

August 22, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

August 23, 2005 (8:05am)

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 ON BEHALF OF LOUISIANA ENERGY SERVICES, L.P.
IN RESPONSE TO INTERVENOR NOTICE CONTESTING DESIGNATION
OF CERTAIN APPLICANT DOCUMENTS AS PROTECTED MATERIALS**

I. INTRODUCTION

On August 12, 2005, counsel for intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") sent via electronic mail a letter to counsel for Louisiana Energy Services, L.P. ("LES"). Counsel for NIRS/PC stated that the letter constitutes notice, made pursuant to paragraph N of the Licensing Board's protective order of May 21, 2004,¹ that NIRS/PC "contest the designation" of certain documents previously disclosed by LES as "protected materials" under the Board's May 2004 Protective Order. Pursuant to paragraph N of that order, LES herein responds to the NIRS/PC notice. As demonstrated below, and in the supporting affidavits, the documents at issue should continue to be treated as "protected materials" and withheld from public disclosure.

II. BACKGROUND

A. The May 2004 Protective Order

By motion dated May 19, 2004, in which the other parties to this proceeding concurred, LES requested Board approval of a proposed protective order to govern the use and

¹ See Memorandum and Order (Protective Order Governing Disclosure of Protected Materials) (May 21, 2004) (unpublished) ("May 2004 Protective Order").

control of proprietary or other protected materials in the proceeding. The Board granted the LES motion on May 21, 2004 and issued the aforementioned protective order. The order states that a party may designate as protected any information: (1) that is of a type customarily held in confidence by its owner; (2) for which there is a rational basis for having customarily held it in confidence; (3) that has, in fact, been kept in confidence; and (4) that is not found in public sources. May 2004 Protective Order at 1, ¶B.

Paragraph N of the order addresses disputes regarding the status of materials designated as protected. *See* May 2004 Protective Order at 7. Absent resolution of the dispute by the involved parties, the party contesting the designation of certain materials as protected must notify the party that provided those materials and specify, in writing, the materials whose designation is contested. The protective order automatically ceases to apply to the contested materials 10 days after the notification is made, unless the designator, within said 10-day period, files a motion and supporting affidavits with the Licensing Board, thereby demonstrating that the materials warrant continued protection from public disclosure. If the Licensing Board finds that the materials at issue are not entitled to such protection, then the procedures of paragraph U of the protective order apply.²

B. The LES Documents at Issue

In their notice of August 12, 2005, NIRS/PC state that they are contesting the “protected material” designation of the following LES documents, as identified by their designated bates numbers: (1) LES-PRO-00750 to 00754; LES-PRO-00755 to 00759; (3) LES-PRO-00777 to 00783; and (4) LES-PRO-00662. The first two documents correspond

² Paragraph U provides that, in the event of a Board ruling that is adverse to the designator, the materials at issue shall remain subject to the protection of the protective order for 10 days from the date of issuance of the Board’s decision, and for an additional 10 days if the party seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission. *See* May 2004 Protective Order at 8.

respectively to a January 21, 2005 Memorandum of Understanding ("MOU") between LES and Areva Enterprises, Inc., and a January 14, 2005 Memorandum of Agreement ("MOA") between LES and Waste Control Specialists, LLC ("WCS"). The third "document" identified by NIRS/PC is actually two documents. The first (LES-PRO-00778) is a printout of a spreadsheet used by LES to prepare its cost estimate for near-surface disposal of depleted U₃O₈ at a commercial low-level radioactive waste disposal facility.³ The second (LES-PRO-00779 to 00883) is a duplicate copy of the aforementioned MOA between LES and WCS.⁴ Finally, the fourth document (LES-PRO-00662) identified by NIRS/PC is a nearly identical version of the disposal cost spreadsheet printout (LES-PRO-00778) mentioned above.

