

RAS 10302

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
  
ATOMIC SAFETY AND LICENSING BOARD

August 12, 2005 (1:31pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before Administrative Judges:

**SERVED August 12, 2005**

G. Paul Bollwerk, III, Chairman  
Dr. Paul B. Abramson  
Dr. Charles N. Kelber

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

August 12, 2005

MEMORANDUM AND ORDER  
(Approving Settlement Agreement and  
Accepting Withdrawal of Parties)

Before the Licensing Board is a July 27, 2005 joint motion by intervenors New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM), and applicant Louisiana Energy Services, L.P., (LES) for approval of a settlement agreement relative to several contentions the Board admitted to this proceeding on behalf of NMED and the AGNM. Finding the settlement agreement consistent with the public interest, the Board approves that settlement agreement and accepts the withdrawal of NMED and the AGNM from this proceeding.

I. BACKGROUND

On June 23, 2005, the AGNM, NMED, and LES submitted a joint motion to the Board requesting approval of a settlement agreement agreed to by those parties. See Joint Motion for Approval of Settlement Agreement (June 23, 2005). On July 5, 2005, the NRC staff and intervenors Nuclear Information and Resource Service and Public Citizen (NIRS/PC) each filed

responses to the joint motion of the AGNM, NMED, and LES. For its part, the staff requested that the agreement not be approved, specifically objecting to the fact that (1) the settlement agreement did not represent all affected parties because the consent and approval of the staff was not obtained; and (2) the settlement agreement attempted to impose license conditions unenforceable by the NRC. See NRC Staff Response to Joint Motion for Approval of Settlement Agreement (July 5, 2005) at 2-3. NIRS/PC, on the other hand, did not expressly object to any of the terms of the proposed settlement, but urged the Board to consider the staff's objections and to ensure that NIRS/PC's interests in the proceeding are not affected by any settlement agreement between other parties to the litigation. See Memorandum on Behalf of Intervenors [NIRS/PC] In Response to Joint Motion for Approval of Settlement Agreement (July 5, 2005).

In response to the staff's objections to the proposed settlement agreement, on July 7, 2005, LES filed with the Board an unopposed motion requesting that the Board defer ruling on the motion for approval of the settlement agreement to allow time for LES to evaluate the staff's objections and continue discussion with all interested parties in an attempt to resolve those concerns. See Motion on Behalf of [LES] To Defer Ruling on Settlement Agreement (July 7, 2005). The Board granted that motion and directed the parties to the settlement agreement to file a status report regarding the agreement by July 22, 2005. See Licensing Board Order (Granting Ruling Deferral and Filing Extension Requests and Conforming Prior Scheduling Order to General Schedule) (July 11, 2005) at 1 (unpublished). Pursuant to that order, on July 22, NMED and the AGNM filed a status report informing the Board that NMED, the AGNM, and LES had resolved the staff's objections, attaching a draft revised settlement agreement as an exhibit to that report, and informing the Board that a final, fully executed version of that agreement would be forwarded to the Board the following week. See NMAG's and NMED's

Status Report on Settlement Agreement (July 22, 2005) at 3. That same day, LES filed a response to that status report supporting the revised settlement agreement attached to that report and requesting the Board to approve the revised agreement. See [LES] Response to the [AGNM]'s and [NMED]'s Status Report on Settlement Agreement (July 22, 2005) at 2.

On July 25, 2005, the Board issued an order directing the AGNM, NMED, and LES that (1) a joint motion for approval of the revised settlement agreement accompany the executed settlement agreement those parties had indicated they intended to forward to the Board; and (2) along with that motion and revised agreement, the parties should provide a "redline" version of the revised agreement reflecting the changes from the initial settlement agreement filed with the Board on June 23. See Licensing Board Order (Filing and Responding to Joint Motion to Approve Revised Settlement Agreement) (July 25, 2005) at 1 (unpublished). The Board further called for party responses to the revised settlement, and ordered that any staff response to the July 22 motion should discuss how the revised settlement agreement addressed the concerns raised by the staff in its July 5 response. See id. at 2.

