

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
)	
(National Enrichment Facility))	
)	

NRC STAFF'S RESPONSE TO
"NMED'S MOTION TO FILE LATE-FILED CONTENTIONS"

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h), the staff of the Nuclear Regulatory Commission ("Staff") hereby files its response to "NMED's Motion to File Late-Filed Contentions" ("Late-Filed Contentions"), filed October 26, 2004.¹ For the reasons set forth below, the Staff submits that NMED's late-filed contentions should be rejected.

BACKGROUND

On December 12, 2003, Louisiana Energy Services, L.P. ("LES") submitted an application for an NRC license to authorize construction and operation of the National Enrichment Facility ("NEF"), a gas centrifuge uranium enrichment facility, to be located in Lea County, New Mexico. In response to a Notice of Application and Notice of Hearing regarding the Application,² several petitioners requested leave to intervene in the proceeding, including the New Mexico Environment

¹ See "NMED's Motion to File Late Filed Contentions" dated October 26, 2004. ("Late-Filed Contentions")

² See "In the Matter of Louisiana Energy Services, L.P. (National Enrichment Facility); Notice of Receipt of Application for License; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order," CLI-04-03, 69 Fed. Reg. 5873 (Feb. 6, 2004).

Department (“NMED”).³ The Staff responded to the NMED hearing request, objecting to several of the contentions on the grounds that they lacked sufficient specificity to satisfy the NRC’s contentions requirements.⁴ NMED filed a reply to the responses of the Staff and LES, which set forth additional information regarding its contentions and, for the first time, submitted supporting affidavits.⁵ After acquiring leave from the Atomic Safety and Licensing Board (“Board”)⁶, the Staff filed a surreply to NMED’s reply on May 24, 2004, arguing that NMED had exceeded the scope of a proper reply pleading by setting forth new arguments and contentions, and that, therefore, the reply could not properly be considered in determining the admissibility of NMED’s contentions.⁷

Following an initial prehearing conference on June 15, 2004, the Board, on July 19, 2004, issued a Memorandum and Order denying admission of several of NMED’s contentions.⁸ The Board found that the reply filings constituted untimely attempts to amend NMED’s original petitions that were not accompanied by any attempt to address the late-filing factors in section 2.309(c) and therefore could not be considered.⁹ The Board referred the issue of whether NMED’s replies

³ See “The New Mexico Environment Department’s Request for Hearing and Petition for Leave to Intervene” dated March 23, 2004 (“NMED’s Hearing Request”) (NMED’s initial hearing request contended, among other things, that LES’s proposed plan for storage of depleted uranium was not sufficiently detailed and did not demonstrate that issuance of a license would not be inimical to the health and safety of the public.).

⁴ See “NRC Staff Response to Request of the New Mexico Environment Department for Hearing and Petition for Leave to Intervene” dated April 19, 2004. (“Staff Response”)

⁵ See “New Mexico Environment Department’s Reply in Support of Petition for Leave to Intervene and Request for Hearing” dated May 10, 2004. (“NMED Reply”)

⁶ See “Order (Granting Requests to File Surreply)” dated May 20, 2004.

⁷ See “NRC Staff Surreply to New Mexico Environment Department’s Reply in Support of Petition for Leave to Intervene and Request for Hearing” dated May 24, 2004. (“Staff Surreply”)

⁸ See *Memorandum and Order (Rulings Regarding Standing, Contentions, and Procedural/Administrative Matters)*, LBP-04-14, 60 NRC ___, slip op. at 16-20 (July 19, 2004).

⁹ *Id.* at 16-20. The Board did admit one of NMED’s contentions, to which the Staff had not
(continued...)

