

January 8, 2005 (8:00am)

January 7, 2005

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

Louisiana Energy Services, L.P.

(National Enrichment Facility)

)
)
)
)
)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

RESPONSE OF LOUISIANA ENERGY SERVICES, L.P. TO MOTION
FOR CLARIFICATION OF PROTECTIVE ORDER

On December 30, 2004, Intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") filed a Motion¹ seeking clarification of the Protective Order² entered by the Atomic Safety and Licensing Board ("Licensing Board") on December 21, 2004. In accordance with the Licensing Board's scheduling order of January 3, 2005, Louisiana Energy Services, L.P. ("LES") offers this response to the Motion. LES addresses below each of the seven points of clarification raised by NIRS/PC.

1. *NIRS/PC submit that the NRC Staff should be required to make screening determinations public, specifying the documents to which they apply, so that persons bound by the Protective Order can know that there is no obligation to keep confidential documents that have already been determined to contain no sensitive information.*

LES expects that the NRC Staff will communicate its screening determinations.

¹ "Motion on Behalf of Nuclear Information and Resource Service and Public Citizen for Clarification of Protective Order," dated December 30, 2004 ("Motion").

² "Memorandum and Order (Protective Order)," dated December 21, 2004.

2. *NIRS/PC propose that counsel for any party be authorized to certify that a document filed by such counsel does not contain sensitive information under the criteria circulated by the NRC Staff on December 22, 2004.*

LES finds this proposal to be reasonable, although we question whether a "certification" is required. In fact, the NIRS/PC proposal is consistent with the normal practice in handling any protected information (e.g., proprietary information, safeguards information). If counsel does not believe its filing or exhibits are protected, it will not treat them as such. This decision remains open to review by the Staff as it relates to whether a document has been properly screened; however, in the first instance, it falls to each party to make the determination.

3. *NIRS/PC question whether all oral statements during the hearing, and transcripts thereof, are protected information until the Staff determines otherwise or, conversely, whether such statements and transcripts are only protected information if they disclose the contents of documents which themselves have previously been identified as sensitive/protected information.*

Statements during the hearing (and transcripts thereof) either contain protected information or not. Protected information may not be communicated in an open session without a violation of the Protective Order. Non-protected information may be communicated without restriction or recourse. In fact, this is a well-recognized process, whether the information at issue is proprietary, classified, safeguards, or sensitive, and LES sees no need for further guidance on this matter.

To the extent the NIRS/PC suggestion is motivated by a concern regarding whether documents or information are protected, see the discussion of Paragraph 1 and 2 above. If NIRS/PC has questions regarding the status of specific documents/information, perhaps it should clarify that with the NRC Staff at an appropriate time.

4. *NIRS/PC argue for completely open hearings and submit that a disclosure during the hearing should not be deemed impermissible if a witness refers to prefiled written testimony that contains protected information.*

While LES is also supportive of open hearings to the maximum extent possible, this suggestion appears to LES to be contrary to the essential intent of the Protective Order. If information has been identified to be sensitive and is therefore protected, it clearly cannot be discussed openly in a public hearing. This is no different than the treatment given to any other protected information in NRC hearings (e.g., proprietary information, safeguards information). The Licensing Board and parties will simply need to exercise vigilance and discretion in determining when a hearing session needs to be closed to allow a discussion of specific protected information. LES expects that closed sessions would be very narrowly circumscribed. This approach in no way compromises the "public" nature of the hearing process.

5. *NIRS/PC request that the Licensing Board make clear that individuals who do not sign the Protective Order are not bound by the terms of that order.*

Obviously, individuals that do not sign the confidentiality/non-disclosure agreement are not bound by the Protective Order. However, they are also not entitled to receive documents under the Protective Order.

The parties remain subject to the Protective Order and protected information may not be provided outside the Protective Order to an individual who has not entered a confidentiality/non-disclosure agreement.

6. *NIRS/PC submit that the Licensing Board should clarify the Protective Order by limiting the reporting obligation to persons who have signed the Confidentiality and Non-disclosure Agreement, and to require such persons to report only the loss or disclosure of protected information from files within their control.*

LES has no objection to this clarification.

7. *NIRS/PC suggest that the Licensing Board make clear that a question of non-disclosure under the screening criteria circulated by the NRC Staff may be raised at any time.*

LES sees no reason to modify the process established by the Board.

Respectfully submitted,



James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
WINSTON & STRAWN LLP
1400 L Street, N.W.
Washington, DC 20005-3502
(202) 371-5700

John W. Lawrence, Esq.
LOUISIANA ENERGY SERVICES, L.P.
100 Sun Avenue, NE
Suite 204
Albuquerque, NM 87109

Dated at Washington, District of Columbia
this 7th day of January 2005

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 "RESPONSE OF LOUISIANA ENERGY SERVICES, L.P. TO MOTION FOR CLARIFICATION OF PROTECTIVE ORDER" in the captioned proceeding have been served on the following by e-mail service, designated by **, on January 7, 2005 as shown below. Additional service has been made by deposit in the United States mail, first class, this 7th day of January 2005.

Chairman Nils J. Diaz
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Edward McGaffigan, Jr.
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Office of the Secretary**
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-16C1
Washington, DC 20555-0001
(original + two copies)
e-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate
Adjudication
Mail Stop O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Counsel**
Attn: Associate General Counsel for
Hearings, Enforcement and
Administration
Lisa B. Clark, Esq.**
Angela B. Coggins, Esq.**
Darani M. Reddick**
David A. Cummings**
Mail Stop O-15D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: OGCMailCenter@nrc.gov
e-mail: lbc@nrc.gov
e-mail: abc1@nrc.gov
e-mail: dmr1@nrc.gov
e-mail: dac3@nrc.gov

Ron Curry
Tannis L. Fox, Esq.**
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110
e-mail: tannis_fox@nmenv.state.nm.us

Administrative Judge
Paul B. Abramson**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: pba@nrc.gov

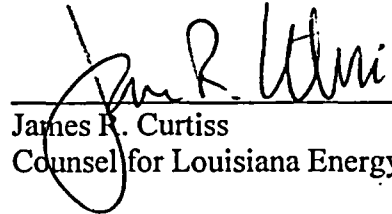
Administrative Judge
G. Paul Bollwerk, III, Chair**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: gpb@nrc.gov

Administrative Judge
Charles N. Kelber**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: cnk@nrc.gov

Christopher D. Coppin, Esq.**
David M. Pato, Esq.**
Stephen R. Farris, Esq.**
Glenn R. Smith, Esq.**
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508
e-mail: ccoppin@ago.state.nm.us
e-mail: dpato@ago.state.nm.us
e-mail: sfarris@ago.state.nm.us
e-mail: gsmith@ago.state.nm.us

Lindsay A. Lovejoy, Jr.**
618 Pasco de Peralta, Unit B
Santa Fe, NM 87501
e-mail: lindsay@lindsaylovejoy.com

Lisa A. Campagna**
Assistant General Counsel
Westinghouse Electric Co., LLC
P.O. Box 355
Pittsburgh, PA 15230-0355
e-mail: campagla@westinghouse.com


James R. Curtiss
Counsel for Louisiana Energy Services, L.P.