By letter dated August 18, 2005, counsel for LES advised NIRS/PC that LES continues to believe that the documents identified by NIRS/PC "are appropriately designated as proprietary documents," and set forth various reasons for that conclusion. Counsel for LES further advised NIRS/PC that, absent the withdrawal of the August 12 notice, LES would file a motion with the Licensing Board by August 22, 2005 supporting the protected status of the contested documents. NIRS/PC have not withdrawn their notice. Accordingly, LES demonstrates in this motion that the contested documents are appropriately considered "protected materials."

³ LES-PRO-00777 is simply a coversheet for the two proprietary documents found at LES-PRO-00778 to 00783, and states only as follows: "Attachment 3 – Proprietary Information Related to Depleted U Disposal Costs."

⁴ In other words, LES-PRO-00755 to 00759 and LES-PRO-00779 to 00783 are the *same* document, *i.e.*, the MOA between LES and WCS. LES provided the first copy to NIRS/PC as a freestanding document on January 31, 2005. LES provided the second copy to NIRS/PC on April 20, 2005, when LES disclosed to NIRS/PC a proprietary April 8, 2005 LES submittal (NEF #05-017) to the NRC that included the MOA as an attachment.

III. DISCUSSION

A. The LES-AREVA MOU (LES-PRO-00750 to 00754)

In their August 12 letter, NIRS/PC argue that the AREVA MOU should be publicly disclosed because “the existence of the [MOU] with AREVA has been publicized,” and “[t]he MOU itself contains very little substantive information that has not already been disclosed.” To be sure, LES and AREVA announced the existence of the MOU in a February 3, 2005 joint press release.⁵ That, however, is the only point on which LES agrees with NIRS/PC.

First, disclosure of the existence of the MOU does not, in and of itself, warrant disclosure of the entire MOU or its specific contents. Surely, if LES and AREVA had envisioned such a scenario as being even remotely possible, they would not have publicly disclosed the existence of the MOU in the first place. Their decision to issue a press release is telling. It reflects a conscious decision by LES and AREVA *not* to make the MOU itself publicly available, and to offer a public explanation of their relationship.

Second, as reflected in the attached affidavits of Mr. Ferland and Mr. McMurphy (attached hereto as Exhibits 1 and 2, respectively),⁶ the MOU sets forth a specific framework for future confidential commercial negotiations between LES and AREVA. In so doing, the MOU presents a timeline for expected activities and operations related to the contemplated deconversion facility, and refers to other business plans and activities by the AREVA Group and LES that are of a confidential nature. The parties never intended such information – which they do view as “substantive” – to be made publicly available. Nor is such information available in public sources. This fact is reinforced by the confidentiality terms of the MOU itself, and by the

⁵ Indeed, the press release was admitted into evidence as LES Exhibit 80 during the February 2005 evidentiary hearing on NIRS/PC Contention EC-4. *See* ADAMS Accession No. ML051040280.

⁶ Mr. Ferland is the President and Chief Executive Officer of LES. Mr. McMurphy is the Vice Chairman and President of AREVA Enterprises, Inc.

parties' incorporation by reference in the MOU of a confidentiality agreement previously executed by LES and AREVA affiliates. As Mr. Ferland and Mr. McMurphy explain, the disclosure of the MOU and its specific contents likely would harm the commercial interests of both entities.

Accordingly, the LES-AREVA MOU should continue to be treated by the parties as "protected material" under the Board's May 2004 Protective Order. Specifically, it contains and constitutes information (1) that is of a type customarily held in confidence by its owner; (2) for which there is a rational basis for having customarily held it in confidence; (3) that has, in fact, been kept in confidence; and (4) that is not found in public sources.