should be considered to the Commission, pursuant to 10 C.F.R. § 2.323(f), along with determinations on the admissibility of the affected contentions.¹⁰ In its August 18, 2004 order, the Commission found that NMED had put forth new material which constituted an attempt to amend its petition without addressing the late-filing factors in 10 C.F.R. § 2.309(c), and that, therefore, NMED's contentions could not be admitted.¹¹ On August 27, 2004, NMED filed a Petition for Reconsideration before the Commission, arguing for the first time that the new bases and contentions NMED submitted in its Reply met the late-filing criteria.¹² That petition is presently pending before the Commission. On October 26, 2004, NMED filed its Motion to File Late-Filed Contentions, incorporating the bases and contentions first raised in its reply filing¹³ and restating its arguments for why it believes those contentions and bases meet the late-filing criteria contained in 10 C.F.R. § 2.309(c).¹⁴ In its motion, NMED requests to participate as a party with respect to three new contentions on a late-filed basis: (1) that LES's strategy for disposition of the depleted uranium is not plausible; (2) that storage of the depleted uranium over the life of the facility is not protective of the health and safety of the public; and (3) that the depleted uranium does not represent low-level waste.¹⁵

⁹(...continued)

objected, related to the radiation protection program, and therefore admitted NMED as a party. *Id.* at 19.

¹⁰ *See id.* at 18, 38.

¹¹ *See* Memorandum and Order, *Louisiana Energy Services*, CLI-04-25, 60 NRC ___, slip op. at 2 (August 24, 2004).

¹² *See* "New Mexico Environment Department's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration" dated August 27, 2004. ("Petition for Reconsideration")

¹³ *See* "NMED's Motion to File Late Filed Contentions" at 3.

¹⁴ *See id.* at 4-7.

¹⁵ *Id.* at 1.

DISCUSSION

I. NMED Has Not Shown That Its Contentions
Should Be Admitted Based on the Late-Filing Criteria

The criteria to be considered when determining the admissibility of late-filed contentions are set forth in 10 C.F.R. § 2.309(c)(1)(i-viii). The NRC's new Part II adjudicatory regulations, which became effective January 14, 2004, and which apply to the LES proceeding¹⁶, have somewhat broadened the criteria considered for late filing.¹⁷ The factors are:

- (i) Good cause, if any, for the failure to file on time;
- (ii) The nature of petitioner's right under the [Atomic Energy] Act to be made a party to the proceeding;
- (iii) The nature and extent of petitioner's property, financial or other interest in the proceeding;
- (iv) The possible effect of any order that may be entered in the proceeding on the petitioner's interest;
- (v) The availability of other means whereby petitioner's interest will be protected;
- (vi) The extent to which petitioner's interests will be represented by existing parties;
- (vii) The extent to which petitioner's participation will broaden the issues or delay the proceeding; and
- (viii) The extent to which petitioner's participation may reasonably be expected to assist in developing a sound record.¹⁸

The burden of proof is on the petitioner, and the petitioner is obliged to affirmatively address the lateness factors in its petition as well as to demonstrate that a balancing of the factors warrants

¹⁶ See 69 Fed. Reg. 5873, 5874 (*Louisiana Energy Services*, Notice of Receipt of Application for License; Notice of Availability of Applicant's Environmental Report, Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order) (Feb. 6, 2004).

¹⁷ See 60 Fed. Reg. 2182 (January 14, 2004) (final rule); 10 C.F.R. § 2.309(c); see also *Private Fuel Storage*, (Independent Spent Fuels Storage Installation), LBP-01-03, 53 NRC 84, 93-95 (2001); cited in CLI-01-12, 53 NRC 459 (2001) (The new late-filed contentions rule contains all five criteria existing under the old rule, 10 C.F.R. § 2.714(a), and adds factors (ii) through (iv), the nature of petitioner's right to be a party, the nature and extent of petitioner's interest, and the possible effect of an order.)

¹⁸ 10 C.F.R. § 2.309(c)(1)(i-viii).

overlooking the petition's lateness.¹⁹

A. Good Cause

The first and most important of the late-filing factors is whether good cause exists that will excuse petitioner's late filing.²⁰ NMED argues that it has good cause for filing late because it did not have adequate time and resources to prepare its petition, because NMED has no in-house expertise on the storage, plausible strategy for disposition, and low-level waste issues, and because NMED had no familiarity with the issues surrounding the facility.²¹

None of these purported reasons constitutes good cause. In making a judgment about good cause, the emphasis is on when sufficient information was made available to the petitioner so as to make it possible for the petitioner to raise and frame the contention with reasonable specificity and basis,²² not on the resources of the petitioner. Good cause does not exist for nontimely filings when the late-filed contentions were not based on new information arising after the original deadline and therefore could have been included in a timely petition.²³

This is precisely the case at hand, where NMED had the information it needed to frame its contentions with reasonable specificity and did not do so in a timely matter. Nor did NMED request, as it could have if it truly needed it, an extension of time to gather the relevant expertise and

¹⁹ *Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 466 n.22 (1985).

