

November 5, 2004

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

November 5, 2004 (3:03PM)

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))	

RESPONSE OF LOUISIANA ENERGY SERVICES, L.P. TO NEW MEXICO
ENVIRONMENT DEPARTMENT MOTION TO FILE LATE FILED CONTENTIONS

I. INTRODUCTION

On October 20, 2004, the Intervenor New Mexico Environment Department ("NMED") filed a "Motion to File Late Filed Contentions" ("Motion"). NMED seeks to participate as a party on three contentions: (1) LES's "plausible strategy" for disposition of depleted uranium; (2) onsite storage of depleted uranium over the life of the facility; and (3) whether depleted uranium can be classified as a low level radioactive waste. Louisiana Energy Services, L.P. ("LES") herein answers the Motion.

II. DISCUSSION

NMED's Motion does not raise any new issues or cite any new information. Rather, NMED seeks to participate on the three issues listed above, all of which are issues previously raised by NMED in this proceeding. The Motion reflects no more than a new procedural approach to an outstanding request to participate on these issues.

Specifically, as acknowledged by NMED in the Motion, NMED first identified its desire to participate with respect to these three issues in its May 10, 2004, reply to the answers of

LES and the NRC Staff to NMED's original proposed contentions. Motion, at 4.¹ LES responded by filing dated May 24, 2004.² The Atomic Safety and Licensing Board ("Licensing Board"), by Memorandum and Order, LBP-04-14, dated July 19, 2004, denied participation on these issues — holding that it could not consider new matters raised in a reply finding absent a showing under 10 C.F.R. § 2.309(c).³ By Memorandum and Order, CLI-04-25, dated August 18, 2004, the Commission affirmed the Licensing Board decision. The Commission found that the new matters could not be considered without an appropriate justification for late-filing.

Subsequently, by a motion filed *with the Commission*, dated August 27, 2004,⁴ NMED sought reconsideration of the Commission's August 18, 2004, memorandum and order. As again acknowledged in the present Motion, NMED there specifically addressed "the Commission's concerns that NMED had not addressed the late-filing factors in 10 C.F.R. § 2.309(c), and set forth the reasons why NMED would satisfy those requirements." Motion, at 4. The present Motion is virtually verbatim in this regard to the August 27, 2004, NMED motion

¹ The Motion incorrectly states that the reply was filed on May 14, 2004. The actual date was May 10, 2004. See "Reply in Support of NMED's Petition to Intervene," dated May 10, 2004. The "plausible strategy" issue is addressed at pages 3-6. The waste classification issue is addressed at pages 5-6. The storage issue is addressed at pages 7-14.

² In NMED's present Motion, NMED states that LES did not object to admission of these contentions. Motion, at 7. This statement is overbroad. LES's actual position with respect to the issues raised in the reply filing was set forth in the surreply of May 24, 2004.

³ Memorandum and Order (Rulings Regarding Standing, Contentions, and Procedural/Administrative Matters), LBP-04-14, dated July 19, 2004, slip op. at 16.

⁴ "NMED's Motion for Leave to File Motion for Reconsideration and Motion for Reconsideration," dated August 27, 2004.

for Commission reconsideration. The motion for reconsideration remains pending before the Commission. LES did not take a position on that motion.⁵

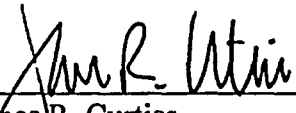
NMED's present Motion does not relate to any new information that would give rise to a new issue at this time. Rather, it is a continuation of NMED's attempt to have the Licensing Board or the Commission consider and admit the issues first raised in the NMED reply filing of May 10, 2004. Given the nature of the Motion, and the fact that the arguments related to the reply filing (including the showing offered under 10 C.F.R. § 2.309(c)) are presently before the Commission, LES concludes that the issue of NMED's participation on the three identified issues should be resolved by the Commission.

⁵ See letter to Commissioners from James R. Curtiss, counsel for LES, dated September 2, 2004.

III. CONCLUSION

For the reasons discussed above, no action by the Licensing Board on the NMED Motion is required. The issue of NMED's participation on the three "new" issues can and should be resolved by the Commission in the context of NMED's pending motion for reconsideration.

Respectfully submitted,



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Dated at Washington, District of Columbia
this 5th day of November 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
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(National Enrichment Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "RESPONSE OF LOUISIANA ENERGY SERVICES, L.P. TO NEW MEXICO ENVIRONMENT DEPARTMENT MOTION TO FILE LATE FILED CONTENTIONS" in the captioned proceeding have been served on the following by e-mail service, designated by **, on November 5, 2004 as shown below. Additional service has been made by deposit in the United States mail, first class, this 5th day of November 2004.

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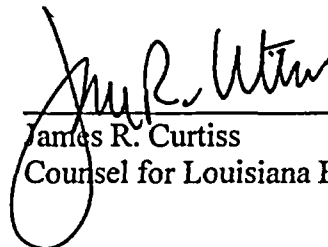
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