On July 27, 2005, NMED, the AGNM, and LES filed a joint motion as requested by the Board, requesting approval of the revised settlement agreement and including as attachments a fully executed version of the settlement agreement as well as a "redline" version. See Joint Motion for Approval of Settlement Agreement (July 27, 2005) [hereinafter July 27 Motion]. In a July 29, 2005 response to the July 27 joint motion, the staff declared that it supports Board approval of the revised agreement and delineated which portions of the revised settlement address the staff's previously-raised concerns, and how they do so. See NRC Staff Response to Joint Motion for Approval of Settlement Agreement (July 29, 2005) [hereinafter July 29 Staff Response]. For its part, NIRS/PC filed a response on August 1, 2005, repeating its belief that, on its face, none of the terms of the revised settlement agreement prejudice NIRS/PC. See

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Memorandum on Behalf of Intervenors [NIRS/PC] in Response to Renewed Joint Motion for Approval of Settlement Agreement (Aug. 1, 2005) at 1. NIRS/PC does, however, repeat its concerns that the Board ensure the settlement agreement does not impact the interests of NIRS/PC in the proceeding, and further requests that the Board specifically state in any order approving the agreement that the agreement would not restrict the future authority of any State of New Mexico agencies to raise issues relative to the proposed LES National Enrichment Facility (NEF). See id. at 2-3.

## II. TERMS OF THE SETTLEMENT AGREEMENT

Under the terms of the settlement agreement, LES has agreed to adopt conditions to its license, should one be issued, for the construction and operation of the NEF. Among other things, LES has agreed to:

- (1) limit the number of cylinders of depleted uranium hexafluoride ( $\text{DUF}_6$ ) generated at the NEF that will be stored there at any given time to 5,016 type 48Y cylinders;
  - (2) limit the length of time any particular cylinder can be stored at the NEF to fifteen years;
  - (3) never store  $\text{DUF}_6$  from the NEF at any site in New Mexico other than the NEF;
  - (4) never construct or operate a deconversion facility in New Mexico, nor permit  $\text{DUF}_6$  from the NEF to be disposed of in New Mexico, nor permit the United States Department of Energy (DOE) to take possession of the  $\text{DUF}_6$  at the NEF site and store it there indefinitely;
  - (5) provide financial assurance for offsite disposal of  $\text{DUF}_6$  from the NEF using a minimum contingency factor of twenty-five percent;
  - (6) increase the contingency factor to fifty percent upon reaching onsite storage of
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4,000 48Y cylinders of  $\text{DUF}_6$  unless (a) an application for construction and operation of a facility for deconversion of NEF  $\text{DUF}_6$  has been docketed with the relevant agency; (b) an application for such a facility has been approved by the relevant agency; or (c) LES is using another method for removing  $\text{DUF}_6$  stored at the NEF;

- (7) automatically increase the contingency factor to fifty percent upon reaching onsite storage of 5,016 48Y cylinders of  $\text{DUF}_6$ , if not already applicable, and maintain the contingency factor at fifty percent until the number of cylinders stored onsite is reduced to ninety-eight percent of 5,016 and either (a) an application for construction and operation of a facility for deconversion of NEF  $\text{DUF}_6$  has been docketed with the relevant agency; (b) an application for such a facility has been approved by the relevant agency; or (c) LES is using another method for removing  $\text{DUF}_6$  from New Mexico;
- (8) provide triennial reports on LES's periodic adjustments of the decommissioning cost estimate for the NEF, and allow NMED and the AGNM to review and comment on those reports in advance of their submission to the NRC;
- (9) provide financial assurance for disposition of  $\text{DUF}_6$  at the minimum amount of \$7.15 per kilogram of uranium (kgU), and not propose to the NRC that such amount be reduced to \$5.85/kgU unless LES has a contractual agreement for removal of  $\text{DUF}_6$  out of New Mexico;
- (10) allow NMED access to information about, and support its participation in, NRC inspections of the NEF radiation protection program; and
- (11) provide to the State the NEF physical security plan.

See July 27 Motion, Exh. A, at 1-7. In addition, the settlement agreement states that nothing in

the agreement precludes NMED or the AGNM from requesting that the NRC initiate an enforcement action relative to the NEF license conditions resulting from the settlement agreement. See id. Exh. A, at 7-9.