²⁰ *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 221 (2000); *aff'd*, CLI-04-04, ___ NRC ___ (Feb. 5, 2004).

²¹ See "NMED's Motion to File Late-Filed Contentions" at 5-6.

²² See *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-99-43, 50 NRC 306, 313 (1999); *interlocutory review denied*, CLI-00-02, 51 NRC 77 (2000).

²³ See, e.g. *Private Fuel Storage* (Independent Spent Fuel Storage Installation), *Private Fuel Storage*, LBP-00-14, 51 NRC 301, 306 (2000), *noted in* CLI-04-04, ___ NRC ___ (Feb. 5, 2004); *Private Fuel Storage*, LBP-99-43, 50 NRC 306, 313; *Private Fuel Storage*, LBP-00-27, 52 NRC 216, 222-23; *Private Fuel Storage*, LBP-01-13, 53 NRC 319, 326-27.

prepare its contentions.²⁴ Instead, NMED raised new contentions and bases in its reply to the Staff's response to its original Petition for Intervention. The Staff pointed this out in its Surreply, noting that NMED had attempted to amend and supplement its contentions but had not addressed the late-filing criteria.²⁵ NMED did not, however, file a motion for admission of late-filed contentions at that point. Instead, NMED raised the late-filing criteria in its Motion for Reconsideration of the Commission's decision,²⁶ although NRC regulations specifically state that a sponsor of late-filed contentions must address the late-filing criteria in its contentions filing.²⁷

Now, NMED seeks to rely on the Board's October 20, 2004 deadline and has finally filed a motion for late-filed contentions with the Board addressing the late-filing criteria. However, a Board deadline does not relieve NMED of its obligation to show good cause for filing late.²⁸ The October 20, 2004 deadline for late-filed contentions was intended to accommodate contentions based on new information contained in the Draft Environmental Impact Statement (DEIS), issued by the Staff on September 30, 2004.²⁹ When a petitioner waits for a document to be issued before

²⁴ NMED requested in a motion not opposed by the NRC, and was granted, an extension of time in filing its reply brief.

²⁵ See Staff Surreply at 6-7.

²⁶ See Petition for Reconsideration at 5-8.

²⁷ See 10 C.F.R. § 2.309(c)(2).

²⁸ See *Private Fuel Storage*, LBP-00-27, 52 NRC 216, 222-23 (holding that although petitioner filed before the deadline for late-filed contentions based on the DEIS, petitioner "does not have good cause for delaying its filing...unless it establishes that new or different data or conclusions are contained" in the newly issued document.) In this case, petitioner does not point to any new or different data or conclusions in the DEIS. In fact, petitioner does not even add anything to its contentions but merely incorporates its original petition and reply filing. See Late-Filed Contentions at 3.

²⁹ See *Memorandum and Order*, Memorializing and Ruling on Matters Raised in Conjunction with August 3, 2004 Conference Call and Setting General Schedule for Proceeding, Appendix A (August 16, 2004).

raising or amending its contentions, it does so at its own peril.³⁰ The risk that it takes is that if the new contentions are not based on new information made available for the first time in the newly issued document, good cause does not exist for the late filing.³¹ Here, NMED's late-filed contentions merely incorporated its earlier filings and therefore did not rely on any new information not before available.³² NMED's contentions could have been raised with the available information in a timely manner and therefore, good cause does not exist for NMED's late filing.³³ NMED's continued delay until months after the Staff informed NMED that it needed to address the late-filing criteria in a petition before the Board further illustrates that its delay is inexcusable.

B. The Other Late-Filing Criteria

When good cause is lacking for a late-filed issue, the petitioner must make a compelling showing on the remaining late-filing factors.³⁴ While NMED has some of the remaining factors in its favor, it has not made a "compelling showing" with regard to the remaining seven factors and lacks some of them entirely.

