

July 29, 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))	ASLBP No. 04-826-01-ML
)	

NRC STAFF RESPONSE TO JOINT MOTION FOR
APPROVAL OF SETTLEMENT AGREEMENT

BACKGROUND

Pursuant to the Board's July 25, 2005, Order,¹ the Nuclear Regulatory Commission Staff ("Staff") hereby responds to the Motion filed by Louisiana Energy Services, L.P. ("LES"), the New Mexico Attorney General ("NMAG"), and the New Mexico Environment Department ("NMED") requesting approval of a revised Settlement Agreement.² As explained below, the settlement agreement, as revised, addresses the concerns raised by the Staff in response to the agreement as initially filed.³ Accordingly, the Staff supports approval of the joint motion and approval of the revised settlement agreement.

¹ Order (Filing and Responding to Joint Motion to Approve Revised Settlement Agreement), July 25, 2005 ("Order").

² "Joint Motion for Approval of Settlement Agreement," July 27, 2005.

³ These were addressed in "NRC Staff Response to Joint Motion for Approval of Settlement Agreement," July 5, 2005 ("Staff Response").

DISCUSSION

The parties to the settlement agreement filed a joint motion requesting this Board to approve a settlement agreement on June 23, 2005.⁴ The Staff objected to approval of the settlement agreement, noting that the Staff has not been a participant in the settlement negotiations and the agreement proposed license conditions that exceeded the NRC' regulatory authority relating to the proposed action - construction and operation of a uranium enrichment facility. Staff Response at 5-6. Additionally, the Staff objected because, as a consequence of exclusion of the Staff , some conditions proposed measures that would be impractical for the NRC to determine compliance with through its ordinary inspection process. *Id.* at 3.

Following the Staff's filing, the Staff was provided proposed revisions to the agreement and asked to notify the parties as to whether the revisions addressed the Staff's concerns. After reviewing the proposed changes, the Staff notified the parties that the revised agreement satisfactorily addressed the Staff's concerns and that the Staff supported approval of the revised agreement. As requested by the Board, the manner in which the Staff's concerns have been addressed in the revised settlement agreement are addressed below for each section of the agreement which was revised:

Agreement Sections

Purpose of revisions

2. & 3.

The revisions to these provisions ensure that the license conditions refer only to actions taken by LES with respect to tails which are generated by the NEF. Therefore, the proposed license conditions, as revised, are encompassed within the NRC's jurisdiction and any license issued to LES.

⁴ "Joint Motion for Approval of Settlement Agreement," June 23, 2005.

Agreement Sections

Purpose of revisions

4. The revisions to sections (a) and (b) of the proposed license condition are worded to ensure that the license condition is sufficiently specific and unambiguous to allow NRC inspectors to readily determine whether LES is in compliance.
5. The revisions to this section remove this portion of the agreement from the proposed license conditions and thereby resolve the Staff's concerns regarding enforceability of these terms by the NRC.
10. This section of the agreement has been revised to clarify that LES is only agreeing to allow NMED access to its facilities for inspection purposes to the extent permitted by agreement between the NRC and the State. This addresses the Staff's concern that LES, rather than the NRC, was permitting the State to conduct inspections for the purpose of determining compliance with NRC requirements.
13. & 18. The revisions to these sections clarify the fact that the NRC may enforce only the terms of any NRC license held by LES, not the other terms of the settlement agreement. In addition, the revisions are designed to clarify that the parties to the agreement may request enforcement by filing a petition pursuant to 10 C.F.R. § 2.206, not by requesting enforcement by the Board in the context of this licensing proceeding.

CONCLUSION

For the reasons discussed above, the revised agreement addresses the concerns raised by the Staff with respect to the original settlement agreement. Accordingly, the Staff supports approval of the joint motion and approval of the revised settlement agreement.

Respectfully submitted,

/RA/

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 29th day of July, 2005

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT" 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 29th day of July, 2005.

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