Relative to the objections and/or concerns raised by the staff and/or NIRS/PC in their responses to the June 23 and July 27 joint motions for approval of the settlement agreement, the Board finds these concerns are adequately addressed by the revised settlement agreement and/or the NRC adjudicatory process. In this regard, as the staff notes in its July 29 response, the objections raised by the staff in its July 5 response have been addressed to the staff's satisfaction. See July 29 Staff Response at 2-3. Specifically, the staff's concerns relative to sections 2 and 3 are addressed in that those sections of the agreement that ensure the subject NEF license conditions are enforceable by the NRC because they refer only to actions taken by LES with respect to DUF<sub>6</sub> generated at the NEF. See id. at 2. As to section 4, paragraphs 2 and 3, those paragraphs, as rewritten, are sufficiently unambiguous and specific to permit NRC inspectors to determine with reasonable specificity whether LES is complying with the relevant license condition. See id. at 3. Section 5, which the staff might have considered an unenforceable license condition, is no longer proposed as an NEF license condition, but instead takes the form of a simple agreement between the parties to the settlement. See id. at 3. Section 10 permits access by NMED to the NEF for inspection purposes, but only to the extent allowed by a specific agreement between the NRC and the State that would ensure the NRC, rather than LES, would determine the conduct of NMED inspections of the NEF. See id. at 3. Finally, sections 13 and 18 make clear that the NRC can only enforce the terms of any NEF license, not any other terms of a settlement agreement between LES and the New Mexico parties, and that the proper course for requesting enforcement of those license conditions is by petition to the agency, not by requesting enforcement by the Board. See id. at 3.

As to NIRS/PC's concerns, Board approval of the settlement agreement does not impact the right of NIRS/PC to make or pursue any of its admitted or admissible contentions to this proceeding, does not preclude the adoption of license conditions different from those contained in the settlement agreement, and does not restrict the authority of New Mexico state agencies over future issues arising in connection with the NEF,<sup>1</sup> except to the extent NMED and the AGNM have agreed to be bound by the terms of the settlement agreement.

### III. CONCLUSION

Pursuant to 10 C.F.R. § 2.338(i), the Board has reviewed the proposed settlement agreement between NMED, the AGNM, and LES to determine whether approval of the revised agreement, dismissal of the admitted AGNM and NMED contentions, and withdrawal of the AGNM and NMED from this proceeding are in the public interest. Based on that review, and according due weight to the positions of the staff and NIRS/PC, the Board has concluded that those actions are in the public interest. Accordingly, we grant the NMED, AGNM, and LES joint motion to approve the settlement agreement; dismiss contentions NMED TC-3/EC-4 – Radiation Protection Program and AGNM TC-ii – Disposal Cost Estimates from this proceeding; modify contention NIRS/PC EC-5/TC-2 - AGNM TC-i – Decommissioning Costs to delete the

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<sup>1</sup> Cf. Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-96-16, 44 NRC 59, 66 (1996) (nothing in settlement agreement prohibits, restricts, or discourages intervenor from reporting any safety concern or suspected improper activity to the NRC or any other state or federal agency).

words "AGNM TC-i" from the title; and accept NMED's and the AGNM's withdrawal from this proceeding.

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For the foregoing reasons, it is this twelfth day of August 2005, ORDERED, that:

1. The July 27, 2005 joint motion of NMED, the AGNM, and LES is granted and their July 27, 2005 settlement agreement is approved, a copy of which is attached to and incorporated by reference in this memorandum and order.

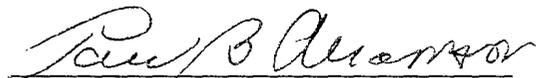
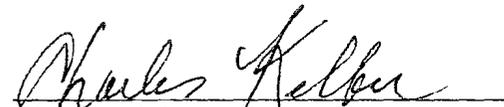
2. Contentions NMED TC-3/EC-4 – Radiation Protection Program, and AGNM TC-ii – Disposal Cost Estimates, are dismissed from this proceeding, and contention NIRS/PC EC-5/TC-2 - AGNM TC-i – Decommissioning Costs is modified to delete "AGNM TC-i" from the title.