The second and third late-filing factors are the nature of petitioner's right to be a party in

³⁰ See *Private Fuel Storage*, LBP-00-27, 52 NRC 216, 223; *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-94-11, 39 NRC 205, 212 (1994).

³¹ See notes 23, 28, *supra*, and accompanying text.

³² See Late-Filed Contentions at 3.

³³ See notes 23, 28, *supra*, and accompanying text.

³⁴ *Private Fuel Storage*, LBP-00-14, 51 NRC 301, 310 (2000); see also *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986) (This line of cases was decided under the NRC's old late-filed contentions regulations previously found in 10 C.F.R. § 2.714(a)(1), under which there were five factors: (1) good cause; (2) availability of other means for protecting petitioner's interest; (3) whether petitioner's involvement will assist in the development of a sound record; (4) whether petitioner's interests will be represented by existing parties; and (5) whether petitioner's participation will broaden the issues or delay the proceeding. However, there is no reason to think that the proposition is not applicable under the new regulation, which keeps good cause as the cornerstone criterion for late-filing and adds three more supporting criteria.)

the proceeding and the nature of petitioner's interest in the proceeding. Because it represents the state that is to serve as the site for the requested license, NMED does have a right to be a party, and does have an important interest in the proceeding. However, NMED is already admitted as a party in the proceeding and enforcing timeliness requirements with respect to contentions will therefore not completely deprive it of its right to participate. The Board has held that a State's interest in intervention, although significant, does not override the need for late-filing requirements.³⁵ The fourth late-filing factor is the possible effect of an order on petitioner's interest. NMED will admittedly be affected by the construction and operation of the NEF within its borders.

The fifth and sixth criteria are the availability of other means by which petitioner's interest may be protected and the extent to which petitioner's interest may be protected by other parties. There are several possible means by which NMED's interest may be protected. NMED is already a party to the proceeding. The New Mexico Attorney General ("NMAG") and the Nuclear Information and Research Service/Public Citizen ("NIRS/PC") have also been admitted as parties, and NIRS/PC has raised an admissible contention regarding whether LES has a plausible strategy for disposal of depleted uranium.³⁶ NIRS/PC has also raised the issue in an admissible contention of whether depleted uranium is low-level waste.³⁷ In addition, NMED has inquired about participating as an interested state party, pursuant to 10 C.F.R. § 2.315(c).³⁸ It has not yet been settled as to what extent NMED, as an interested state, could participate in the contentions raised

³⁵ See, e.g., *Private Fuel Storage*, LBP-00-14; *Private Fuel Storage*, LBP-00-27, *Private Fuel Storage*, LBP-99-43 (in which contentions submitted by the State of Utah were rejected under a balancing of the late-filing criteria).

³⁶ *Memorandum and Order*, LBP-04-14, slip op. at 26-27.

³⁷ *Id.*

³⁸ See NMED's Motion for Clarification of Participating as an Interested State (Aug. 27, 2004) at 1-2.

by other intervenors.³⁹ NMAG, another party also representing the State of New Mexico, may also adequately represent and protect NMED's interests. Therefore, there are several other means by which NMED's interests may be protected.

The seventh late-filing factor is the extent to which petitioner's participation will broaden the issues or delay the proceeding. While NMED's new contentions on plausible disposal strategy and classification of depleted uranium are related to contested issues in the proceeding, NMED raises new bases which will broaden the issues to be adjudicated. Moreover, NMED's contention that storage of depleted uranium over the life of the facility is not protective of public health and safety would significantly broaden the contested issues before the Board and could well delay the proceeding. Therefore, this factor weighs against NMED.

The final late-filing factor is the extent to which petitioner's participation will assist in the development of a sound record. This factor weighs heavily against NMED. Precedent makes clear that when a petitioner addresses the sound record criterion, it must set out with specificity "the precise issues it plans to cover, identify its prospective witnesses, and summarize their proposed testimony."⁴⁰ The Board has held in a number of decisions that when a petitioner merely identifies its prospective witnesses and asserts the qualifications of each, but does little in the way of summarizing planned testimony or identifying specific matters petitioner plans to address, that the sound record factor provides "little, if any, weight in favor of admitting the contention."⁴¹

³⁹ See *Memorandum and Order* (Clarification Requests Ruling and Commission Referral) at 5 (Sept. 14, 2004).