B. The LES-WCS MOA (LES-PRO-00750 to 00754 and LES-PRO-00779 to 00783)

The January 14, 2005 MOA between LES and WCS likewise warrants continued protection from public disclosure under the Board's May 2004 Protective Order. First and foremost, when LES provided a copy of the MOA to the NRC Staff as part of a submittal containing clarifying information, LES requested that the MOA be withheld from public disclosure pursuant to 10 C.F.R. § 2.390.⁷ In support of that request, LES submitted an affidavit from George E. Dials, the President and Chief Operating Officer of WCS, executed on behalf of WCS (attached hereto as Exhibit 3). Mr. Dials' affidavit states that the MOA "sets forth detailed cost information regarding the disposal of depleted uranium," the disclosure of which would result in WCS's competitors gaining "valuable insight into otherwise unavailable details of the cost of disposing depleted uranium and related disposal alternatives." The affidavit further states

⁷ See Letter from R. Krich, LES, to Director of Office of Nuclear Material Safety and Safeguards, NRC, NEF #05-017, "Clarifying Information Related to Depleted UF₆ Disposition Costs and Application for Withholding Information from Public Disclosure" (Apr. 8, 2005) (ADAMS Accession No. ML051230466) (nonproprietary version); Letter from R. Krich, LES, to Director of Office of Nuclear Material Safety and Safeguards, NRC, NEF #05-020, "Submittal of Affidavit in Support of Application for Withholding Information from Public Disclosure" (Apr. 27, 2005) (ADAMS Accession No. ML051250376).

that, "by knowing the specific cost and disposal alternatives assessed by WCS for the disposal of depleted uranium, competitors would obtain an unfair commercial advantage which would significantly affect WCS's ability to compete." As set forth in the second affidavit of LES President and Chief Executive Officer James Ferland attached hereto (Exhibit 4), LES also considers the MOA to contain information proprietary to LES and to warrant treatment as protected material on that ground as well.

Significantly, on May 10, 2005, the NRC approved LES's request to withhold the MOA, among other documents, from public disclosure.⁸ Specifically, the NRC determined as follows: "We have reviewed the justifications you provided in accordance with the requirements of 10 CFR 2.390 and, on the basis of your statements, have determined that the submitted information sought to be withheld contains proprietary commercial information and should be withheld from public disclosure."

In seeking public disclosure of this MOA, NIRS/PC present two arguments in their August 12 notice. First, they assert that "the existence of the [MOA] between LES and WCS has been disclosed by LES itself in a non-proprietary document filed in this case." Specifically, NIRS/PC note that LES referred to and quoted from the MOA in its June 3, 2005 response to several May 2005 NIRS/PC late-filing motions. This fact, however, does not support public disclosure of the MOA. As the foregoing discussion demonstrates, the *existence* of the MOA had been publicly disclosed by LES and WCS in April 2005 (*i.e.*, before June 3, 2005) when those parties sought to have the MOA itself withheld from public disclosure pursuant to 10 C.F.R. § 2.390. Moreover, the sentence quoted by LES in its pleading of June 3 simply reflects the mutual intent of LES and WCS to pursue continuing commercial discussions for the purpose

⁸ See Letter from R. Pierson, Director of Division of Fuel Cycle Safety and Safeguards, NMSS, NRC, "Approval of [LES] Request for Withholding Information from Public Disclosure" (May 10, 2005) (ADAMS Accession No. ML051220149).

of entering into a possible contract for the future disposal of depleted U_3O_8 at the WCS site. The quoted language does not in any way divulge the “specific cost and disposal alternatives” information referred to by Mr. Dials in his April 18, 2005 affidavit, and also does not divulge any specific information contained in the MOA itself.

Second, NIRS/PC assert that “the WCS pricing information contained in the WCS MOA and other documents as used by LES in its calculations (cost per cubic foot) can be approximately determined from publicly available sources.” NIRS/PC refer, in particular, to the \$1.14/kgU disposal cost reflected in the NRC Staff’s Safety Evaluation Report, and certain depleted U_3O_8 density information disclosed by LES in a March 29 submittal to the NRC Staff.⁹ However, Intervenor’s “reverse” calculation does not justify public disclosure of the MOA or even the specific cost information provided by WCS.