3. The withdrawal of intervenors NMED and the AGNM from this proceeding is approved.

THE ATOMIC SAFETY  
AND LICENSING BOARD<sup>2</sup>



G. Paul Bollwerk, III  
ADMINISTRATIVE JUDGE

  
Paul B. Abramson  
ADMINISTRATIVE JUDGE  
Charles N. Kelber  
ADMINISTRATIVE JUDGE

Rockville, Maryland

August 12, 2005

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<sup>2</sup> Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant LES; (2) intervenors NMED, the AGNM, and NIRS/PC; and (3) the staff.

ATTACHMENT

## SETTLEMENT AGREEMENT

WHEREAS, the New Mexico Environment Department (“NMED”) and the Attorney General of New Mexico (“NMAG”) have requested and been granted a hearing before the Atomic Safety and Licensing Board (“Board”) relating to certain matters concerning the application filed by Louisiana Energy Services, L.P. (“LES” or “licensee”) for a license from the United States Nuclear Regulatory Commission (“NRC”) to construct and operate the National Enrichment Facility (“NEF”), Docket No. 70-3103 (“NRC Proceeding”);

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest for LES to be bound by enforceable conditions limiting the storage and disposal of depleted uranium hexafluoride (“DUF<sub>6</sub>”) generated at the NEF;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to insure that LES reduces the amount of DUF<sub>6</sub> stored onsite by 289 million pounds from the amount originally requested in LES’ license application and to limit the length of time that DUF<sub>6</sub> is stored onsite at the NEF;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to prohibit the disposal of DUF<sub>6</sub> in the State of New Mexico;

WHEREAS, NMED, NMAG and LES have determined that it is in the public interest to require LES to establish adequate financial assurances for the storage and offsite disposal of DUF<sub>6</sub>;

WHEREAS, NMED, NMAG and LES have determined that an appropriate contingency factor should be applied to the financial assurances to be established by LES; and

WHEREAS, NMED, NMAG and LES have reached agreement regarding the issues raised by NMED and NMAG in the NRC Proceeding;

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by NMED,

NMAG and LES that:

1. NMED, NMAG and LES admit that the NRC has jurisdiction over the parties and the subject matter of this Settlement Agreement.

2. NMED, NMAG and LES agree to the following condition:

Onsite storage of  $\text{DUF}_6$  generated at the NEF shall be limited to a maximum of 5,016 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and Department of Transportation ("DOT") certified cylinder types) of  $\text{DUF}_6$ . The generation of any additional  $\text{DUF}_6$  to be stored onsite by LES beyond this limit shall constitute noncompliance with this Settlement Agreement and the license. LES shall suspend production of any additional  $\text{DUF}_6$  for onsite storage until this noncompliance is remedied. In no event shall LES store  $\text{DUF}_6$  generated at the NEF in New Mexico other than at the NEF.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when issued by the NRC.

3. NMED, NMAG and LES agree to the following condition:

Onsite storage of any one cylinder of  $\text{DUF}_6$  generated at the NEF shall be limited to a maximum of 15 years, beginning from the date that each cylinder is filled in accordance with LES' standard procedures. The storage of any one  $\text{DUF}_6$  cylinder beyond this limit by LES shall constitute noncompliance with this Settlement Agreement and with the license. LES shall suspend production of any additional  $\text{DUF}_6$  for onsite storage until this noncompliance is remedied. In no event shall LES store  $\text{DUF}_6$  generated at the NEF in New Mexico other than at the NEF.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when issued by the NRC.

4. NMED, NMAG and LES agree to the following condition:

LES shall provide financial assurance for the offsite disposal of  $\text{DUF}_6$  from the NEF using a minimum contingency factor of twenty-five percent (25%).

Upon reaching 4,000 cylinders of  $\text{DUF}_6$  in 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and DOT certified cylinder types) in onsite storage, LES shall immediately increase the financial assurance to provide a fifty percent (50%) contingency factor for disposition of  $\text{DUF}_6$  stored at the NEF unless: (a) an application to construct and operate a deconversion facility outside of New Mexico that is specifically designated to deconvert the  $\text{DUF}_6$  stored onsite at the NEF has been docketed by the agency responsible for reviewing the application; (b) an application for such a facility has been approved by the agency responsible for reviewing the application; or (c) LES is using another alternate method for removing the  $\text{DUF}_6$  stored onsite.

