

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
NIRS/PC MOTION FOR LEAVE TO REPLY

INTRODUCTION

Pursuant to the Atomic Safety and Licensing Board's ("Board") Order of November 15, 2004 (Schedule for Responses to Motion for Leave to File Reply), the NRC Staff ("Staff") hereby submits its response to the November 11, 2004 Motion of Petitioners Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") for Leave to Reply ("Motion for Leave to Reply") to the responses of applicant Louisiana Energy Services, L.P., ("LES") and the Staff to the NIRS/PC motion to amend and supplement contentions. For the reasons discussed below, the Staff submits that NIRS/PC's motion should be denied.

DISCUSSION

In this proceeding, the parties months ago submitted a joint report outlining an agreed upon schedule regarding discovery and other adjudicatory process issues.¹ The Board, in large part

¹ See Joint Status Report Regarding the Parties' Proposed Discovery Plan and Other Adjudicatory Process Issues (July 29, 2004) ("Joint Status Report").

adopting the schedule set forth in the Joint Status Report, then issued a Scheduling Order.² This Scheduling Order established deadlines for Motions to Amend Contentions/for Late-Filed Contentions (October 20, 2004) and Answers to such Motions (November 5, 2004). Notably, the schedule did not provide for the opportunity to file Replies to these Answers. The Staff submits that where the Board intended parties to be afforded the opportunity to file a Reply, it explicitly provided a deadline for doing so. For example, the Scheduling Order sets forth deadlines for filing Summary Disposition Motions, Responses to these Motions, and Replies to the Responses. No such deadline is provided in the Scheduling Order for Replies to Answers to Motions for Amended/Late-Filed Contentions.

According to 10 C.F.R. § 2.332(b), modification of the Board's Scheduling Order should not be permitted absent a finding by the presiding officer of good cause. However, NIRS/PC, in its Motion for Leave to Reply failed to address any of the good cause factors outlined in 10 C.F.R. § 2.332(b). NIRS/PC has been aware of the deadlines established in this Scheduling Order and the filings allowed thereunder certainly since its issuance by the Board. Following issuance of the Scheduling Order, NIRS/PC could have at any time sought amendment to include the opportunity to file such Replies. NIRS/PC failed to raise this issue until now, and even at this late date, has failed to make the requisite good cause showing necessary to amend the Scheduling Order. See 10 C.F.R. § 2.332(b).

² See Memorandum and Order (Memorializing and Ruling on Matters Raised in Conjunction with August 3, 2004 Conference Call and Setting General Schedule for Proceeding) (Aug. 16, 2004).

CONCLUSION

For the reasons stated above, the Staff submits that the Board should deny NIRS/PC's Motion for Leave to Reply as it failed to demonstrate good cause required to amend the Scheduling Order. If, however, the Board grants this Motion, it should limit its consideration of arguments presented in the Motion.³

Respectfully Submitted,

/RA/

Darani M. Reddick
Counsel for NRC Staff

Dated at Rockville, Maryland
this 17th day of November, 2004

³ If the Board, in its discretion, grants NIRS/PC's Motion for Leave to Reply, the Staff submits that the Board should limit its consideration to portions of the Reply that directly respond to the answers filed by the Staff and LES in their November 5, 2004 submittals. See NRC Staff's Response to Nuclear Information and Resource Service and Public Citizen Motion to Amend and Supplement Contentions (Nov. 5, 2004); see *also* Answer of Louisiana Energy Services, L.P. to Motion on Behalf of Nuclear Information and Resource Service and Public Citizen to Amend and Supplement Contentions (Nov. 5, 2004). As the Commission has stated, any reply should be narrowly focused on the legal or logical arguments presented in the applicant or Staff answer. See "10 CFR Parts 1, 2, 50, et al. Changes to Adjudicatory Process," 69 Fed. Reg. 2182, 2203 (Jan. 14, 2004) (final rule); see *also* Louisiana Energy Services, L.P. (National Enrichment Facility), CLI-04-25, 60 NRC __, __ (slip op. at 2-3) (Aug. 18, 2004). Because NIRS/PC's filing exceeds the narrow bounds to which a reply is required to be confined, the Staff contends that any new issues presented should not be considered by the Board in ruling on NIRS/PC's amended contentions.

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))	ASLBP No. 04-826-01-ML
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO NIRS/PC MOTION FOR LEAVE TO REPLY" 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 17th day of November, 2004.

Administrative Judge * **
Paul Bollwerk
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-Mail: gpb@nrc.gov

Administrative Judge * **
Charles Kelber
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-Mail: cnk@nrc.gov

Administrative Judge * **
Paul Abramson
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-Mail: pba@nrc.gov

Ron Curry, Secretary
Clay Clarke, Assistant General Counsel **
Tannis L. Fox, Attorney **
Melissa Y. Mascarenas, Legal Assistant
New Mexico Environmental Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110
E-mail: clay_clarke@nmenv.state.nm.us
tannis_fox@nmenv.state.nm.us

Office of the Secretary * **
ATTN: Rulemakings and Adjudication Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

Patricia A. Madrid, N.M. Attorney General
Glenn Smith, Deputy Attorney General **
David M. Pato, Asst. Attorney General **
Stephen R. Farris, Asst. Attorney General **
Christopher D. Coppin **
P.O. Box 1508
Santa Fe, NM 87504-1508
E-Mail: gsmith@ago.state.nm.us
dpato@ago.state.nm.us
sfarris@ago.state.nm.us
ccoppin@ago.state.nm.us

Office of Commission Appellate Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

Mr. Rod Krich, Vice President
Licensing, Safety and Nuclear Engineering
Louisiana Energy Services
2600 Virginia Avenue NW.
Suite 610
Washington, D.C. 20037

Lindsay A. Lovejoy, Jr. **
Nuclear Information and Resource Service
1424 16th Street, NW.
Suite 404
Washington, D.C. 20036
E-mail: lindsay@lindsaylovejoy.com
llovejoy@cybermesa.com

James. R. Curtis, Esq. **
Dave Repka, Esq. **
Martin O'Neill, Esq. **
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
E-mail: jcurtiss@winston.com
drepka@winston.com
moneill@winston.com

/RA/

Darani M. Reddick
Counsel for NRC Staff