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RULEMAKINGS AND
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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)	)	

ANSWER OF LOUISIANA ENERGY SERVICES L.P. TO RENEWED MOTION FOR MODIFICATION OF DEPOSITION SCHEDULE

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323(c) and the scheduling order of October 21, 2004, Louisiana Energy Services, L.P. ("LES") hereby responds to a Motion[1] filed by Nuclear Information and Resource Services and Public Citizen ("NIRS/PC") on October 20, 2004, again requesting an extension of the deadline for a deposition of Dr. Arjun Makhijani due to the death of Dr. Makhijani's mother and the need for additional preparation time. The NIRS/PC Motion would extend the deadline for a deposition on issues raised by Contention NIRS/PC EC-4 until November 17, 2004. LES no longer opposes the extension request, subject to the qualification discussed below.

II. DISCUSSION

In its Memorandum and Order (Ruling on Motion to Modify Deposition Schedule), dated October 12, 2004, the Atomic Safety and Licensing Board ("Licensing Board") set the deadline for the deposition on Contention NIRS/PC EC-4 of October 25, 2004. This issue

[1] "Renewed Motion for Modification of Deposition Schedule on Behalf of Petitioners Nuclear Information and Resource Service and Public Citizen," dated October 20, 2004 ("Motion").

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is scheduled to go to hearing in February 2005. (Dr. Makhijani will also testify on three other contentions, which are not slated for the February 2005 hearing. The Licensing Board set a deadline for deposition on these issues of November 17, 2004.) At the time of its October 12 ruling, the Licensing Board specifically rejected an earlier request from NIRS/PC to extend the deposition deadline for Dr. Makhijani on Contention NIRS/PC EC-4 to the week of November 15, 2004. Among other things, the Licensing Board specifically emphasized the obligations of NIRS/PC and Dr. Makhijani to this case: "Recognizing fully the circumstances that compelled Dr. Makhijani to travel to India during the time he otherwise was scheduled to prepare for deposition, we nonetheless do not consider it appropriate that this proceeding essentially 'go to the back of the line' relative to his apparently crowded schedule." Memorandum and Order, October 12, 2004, slip op. 2.

LES fully appreciates that, since that Licensing Board ruling of October 12, 2004, counsel for NIRS/PC reports that Dr. Makhijani's mother has passed away and that Dr. Makhijani "was required to return to India, and his schedule was again upset." NIRS/PC Motion at 2. LES is sympathetic to Dr. Makhijani's loss and understands the scheduling predicament of NIRS/PC. LES has attempted to resolve this issue informally. Counsel for LES was informed that Dr. Makhijani would be returning to the U.S. on or about the weekend of October 22-23. Accordingly, upon learning of Dr. Makhijani's loss, LES offered informally to extend the October 25 deadline in order to conduct the deposition later in the week, on October 28 or 29, 2004, and to take any other steps necessary to accommodate Dr. Makhijani's schedule. The deposition would cover only one contention (NIRS/PC EC-4), reducing the required preparation time.[2] Opposing counsel declined the offer.

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[2] We note that during this same time period Dr. Makhijani issued a 40 page paper dated October 15, 2004, entitled "Uranium Enrichment, Just Plain Facts to Fuel an Informed

Given the unhappy circumstances and the representations in the NIRS/PC Motion concerning the importance that Dr. Makhijani is now assigning to this effort, LES is now willing to accommodate the renewed extension request. LES will not oppose the Motion, subject to a proviso that NIRS/PC make available two full days — prior to the November 17 deadline — for depositions of Dr. Makhijani on all contentions on which he will testify. (LES believes that, given the scope of issues to be covered, two days in Dr. Makhijani's crowded schedule are necessary.) LES also wishes the record to reflect that it remains concerned regarding the schedule in this case. As before, LES believes that, apart from humanitarian concerns, the obligations of parties and witnesses in this proceeding cannot be viewed as secondary to other professional obligations.

Debate on Nuclear Proliferation and Nuclear Power," and addressing some of the same issues raised in this case.

III. CONCLUSION

For the reasons discussed above, and given the present circumstances, LES does not oppose an extension of the deadline for a deposition of Dr. Makhijani on Contention NIRS/PC EC-4, with the expectation that NIRS/PC will make Dr. Makhijani available for two full days prior to November 17, 2004, for depositions on all issues on which he will testify.

Respectfully submitted,

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Dated at Washington, District of Columbia
this 22nd 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 "ANSWER OF LOUISIANA ENERGY SERVICES L.P. TO RENEWED MOTION FOR MODIFICATION OF DEPOSITION SCHEDULE" in the captioned proceeding have been served on the following by e-mail service, designated by **, on October 22, 2004 as shown below. Additional service has been made by deposit in the United States mail, first class, this 22nd day of October 2004.

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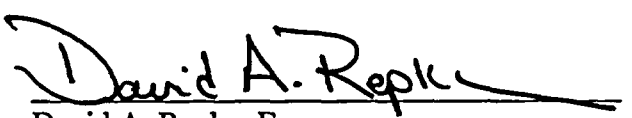

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