

February 4, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

February 7, 2005 (8:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)

Louisiana Energy Services, L.P.)

(National Enrichment Facility))

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

MOTION FOR EXTENSION OF TIME TO RESPOND TO
NIRS/PC MOTION FOR ADMISSION OF LATE-FILED CONTENTIONS

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.307 and the Atomic Safety and Licensing Board's ("Licensing Board") Initial Prehearing Order,¹ Louisiana Energy Services, L.P. ("LES") hereby requests an extension of time to respond to the motion for admission of late-filed contentions² submitted by intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") on February 2, 2005.³ While the Board has yet to issue an order establishing a schedule for responses, the nature and timing of the NIRS/PC motion have compelled LES to present its views now. Specifically LES respectfully requests that the deadline for any LES and NRC Staff responses to the NIRS/PC motion be extended to at least April 14, 2005, *i.e.*, 10 days following the established filing date for the parties' reply findings of fact and conclusions of law on the four environmental contentions scheduled for hearing next

¹ Licensing Board Memorandum and Order (Initial Prehearing Order) (Apr. 15, 2004) at 7.

² "Motion on Behalf of Intervenors Nuclear Information and Resource Service and Public Citizen for Admission of Late-Filed Contentions," dated February 2, 2005 ("NIRS/PC Motion").

³ Because the NIRS/PC motion contains proprietary information, it was served on LES via overnight delivery. Therefore, LES did not receive the motion until today.

week. As set forth below, the circumstances surrounding the NIRS/PC motion clearly provide good cause for requesting a time extension.

II. ARGUMENT

With respect to time limits in NRC adjudicatory hearings, 10 C.F.R. § 2.307(a) provides, in relevant part, that such time limits “may be extended or shortened either by the Commission or the presiding officer for *good cause*, or by stipulation approved by the Commission or the presiding officer” (emphasis added). Consistent with this requirement, the Licensing Board stated in its initial prehearing order that “[a] motion for extension of time must . . . demonstrate *appropriate cause* that supports permitting the extension.” Finally, the Commission stated in the Hearing Order that “to avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent unavoidable and extreme circumstances.” 69 Fed. Reg. 5877 col. 1 (emphasis added); *see also Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 21 (1998).

LES has good cause for requesting a time extension for the following reasons. Just two business days prior to the commencement of evidentiary hearings on environmental contentions, LES received a 47-page motion from NIRS/PC seeking the admission of late-filed amended contentions. As an initial matter, the Board’s Initial Prehearing Order states explicitly that motions for admission of late-filed contentions are subject to the Board-imposed 10-page limitation on motions, and that a party wishing to exceed this page limitation must: (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation. Initial Prehearing Order, at 6. NIRS/PC have comported with none of these requirements, once again ignoring

clear-cut Licensing Board directives in this proceeding. On this ground alone, LES submits that the motion should be rejected by the Licensing Board.

Notwithstanding, it is clear that the submittal of this motion by NIRS/PC in the midst of the parties' preparation for hearing on unrelated issues is a diversionary and public relations tactic intended to shift the focus of the other parties from the tasks at hand (*i.e.*, next week's hearings and the ensuing preparation of findings).⁴ As NIRS/PC readily acknowledge, the late-filed issues raised in their motion relate to depleted uranium "disposal impacts and costs." NIRS/PC Motion at 3. In this regard, NIRS/PC seek to amend NIRS/PC Contentions EC-3/TC-1 and EC-5/TC-2, both of which are scheduled for hearing in October 2005. *See* NIRS/PC Motion at 7, 30. The time extension requested by LES is, without question, warranted under the present circumstances and will cause no delay in the proceeding.