In addition, upon reaching the limit of 5,016 cylinders of  $\text{DUF}_6$  in 48Y cylinders (or the equivalent amount of uranium stored in other NRC accepted and DOT certified cylinder types) in onsite storage, LES shall immediately increase the financial assurance to provide a fifty percent (50%) contingency factor for disposition of  $\text{DUF}_6$  stored at the NEF if the contingency factor has not already been increased to fifty percent (50%). The contingency factor shall remain at fifty percent (50%) until the number of cylinders stored onsite is reduced to ninety-eight percent (98%) of the 5,016 limit and either: (a) an application to construct and operate a deconversion facility outside of New Mexico that is specifically designated to deconvert the  $\text{DUF}_6$  stored onsite at the NEF has been docketed by the agency responsible for reviewing the application; (b) an application for such a facility has been approved by the agency responsible for reviewing the application; or (c) LES is using another alternate method for removing the  $\text{DUF}_6$  from New Mexico.

Nothing herein shall release LES from other financial assurance obligations set forth in applicable laws and regulations.

NMED, NMAG and LES agree that this condition shall be included in the NEF license when issued by the NRC.

5. NMED, NMAG and LES agree that

In no event shall  $\text{DUF}_6$  from the NEF be disposed of in the State of New Mexico and in no event shall LES construct or operate a deconversion facility in the State of New Mexico.

LES agrees that if it decides to submit a request to the Secretary of the United States Department of Energy (“DOE”) pursuant to Section 3113 of Public Law 104-134 (42 U.S.C. § 2297h-11), such a request will be made only if both LES and DOE determine that the NEF is not and will not be considered an “existing  $\text{DUF}_6$  storage facility” within the meaning of Section 311 of Public Law 108-447.

6. NMED, NMAG and LES agree that LES shall provide a draft copy of the periodic adjustment of the decommissioning cost estimate required by 10 C.F.R. § 70.25(e) (hereinafter referred to as the “Triennial Report”) to the Attorney General of the State of New Mexico and to the Secretary of the New Mexico Environment Department at least 60 days prior to the submission of Triennial Report in final form to the NRC. NMED, NMAG and LES further agree that they will work together in good faith to resolve any comments regarding the Triennial Report. Notwithstanding any efforts by LES to resolve any comments regarding the Triennial Report, NMED or NMAG may submit their comments directly to the NRC. Lastly, LES agrees to reimburse NMED and NMAG (or to pay directly as requested by NMED and NMAG) to hire expert(s) and/or outside counsel to evaluate, review, and provide comments to the draft Triennial Report subject to a maximum of no greater than \$20,000 per Triennial Report.

7.A. NMED, NMAG and LES agree that LES will provide financial assurance in the minimum initial amount of \$7.15/kgU for the disposition of DUF<sub>6</sub> situated at the NEF from the date when financial assurance is required by the NRC until LES notifies the NRC of any revision pursuant to applicable NRC regulatory requirements and guidance, but no revision shall be submitted for review sooner than the first Triennial Report.

7.B. In addition to the DUF<sub>6</sub> disposition cost estimate and contingency factor submitted by LES in Section 10.3 of its Fourth Revision to the Safety Analysis Report in its License Application (April 2005), NMED, NMAG and LES agree that to address and resolve NMAG's financial assurance concerns, an additional \$1.30/kgU will be included in the initial amount of financial assurance for the disposition of DUF<sub>6</sub> situated at the NEF, bringing the minimum initial amount to a total of \$7.15/kgU as provided in Paragraph 7.A of this Settlement Agreement. NMED, NMAG and LES further acknowledge that LES maintains that the additional \$1.30/kgU to address NMAG's financial assurance concerns is over and above the amount that LES maintains is required by applicable NRC regulatory requirements and guidance.

7.C. NMED, NMAG and LES further agree that in the first, or subsequent, Triennial Report(s), LES may not submit for NRC review the elimination of the \$1.30/kgU amount provided for in Paragraph 7.B of this Settlement Agreement unless LES has in place a contractual arrangement for the out-of-state processing and/or removal of DUF<sub>6</sub> situated onsite at the NEF. Nothing herein shall preclude NMED or NMAG, in accordance with the provisions in Paragraph 6 of this Settlement Agreement, from advocating at the first, or subsequent, Triennial Report(s), any issues with respect to financial assurance, including, but not limited to, the \$1.30/kgU provided for in Paragraph 7.B of this Settlement Agreement.