⁴⁰ *Private Fuel Storage*, LBP-00-27, 52 NRC 216, 224.

⁴¹ *Id.*; see also *Private Fuel Storage*, LBP-00-14, 51 NRC 301, 310; *Private Fuel Storage*, LBP-99-43, 50 NRC 306, 315 ("Petitioners are required to provide the Board with a real clue about what they would say to support the contention beyond the minimal information they provide for admitting the contention") (internal citation omitted); *Private Fuel Storage*, LBP-01-13, 53 NRC 319, 328; *Duke Cogema Stone and Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), 2002 WL 31652507, slip op. at 5 (November 19, 2002), CLI-02-24, 56 NRC 335 (2002).

In this case, NMED has not identified planned testimony at all, let alone done so with any specificity. NMED has merely stated that it has “retained credible experts to pursue critical issues.”⁴² This is clearly inadequate for purposes of the sound record criterion, which the Board has held requires more specificity than that required to file a timely contention.⁴³

For these reasons, NMED does not have good cause for its late-filed contentions. NMED has met some of the additional factors for late filing, but has not made the compelling showing on these remaining factors that is necessary in the absence of good cause. Therefore, NMED’s Motion to File Late-Filed Contentions must be denied.

II. Even if NMED Met the Late-Filing Criteria, it Has Not Offered Admissible Contentions

Even if NMED did meet the late-filing criteria, it has not offered admissible contentions in its Motion to File Late-Filed Contentions. In its Motion to File Late-Filed Contentions, NMED seeks to introduce three new contentions: (1) that LES’s strategy for disposition of the depleted uranium is not plausible; (2) that storage of the depleted uranium over the life of the facility is not protective of the health and safety of the public; and (3) that the depleted uranium does not represent low-level waste.⁴⁴

None of these proposed contentions represents an admissible contention under NRC regulations and precedent. NRC regulations require that admissible contentions include: (1) a specific statement of the issue of law; (2) a brief explanation of the basis for the contention; (3) a demonstration that the issue is within the scope of the proceeding; (4) a demonstration that the issue is material to the findings the NRC must make regarding the action subject to the proceeding; (5) a concise statement of the alleged facts or expert opinions which support the contention and

⁴² See Late Filed Contentions, at 7.

⁴³ See *Private Fuel Storage*, LBP-99-43, 50 NRC 306, 315.

⁴⁴ See Late Filed Contentions at 1.

on which the petitioner intends to rely at hearing, including references to the specific sources and documents; and (6) sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.⁴⁵

A. Plausible Strategy

NMED contends that LES does not have a plausible strategy for disposition of the depleted uranium.⁴⁶ NMED contends that federal legislation has not yet been enacted that would allow the Department of Energy (“DOE”) to take title and disposition responsibility of the DU₆ produced by the facility, and that, therefore, LES’s strategy to have DOE take responsibility for its disposal is not plausible.⁴⁷ This contention is not an issue within the scope of this hearing. In fact, the legislation in question, the USEC Privatization Act, has been enacted.⁴⁸ The Commission has concluded that if the DU₆ is waste under the Atomic Energy Act, it is low-level waste and therefore LES’s strategy is a plausible one.⁴⁹ Therefore, the only issue is whether the depleted uranium does constitute waste within the meaning of the Atomic Energy Act. That issue is presently before the Commission.⁵⁰ Therefore, the question of whether LES has put forth a plausible strategy for disposal of the depleted uranium under the USEC Privatization Act is a matter outside the Board’s jurisdiction and the scope of the hearing unless otherwise determined by the Commission following its decision on the matter before it.

⁴⁵ See 10 C.F.R. § 2.309(f)(1)(i-vi).

⁴⁶ See Late Filed Contentions at 1; NMED Reply at 6.

⁴⁷ See NMED Reply at 6.

⁴⁸ See 42 U.S.C. § 2297h-11, section 3113 of the USEC Privatization Act.

⁴⁹ See CLI-04-03, 69 Fed. Reg. at 5877.