In its General Schedule for this proceeding, the Board has established July 25, 2005 as a filing date for amended and late-filed contentions on technical/safety contentions.⁵ It also warrants mention that, when NIRS/PC sought to conduct additional discovery relative to "LES's strategy for the conversion and disposal of depleted uranium" last November, the Board rejected that request. The Board found "*no basis* for further discovery at this point relative to the matter of the LES conversion and disposal strategy," and ruled that "any additional discovery on this matter should be conducted in the mid-April 2005 time frame *following* the conduct of the scheduled February 2005 evidentiary hearing on environmental contentions."⁶ Thus, it is clear

⁴ It is certainly not mere chance that, on the same day they filed their motion, NIRS/PC issued a press release taking aim at LES's strategy for the disposition of depleted uranium. The title says it all: "Nuclear Company's Waste Disposal Plan Still Inadequate, Despite Ruling."

⁵ *See* Memorandum and Order (Memorializing and Ruling on Matters Raised in Conjunction with August 3, 2004 Conference and Call and Setting General Schedule for Proceeding) (Aug. 16, 2004), App. A (General Schedule) at 1.

⁶ Memorandum and Order (Ruling on Motion to Allow Discovery Concerning Conversion and Disposal of Depleted Uranium) (Dec. 6, 2004), at 2 (emphasis added).

that the Board does not intend for the parties to divert limited resources to address issues scheduled for hearing in October 2005, particularly when the parties are preparing for an evidentiary hearing on unrelated issues that is only days away.⁷

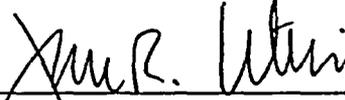
III. CONCLUSION

For the foregoing reasons, LES respectfully requests that the Licensing Board establish as a deadline for responding to the NIRS/PC motion a date no sooner than April 14, 2005, 10 days following the completion of the environmental contention phase of this proceeding. LES has shown good cause for the requested time extension. The unexpected filing of a voluminous motion by NIRS/PC relative to issues slated for hearing in October, just two business days before the conduct of the February hearings, is an unavoidable and extreme circumstance. Given the bifurcated schedule adopted by the Board, which provides for separate

⁷ Moreover, the new information purportedly giving rise to this proposed amendment to Contention NIRS/PC EC-4 is a January 7, 2005 LES response to an NRC Staff Request for Additional Information that pertains solely to LES's proposed *cost estimates* for the disposition of depleted uranium. See NIRS/PC Motion at 3. The Board has made clear that depleted uranium disposal and cost-related issues are *not* within the scope of Contention NIRS/PC EC-4. See Memorandum and Order (Ruling on Late-Filed Contentions) (unpublished) (Nov. 22, 2004), at 10 ("Ruling on Late-Filed Contentions"), at 15 (stating that "Basis B is insufficient to support admitting this paragraph in that it focuses on economics and cost which, as we discuss above in relation to NIRS/PC EC-3/TC-1, is outside the admissible scope of this contention," and that, to "clarify the scope of this contention, we will delete the words "and Disposal" from its title").

hearings on environmental and technical/financial issues, the extension will occasion no delay in the proceeding.

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 4th day of February 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

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(National Enrichment Facility)

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "MOTION FOR EXTENSION OF TIME TO RESPOND TO NIRS/PC MOTION FOR ADMISSION OF LATE-FILED CONTENTIONS" in the captioned proceeding have been served on the following by e-mail service, designated by **, on February 4, 2005 as shown below. Additional service has been made by deposit in the United States mail, first class, this 4th day of February 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**
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: abcl@nrc.gov
e-mail: dmrl@nrc.gov

Ron Curry, Esq.
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
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

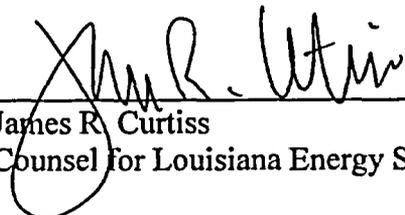
Christopher D. Coppin, Esq.**
David M. Pato, Esq.**
Stephen R. Farris, Esq.**
Glenn R. Smith, Esq.**
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508
e-mail: ccoppin@ago.state.nm.us
e-mail: dpato@ago.state.nm.us
e-mail: sfarris@ago.state.nm.us
e-mail: gsmith@ago.state.nm.us

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

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
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

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


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