8. NMED, NMAG and LES agree that LES shall provide a yearly report to the Attorney General of the State of New Mexico and to the Secretary of the New Mexico Environment Department, on or before January 15<sup>th</sup> of each year that the NEF is producing DUF<sub>6</sub>, that identifies the number of DUF<sub>6</sub> cylinders stored on the storage pad at the NEF as of the end of the preceding year, the number of DUF<sub>6</sub> cylinders anticipated to be filled during the next year, and the lengths of time all the DUF<sub>6</sub> cylinders have been stored onsite. In addition, NMED, NMAG and LES agree that in each such yearly report LES shall include any findings resulting from the cylinder management program (as required in LES' Environmental Report at Section 4.13.3.1.1) for the preceding year.

9. NMED, NMAG and LES agree that LES shall provide NMED and the NMAG the same access to documents and materials relating to LES' radiation protection program that is required to be provided to the NRC.

10. NMED, NMAG and LES agree that LES shall support and shall not object to NMED accompanying NRC staff on any of its inspections of the NEF radiation program and conducting inspections as permitted by any agreements between NMED and NRC that are executed in accordance with applicable NRC policy and guidance. In this regard, LES shall allow NMED staff the same access to its facilities, documents, materials and personnel to which NRC is entitled. NMED shall execute any confidentiality agreement necessary to participate in such inspections and shall comply with all appropriate NEF rules (e.g., safety, security) and any applicable NRC requirements when participating in such inspections.

11. NMED, NMAG and LES agree that the NEF shall comply with all safeguards requirements of the International Atomic Energy Agency ("IAEA") as imposed by the NRC to ensure proliferation protection.

12. NMED, NMAG and LES agree that LES shall provide to the New Mexico Department of Public Safety the Physical Security Plan for the NEF subject to the execution by the appropriate officials, employees or representatives of the New Mexico Department of Public Safety of all required non-disclosure agreements.

13. NMED, NMAG and LES agree that all NMED and NMAG matters presently pending in the NRC Proceeding shall be deemed to be withdrawn upon the Board's or NRC's approval of this Settlement Agreement in its entirety. NMED and NMAG reserve the right to reappear before the Board or NRC during the pendency of the NRC Proceeding upon the discovery of significant information that was not known by NMED or NMAG at the time they executed this Settlement Agreement and, in the event the NMED or NMAG make such an appearance, they shall comply with any applicable NRC rules regarding late-filed contentions. Prior to reappearing before the Board or NRC, NMED and NMAG shall make good faith efforts to resolve the issues or claims with LES. Nothing herein shall be construed to prohibit NMED or NMAG from filing a request that the NRC initiate a proceeding to enforce the conditions of the license issued as a result of this Settlement Agreement. Finally, NMED and NMAG agree that neither NMED nor NMAG will judicially challenge or seek to join a judicial challenge of a decision by the Board or NRC in this NRC Proceeding unless such challenge is based solely on a matter which was the subject of a reappearance by NMED and/or NMAG as provided for herein.

14. This Settlement Agreement does not resolve matters not raised by NMED or NMAG in the NRC Proceeding or matters outside the NRC Proceeding. NMED and NMAG reserve the right to enforce and seek relief under any other applicable laws and regulations. Moreover, nothing in this Settlement Agreement waives or releases LES from its obligation to comply with all applicable laws and regulations.

15. All parties hereto agree to exercise due diligence in the performance of their various responsibilities under this Settlement Agreement and to cooperate with each other in carrying out its intent.

16. This Settlement Agreement supersedes all prior representations, negotiations, and understandings of the parties hereto, whether oral or written, and constitutes the entire agreement between the parties with respect to the matter hereof. It is expressly understood, however, that nothing in this Settlement Agreement shall prevent or excuse LES from fulfilling any legal or statutory requirement of the NRC, or its successors, whether contained in the license for the NEF when issued or other requirement or regulation of the NRC, its successors, or representatives, whether oral or in writing.

