify documents or other information to be relied upon is a reasonable and appropriate request. As LES has pointed out in its own filing of October 7, 2004,³ the NIRS/PC mandatory disclosures, the discovery responses by NIRS/PC to date, and the depositions of the NIRS/PC witnesses have often followed a pattern of non-responsiveness on the part of NIRS/PC. The consistent theme is that the NIRS/PC witnesses have not yet performed their reviews necessary to prepare positions and testimony. The example cited by the NRC Staff involving NIRS/PC witness Mr. Sheehan is just one, good example of this pattern. Simply stated, NIRS/PC is not fulfilling its obligation to provide meaningful information on the facts, opinions and basis on which its purported experts are expected to testify in this case. Accordingly, the Staff motion to compel should be granted.

B. Motion to Set Deadline for Supplementation

The NRC Staff also requests that the Licensing Board establish November 12, 2004, as a deadline for NIRS/PC to supplement its inadequate (to date) discovery responses. Staff Motion, at 4-5. The Staff cites its concern that complete answers to discovery requests are

³ "Answer of Louisiana Energy Service, L.P. to Motion for Modification of Deposition Schedule on Behalf of Petitioners Nuclear Information and Resource Service and Public Citizen," dated October 7, 2004.

necessary “sufficiently in advance of the prefiled testimony to allow the staff to properly prepare testimony which is relevant to the issues which will be addressed by the Board.” *Id.* at 4. The NRC Staff’s proposed deadline would apply to discovery requests relating to the environmental contentions for which prefiled testimony is due by December 30, 2004. *Id.* at 5.

The NRC Staff is precisely correct in its concern regarding the non-responsiveness to date of the NIRS/PC answers to discovery requests. It is also precisely correct regarding the need for a firm deadline for supplementation of responses. However, the Staff’s proposal of November 12, 2004, as the deadline would allow NIRS/PC to benefit from its own pernicious non-compliance to the detriment of the NRC Staff and LES. Moreover, the Staff’s deadline is unnecessarily restricted to environmental contentions.

Based on the agreement of the parties, the Licensing Board in its August 16, 2004 Memorandum and Order, set *October 18, 2004*, as the completion date for discovery against LES and the intervenors with respect to *all issues* admitted in this proceeding to date.⁴ The schedule set by the Licensing Board further establishes a clear path forward for litigation of *all issues* — setting many deadlines and creating many obligations for all of the parties. An extension in any one deadline will clearly have an effect on the parties. Failure to provide discovery responses to either the NRC Staff or LES will clearly impact the ability of the NRC Staff to prepare summary disposition motions or testimony on the established schedule.

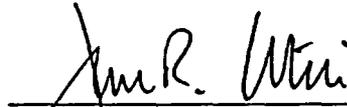
With only one exception, NIRS/PC has not presented any basis to establish good cause for failure to meet its discovery obligations. (NIRS/PC did provide its basis for a delay in the deposition of Mr. Makhijani, which was partially accepted by the Licensing Board.) The NRC Staff’s proposal would effectively award NIRS/PC an extension that was not asked for, is

not justified, and would impact the schedule and the other parties in this proceeding. The Staff's view that there must be a firm deadline is correct. However, absent a showing of good cause by NIRS/PC, that deadline should remain October 18, 2004, for all issues as presently established by the Licensing Board.

III. CONCLUSIONS

For the reasons stated above, the Licensing Board should: (1) grant the NRC Staff motion to compel; and (2) re-confirm October 18, 2004, as the date by which NIRS/PC must provide complete and accurate responses to all pending discovery requests to it from all parties in this proceeding.

Respectfully submitted,



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Dated at Washington, District of Columbia
this 13th day of October 2004

⁴ See "Joint Status Report Regarding the Parties' Proposed Discovery Plan and Other Adjudicatory Process Issues," dated July 29, 2004.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "ANSWER OF LOUISIANA ENERGY SERVICES, L.P., TO NRC STAFF MOTION TO COMPEL AND TO ESTABLISH DEADLINES FOR SUPPLEMENTARY RESPONSES" in the captioned proceeding have been served on the following by e-mail service, designated by **, on October 13, 2004 as shown below. Additional service has been made by deposit in the United States mail, first class, this 13th day of October 2004.

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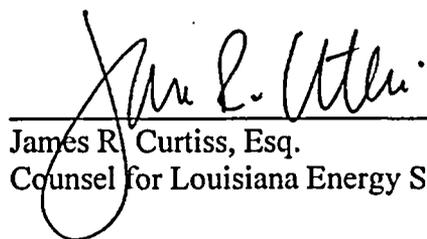
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