In performing their “approximate” determination based on publicly available information, NIRS/PC had access to the proprietary WCS cost information at issue, thereby allowing NIRS/PC to “conclude” that their determination is supposedly “correct.” Further, the cost information provided by WCS was not provided in the form of a single discrete value or disposal price, but rather, was provided in the form of a cost range. Accordingly, Intervenor’s “approximate” determination does not warrant disclosure of the specific cost information furnished by WCS. Finally, the fact that LES and the NRC Staff have generally described the cost figure attributed to WCS to be comparable to a low-level radioactive waste disposal cost figure previously provided by Envirocare does not justify disclosure of the specific cost information provided in the MOA.

⁹ See NUREG-1827, *Safety Evaluation Report for the National Enrichment Facility in Lea County, New Mexico* (June 2005) (“SER”), at 10-12; See Enclosure to Letter from R. Krich, LES, to Director of Office of Nuclear Material Safety and Safeguards, NRC, NEF #05-016, “Clarifying Information Related to Depleted UF_6 Disposition Costs and Request for License Condition” (Mar. 29 2005) (ADAMS Accession No. ML050960429).

C. The Disposal Cost Spreadsheet Printouts (LES-PRO-00662 and LES-PRO-00778)

The remaining two documents of which NIRS/PC seek public disclosure are two slightly different printouts of a spreadsheet used by LES in estimating the unit cost of disposal of depleted U_3O_8 in a near-surface disposal facility. LES submitted one of those printouts (LES-PRO-00778) to the NRC Staff as part of NEF #05-017, a clarifying information package cited above (*see n. 7, supra*). LES specifically requested that the spreadsheet printout, like the MOA with WCS, be withheld from public disclosure under 10 C.F.R. § 2.390. In support of that request, LES provided an affidavit from Rod Krich, LES Vice President – Licensing, Safety, and Nuclear Engineering (attached hereto as Exhibit 5). As with the MOA, the NRC Staff approved LES's request for nondisclosure in its letter of May 10, 2005 (*see n. 8, supra*). Notably, while LES did not submit LES-PRO-00662 to the NRC Staff for docketing (because LES is not relying on LES-PRO-00662 to support its application), that document differs from LES-PRO-00778 only in one material respect. Namely, it uses a different input variable for "disposal cost per ft^3 ," which, in turn, results in a different output estimate for disposal cost per kgU.

NIRS/PC argue that the data in the spreadsheets is publicly available information. Insofar as certain information in the spreadsheet printouts is derived from public sources and has been previously disclosed by LES (*e.g.*, mass conversion factors for MT of DUF_6 , U, and U_3O_8 ; grout density; volume of a 55-gallon drum) (*see* LES-04673), LES would not oppose disclosure of that particular public information standing alone. However, the spreadsheets do, in fact, also contain certain proprietary information, including a disposal cost figure and U_3O_8 density information provided by specific commercial vendors, as well as the results of applying that proprietary information. The proprietary information in the spreadsheets was never intended to be disclosed, nor has it been disclosed, by LES. LES is providing today under separate cover redacted versions of the two spreadsheets at issue, which omit the information that LES (and the Staff) consider to be proprietary, to the other parties and the Board. However, the redacted

proprietary information warrants continued protection under the Board's May 2004 Protective Order.

D. Lack of Timeliness of Intervenor's Request for Public Disclosure of Documents

The extremely dilatory nature of the Intervenor's August 12 request for disclosure of the aforementioned LES documents deserves mention here. LES disclosed the MOU with AREVA to NIRS/PC in January 2005, at which time it was identified as a proprietary document. In February 2005, LES informed NIRS/PC that the AREVA MOU would be used as an exhibit with regard to Contention NIRS/PC EC-4 (*see* proposed LES Exhibit 79). Indeed, the Board acknowledged the proprietary nature of this document in the context of its discussion with the parties in the February 2005 hearing regarding the treatment of the anhydrous hydrofluoric acid (AHF) issue. At no point during the February proceeding, however, did NIRS/PC raise any objection to the treatment of the AREVA MOU as proprietary.