17. This Settlement Agreement shall not be effective, final and binding on the parties hereto unless this Settlement Agreement is approved in its entirety by the Board or the NRC. If the Board or the NRC does not approve this Settlement Agreement in its entirety, then this Settlement Agreement shall not take effect and shall be deemed null and void. The parties agree that if the Board or the NRC does not approve this Settlement Agreement, they will negotiate in good faith to resolve any outstanding issues necessary to obtain its approval by the Board or the NRC.

18. In the event this Settlement Agreement becomes effective in accordance with the provisions herein, LES, NMED and NMAG agree that the license conditions in this Settlement Agreement are fully enforceable by the NRC. All parties agree not to contest the NRC's jurisdiction to approve and enforce the license conditions in this Settlement Agreement. If any provision of this Settlement Agreement is found by the NRC or any court of competent jurisdiction to be outside the NRC's jurisdiction, and thus unenforceable by the NRC, or should

the NRC refuse or otherwise decline to enforce any provision of this Settlement Agreement, the parties agree that an action to enforce such provision may be filed in the United States District Court for the District of New Mexico (if subject matter jurisdiction exists) or the First Judicial District Court, Santa Fe County, of New Mexico and agree not to object to the jurisdiction of those courts to hear and determine such action. The parties further agree to waive any objection to the standing of any party to this Settlement Agreement to bring an action to enforce the license conditions in this Settlement Agreement before the NRC or, if outside the NRC's jurisdiction, the United States District Court or the First Judicial District Court. Finally, the parties agree to proceed before the NRC prior to bringing an action in court, and further to proceed in United States District Court (if subject matter jurisdiction exists) before proceeding in the First Judicial District Court.

19. In the event of a breach of any provision of Paragraphs 2, 3, 4, 5 or 7 herein, NMED and NMAG shall be entitled to liquidated damages from LES in the amount of \$5,000 per day per breach. This amount is not a penalty but is a reasonable estimate of the damages that would result from any breach. Notwithstanding the foregoing, NMED, NMAG and LES agree that LES shall be entitled to attempt to cure the breach of any provision of Paragraphs 2, 3, 4, 5 or 7 herein within 60 days of receiving written notice from NMED or NMAG of such breach.

20. In the event this Settlement Agreement becomes effective in accordance with the terms herein, the parties agree if any term, section, provision or portion of this Settlement Agreement is subsequently held invalid or unconstitutional by any court of competent jurisdiction, the remaining terms, sections, provisions and portions of this Settlement Agreement shall remain in full force and effect.

21. In the event this Settlement Agreement becomes binding upon the parties in accordance with the terms herein, the Settlement Agreement shall be binding upon the parties' successors, assigns, representatives, employees, agents, partners, subsidiaries, and affiliates.

22. NMED, NMAG and LES expressly waive the right to challenge, contest the validity of, or seek judicial review of any order entered as a result of this Settlement Agreement so long as such order is fully consistent with each provision of this Settlement Agreement.

23. When approved by the Board, the order entered as a result of this Settlement Agreement has the same force and effect as an order made after full hearing.

IN WITNESS WHEREOF LES, NMED and NMAG have caused this Settlement Agreement to be executed by their duly authorized representatives on this 27 day of ~~June~~<sup>July</sup> 2005.



Patricia A. Madrid  
Attorney General of New Mexico



Ron Curry  
Secretary, New Mexico Environment Department



E. James Ferland  
President and Chief Executive Officer  
Louisiana Energy Services, L.P.

DC:424436.1

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
LOUISIANA ENERGY SERVICES, L.P. ) Docket No. 70-3103-ML  
 )  
 )  
(National Enrichment Facility) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (APPROVING SETTLEMENT AGREEMENT AND ACCEPTING WITHDRAWAL OF PARTIES) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
G. Paul Boliwerk, III, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Paul B. Abramson  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Charles N. Kelber  
Atomic Safety and Licensing Board Panel  
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Docket No. 70-3103-ML  
LB MEMORANDUM AND ORDER (APPROVING  
SETTLEMENT AGREEMENT AND ACCEPTING  
WITHDRAWAL OF PARTIES)

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Dated at Rockville, Maryland,  
this 12<sup>th</sup> day of August 2005

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