⁵⁰ See *Memorandum and Order*, LBP-04-14, slip op. at 27; *Memorandum and Order*, CLI-04-25, slip op. at 4-5.

B. Storage of Depleted Uranium

NMED also contends that storage of the depleted uranium over the life of the NEF is not protective of the health and safety of the public.⁵¹ Although the basis for NMED's contentions is not entirely clear, NMED raises a few issues with respect to storage. However, none provide a sufficient basis for an admissible contention under NRC regulations and precedent.

For example, NMED raises the issue of the conclusions of the DOE Defense Nuclear Facility Safety Board as a basis for its contention.⁵² The DOE report dealt with oversight problems from the storage of DU cylinders.⁵³ LES, in its application, has proposed its own management program to ensure that the cylinders are properly maintained and inspected to prevent the sort of degradation, and subsequent cylinder breach issues, referred to in the DOE reports.⁵⁴ NMED does not take issue with any specific part of LES's application or point to any inadequacies or omissions in LES's proposed management plan that would raise public health and safety concerns about the cylinders. While NMED raises general concerns regarding the issue of on-site storage of the depleted uranium, NMED has failed to cite to any specific failure of LES to adequately deal with these issues in its application.

In addition, NMED raises the issue that LES has not sufficiently dealt with the possible impacts on public and occupational health or evaluated the public health consequences of potential accidents.⁵⁵ However, LES devotes an entire section of its Environmental Report to public and

⁵¹ See Late Filed Contentions at 1.

⁵² See NMED Reply at 8.

⁵³ See *Integrity of Uranium Hexafluoride Cylinders*, U.S. DOE, Defense Nuclear Facilities Safety Board Technical Report (May 5, 1995).

⁵⁴ See LES Environmental Report ("ER"), 4.13.3.1.1, 4.13.3.1.2.

⁵⁵ See NMED Reply at 8-10.

occupational health impacts⁵⁶ and its Integrated Safety Analysis contains an accident analysis that does evaluate the possible public health consequences of potential accidents.⁵⁷ NMED does not raise any specific issue with respect to LES's accident analysis. An admissible contention must raise a specific dispute with a part of the application, not merely make a general statement that the application does not sufficiently address an issue.

C. Depleted Uranium as Low-Level Waste

Finally, NMED raises the issue that depleted uranium cannot be considered low-level waste within the meaning of the Atomic Energy Act.⁵⁸ This is not an admissible contention because the issue of whether depleted uranium is low-level waste is presently being decided by the Commission.⁵⁹ Parties have had the opportunity to fully brief the issue. Because the issue is presently before the Commission, the Board does not have jurisdiction. Therefore, this does not represent an admissible contention because it is outside the scope of this hearing.

CONCLUSION

As the Board has made clear, Petitioner has an "ironclad obligation" to set forth admissible contentions at the earliest possible time depending on when the necessary information has been made available to them.⁶⁰ When filing late contentions, Petitioner has a similar obligation to affirmatively plead and demonstrate the late-filing factors. In this case, NMED has without good cause delayed the filing of its contentions far beyond the point at which it had the necessary information to frame them with adequate specificity. NMED may not circumvent Commission law

⁵⁶ See LES ER, 4.12.

⁵⁷ See LES Integrated Safety Analysis, 3.7.

⁵⁸ See Late Filed Contentions at 1.

⁵⁹ See *Memorandum and Order*, LBP-04-14, slip op. at 27; *Memorandum and Order*, CLI-04-25, slip op. at 4-5; see also section II(A), *supra*.

⁶⁰ See *Private Fuel Storage*, LBP-99-43, 50 NRC 306, 313.

and precedent by attempting to use the late-filing factors to admit information it submitted as part of a reply filing and now attempts to incorporate in its Motion to File Late Filed Contentions. NMED has not met the late-filing criteria and, even if it had, has not offered admissible contentions within the scope of the Board's hearing and jurisdiction. Therefore, NMED's motion should be denied.

Respectfully Submitted,

/RA/

Lisa Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 5th day of November, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
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LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
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(National Enrichment Facility))	ASLBP No. 04-826-01-ML
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO "NMED'S MOTION TO FILE LATE-FILED CONTENTIONS"" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 5th day of November, 2004.

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