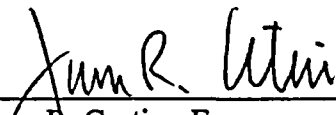
Likewise, LES disclosed the WCS MOU in January 2005 and the spreadsheets applying the proprietary information from the WCS MOU in April 2005. Until its notice of August 12th, at no time did NIRS/PC question the proprietary nature of either the MOU or the spreadsheets.

In fact, in each of the instances in which NIRS/PC are now asking LES to release material previously designated as proprietary, the documents were identified as proprietary and disclosed as such many months ago, ranging from November 1, 2004 (LES-PRO-00662), to January 31, 2005 (LES-PRO-750-754 and LES-PRO-777-783) to April 20, 2005 (LES-PRO-777-783). Intervenor's August 12 notice fails to explain why NIRS/PC have been grossly untimely in raising concerns regarding the proprietary nature of the documents that they now request be publicly released, rather than raising those concerns at the time that LES initially provided the documents to NIRS/PC. This fact also militates against public disclosure of the documents at issue.

IV. CONCLUSION

For the reasons stated above, with the exception of the information that LES is disclosing today in redacted versions of LES-PRO-00662 and LES-PRO-00778 (provided under separate cover), the documents contested by NIRS/PC in their August 12 notice should continue to be withheld from public disclosure as "protected materials" under the Board's May 2004 Protective Order. The information for which LES seeks such protection clearly meets the criteria set forth in paragraph B of the Board's May 2004 Protective Order.

Respectfully submitted,



James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
Amy C. Roma, Esq.
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, DC 20006-3817
(202) 282-5000

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 22nd day of August 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 "MOTION ON BEHALF OF LOUISIANA ENERGY SERVICES, L.P. IN RESPONSE TO INTERVENOR NOTICE CONTESTING DESIGNATION OF CERTAIN APPLICANT DOCUMENTS AS PROTECTED MATERIALS" in the captioned proceeding have been served on the following by e-mail service, designated by **, on August 22, 2005 as shown below. Additional service has been made by deposit in the United States mail, first class, this 22nd day of August 2005.

Chairman Nils J. Diaz
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

Commissioner Gregory B. Jaczko
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Commissioner Peter B. Lyons
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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.**
Kathleen A. Kannler, Esq.**
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: kak1@nrc.gov

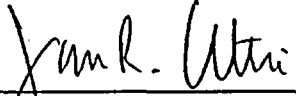
Administrative Judge
Paul B. Abramson**
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
e-mail: pba@nrc.gov

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

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

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.

