

January 7, 2005

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 RESPONSE TO MOTION ON BEHALF OF
NUCLEAR INFORMATION AND RESOURCE SERVICE AND
PUBLIC CITIZEN FOR CLARIFICATION OF PROTECTIVE ORDER

INTRODUCTION

Pursuant to 10 C.F.R. §2.3239(c), the Nuclear Regulatory Commission Staff (“Staff”) hereby responds to the motion filed by Nuclear Information and Resource Service and Public Citizen (“NIRS/PC”)¹ seeking clarification and modification of the protective order approved by the Board on December 21, 2004.² The Staff presents its views on the proposals of NIRS/PC below.

DISCUSSION

NIRS/PC makes seven separate requests for clarification or modification of the protective order. The Staff address each in turn:

1. The documents in the Electronic Hearing Docket (“EHD”) for this proceeding consist of pleadings filed before the Board or Commission, Orders issued by the Board or Commission, and the Staff’s hearing file. As of December 30, 2004, all documents in the hearing file have been provided or made available to parties who have completed the confidentiality and non-disclosure agreement pursuant to the protective order. In addition, all non-sensitive documents have been

¹ “Motion on Behalf of Nuclear Information and Resource Service and Public Citizen for Clarification of Protective Order” December 30, 2004.

² “Memorandum and Order (Protective Order)” December 21, 2004.

made available through Citrix based ADAMS, and all sensitive documents have been redacted, provided to the parties in CDs and made available through Citrix based ADAMS. The Staff has determined that none of the remaining documents in the EHD is sensitive and is working to make those available through ADAMS in the near future.

2. For future filings, the Staff believes that it would be appropriate for parties to utilize the screening criteria and the redacted documents completed by the Staff to determine whether they contain sensitive information that must be kept confidential under the protective order. This could be accomplished, as NIRS/PC proposes, by including a certification by counsel that the filing does not relate to any document containing sensitive information.

3-4. With respect to oral presentations at the hearing, the Staff is also of the view that the hearing should remain public to the greatest extent possible. Therefore, the Staff suggests that the same process be followed with regard to oral presentations, *i.e.*, that counsel be responsible for ensuring that their cross examination during the public portion of the hearing does not include discussion of any sensitive information. If it is necessary to reference any such information, counsel should notify the Board in advance and request a closed session for that specific portion of the examination. The Staff believes that there is no need to provide additional clarification with regard to direct testimony, as the Board has already provided that any portions which refer to sensitive information be marked and treated as protected. The Staff also believes that counsel can be responsible for the conduct of their witnesses during the oral portion of the hearing. Obviously, witnesses can be counseled to protect certain information and counsel can intervene should a witness inadvertently refer to such information.

5-6. With regard to the clarifications NIRS/PC seeks, the Staff believes that it is reasonable to expect that individuals who have been provided sensitive information to report disclosures by clients, employee and experts notwithstanding the fact that the information was previously publically available.

7. The Staff does not object to reasonable provisions for allowing parties to challenge Staff determinations regarding sensitivity at times other than the filing of proposed findings of fact and conclusions of law.

With regard to the specific information requested by the Board, the Staff notes that the provisions of section seven of the Protective Order relating to sensitive information which states that individuals who have reason to suspect that protected information is released to unauthorized persons, are consistent with other protective orders proposed by the Staff and issued in other NRC proceedings.³ The Protective Order which was issued earlier by the Board to address proprietary information⁴ was proposed by Louisiana Energy Services. In addition, as indicated above, the Staff believes that Staff screening of adjudicatory filings is no longer necessary.

CONCLUSION

The Staff requests that the Board consider the foregoing views of the Staff in ruling on any clarifications or modifications of the protective order as requested by NIRS/PC.

Respectfully submitted

/RA/

Lisa B. Clark
Counsel for NRC Staff

dated at Rockville, Maryland
this 7th day of January, 2005

³ See, *In the Matter of Private Fuel Storage* (Independent Spent Fuel Storage Installation), *Memorandum and Order* (Protective Order and Schedule or Filing Security Plan Contentions), December 17, 1997, slip op. at 9 (relating to safeguards information).

⁴ *Memorandum and Order* (Protective Order Governing Disclosure of Protected Materials), May 21, 2004.

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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 RESPONSE TO MOTION ON BEHALF OF NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN FOR CLARIFICATION OF PROTECTIVE ORDER" 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 7th day of January, 2005.

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