Exhibit 1

Affidavit of E. James Ferland

E. James Ferland, being duly sworn, hereby deposes and states as follows:

1. My name is E. James Ferland. I am the President and Chief Executive Officer of Louisiana Energy Services, L.P. ("LES"). My principal place of business is located in Albuquerque, New Mexico.
2. I have been authorized by LES to execute this affidavit in support of LES's request to withhold the "Memorandum of Understanding Between Louisiana Energy Services, L.P. and AREVA Enterprises, Inc.," dated January 21, 2005 ("MOU") from public disclosure in accordance with the Nuclear Regulatory Commission Atomic Safety and Licensing Board's Memorandum and Order (Protective Order Governing Disclosure of Protected Materials), dated May 21, 2004.
3. The MOU is proprietary and confidential to LES and AREVA because it contains commercial information that is not publicly available. Specifically, the MOU sets forth a specific framework for future confidential commercial discussions between LES and AREVA regarding the possible construction of a deconversion facility deploying AREVA Group technology nearby LES's proposed National Enrichment Facility. The MOU sets forth, among other things, a timeline for expected activities and operations related to the contemplated deconversion facility. The MOU also makes reference to other LES business plans and activities that are of a confidential nature.
4. The MOU was drafted and executed by LES and AREVA with the explicit understanding of the parties that the document itself and the information contained within it would be treated as proprietary and confidential. Indeed, the MOU and any discussions held pursuant to it are subject to a prior Confidentiality Agreement between LES and certain AREVA Group affiliates executed on February 17, 2004.
5. LES and AREVA have consistently maintained the position that the MOU and the information contained therein be withheld from public disclosure, and, in fact, LES and AREVA have refrained from publicly disclosing the document or its contents. For example, while LES and AREVA disclosed the existence of the MOU in a press release dated February 3, 2005, they specifically and deliberately refrained from publicly disclosing the MOU itself and the particularized representations made therein. To the best of my knowledge and belief, neither the MOU nor the specific commercial and legal representations contained therein are available in any public source.
6. If the MOU or its contents were publicly disclosed, LES and AREVA could suffer irreparable and incalculable harm. Specifically, potential competitors of LES and AREVA would gain valuable insight into otherwise unavailable business strategies, operational plans, and prospective commercial and legal

arrangements. Furthermore, public disclosure of the specific framework for future commercial negotiations between LES and AREVA – negotiations that could culminate in a contract between those two parties – could undermine the confidentiality, and, hence, the viability of such negotiations. As set forth above, any discussions or negotiations held pursuant to the MOU are intended to be strictly confidential under the terms of the MOU and the aforementioned February 17, 2004 Confidentiality Agreement.

7. LES and AREVA have publicly disclosed information regarding the MOU only to the extent desired through the abovementioned February 3, 2005 press release. However, neither the specific representations in the MOU nor the MOU itself have been publicly released for the reasons set forth above.
8. For the foregoing reasons, the MOU meets the criteria set forth in Paragraph B of the Atomic Safety and Licensing Board's May 21, 2004 Protective Order, and should continue to be protected from public disclosure accordingly. Specifically, the MOU and its contents constitute information (1) that is of a type customarily held in confidence by its owner; (2) for which there is a rational basis for having customarily held it in confidence; (3) that has, in fact, been kept in confidence; and (4) that is not found in public sources.
9. I have read the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.



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

Subscribed and sworn to before me, a New Mexico
Notary Public, this 02 day of August, 2005:

Sandra Langfeld Nunes

My Commission expires:

12/15/06



OFFICIAL SEAL
Sandra Langfeld Nunes
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12/15/06

Exhibit 2

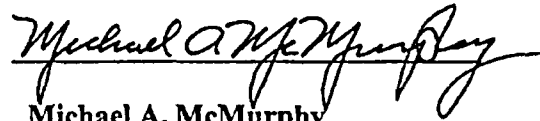
Affidavit of Michael A. McMurphy

Michael A. McMurphy, being duly sworn, hereby deposes and states as follows:

1. My name is Michael A. McMurphy. I am the Vice Chairman & President of AREVA Enterprises, Inc. ("AREVA"), headquartered in Bethesda, Maryland.
2. I have been authorized by AREVA to execute this affidavit in support of AREVA's request to withhold the "Memorandum of Understanding Between Louisiana Energy Services, L.P. and AREVA Enterprises, Inc.," dated January 21, 2005 ("MOU") from public disclosure in accordance with the Nuclear Regulatory Commission Atomic Safety and Licensing Board's Memorandum and Order (Protective Order Governing Disclosure of Protected Materials), dated May 21, 2004.
3. The MOU is proprietary and confidential to AREVA and LES because it contains commercial information that is not publicly available. Specifically, the MOU sets forth a specific framework for future confidential commercial discussions between LES and AREVA regarding the possible construction of a deconversion facility deploying AREVA Group technology nearby LES's proposed National Enrichment Facility. The MOU sets forth, among other things, a timeline for expected activities and operations related to the contemplated deconversion facility. The MOU also makes reference to other AREVA Group business plans and activities that are of a confidential nature.
4. The MOU was drafted and executed by AREVA and LES with the explicit understanding of the parties that the document itself and the information contained within it would be treated as proprietary and confidential. Indeed, the MOU and any discussions held pursuant to it are subject to a prior Confidentiality Agreement between LES and certain AREVA Group affiliates executed on February 17, 2004.
5. AREVA and LES have consistently maintained the position that the MOU and the information contained therein be withheld from public disclosure, and, in fact, AREVA and LES have refrained from publicly disclosing the document or its contents. For example, while AREVA and LES disclosed the existence of the MOU in a press release dated February 3, 2005, they specifically and deliberately refrained from publicly disclosing the MOU itself and the particularized representations made therein. To the best of my knowledge and belief, neither the MOU nor the specific commercial and legal representations contained therein are available in any public source.
6. If the MOU or its contents were publicly disclosed, AREVA and LES could suffer irreparable and incalculable harm. Specifically, potential competitors of AREVA and LES would gain valuable insight into otherwise unavailable business strategies, operational plans, and prospective commercial and legal arrangements. Furthermore, public disclosure of the specific framework for

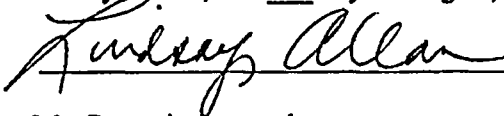
future commercial negotiations between AREVA and LES – negotiations that could culminate in a contract between those two parties – could undermine the confidentiality, and, hence, the viability of such negotiations. As set forth above, any discussions or negotiations held pursuant to the MOU are intended to be strictly confidential under the terms of the MOU and the aforementioned February 17, 2003 Confidentiality Agreement.

7. AREVA and LES have publicly disclosed information regarding the MOU only to the extent desired through the abovementioned February 3, 2005 press release. However, neither the specific representations in the MOU nor the MOU itself have been publicly released for the reasons set forth above.
8. For the foregoing reasons, the MOU meets the criteria set forth in Paragraph B of the Atomic Safety and Licensing Board's May 21, 2004 Protective Order, and should continue to be protected from public disclosure accordingly. Specifically, the MOU and its contents constitute information (1) that is of a type customarily held in confidence by its owner; (2) for which there is a rational basis for having customarily held it in confidence; (3) that has, in fact, been kept in confidence; and (4) that is not found in public sources.
9. I have read the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.



Michael A. McMurphy
Vice Chairman & President
AREVA Enterprises, Inc.

Subscribed and sworn to before me, a Maryland
Notary Public, this 22 day of August, 2005:



My Commission expires:
LINDSAY ALLAN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 27, 2007

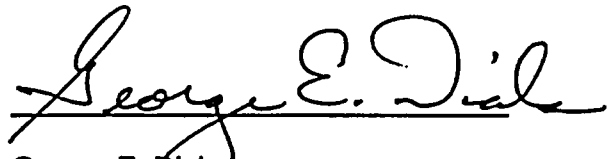
Exhibit 3

Affidavit of George E. Dials

George E. Dials, being duly sworn, hereby deposes and states as follows:

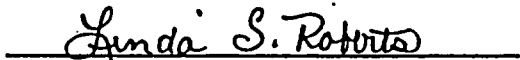
1. My name is George E. Dials. I am the President & COO for Waste Control Specialists (WCS) LLC.
2. I have been authorized by WCS to execute this affidavit in support of Louisiana Energy Service's (LES's) request to withhold the "Memorandum of Agreement between Louisiana Energy Services, LP and Waste Control Specialists LLC" hereinafter referred to as the "Memorandum of Agreement or MOA" from public disclosure in accordance with the Nuclear Regulatory Commission (NRC) regulations appearing at 10 CFR 2.390(a)(4).
3. The MOA is being submitted as a proprietary and confidential document in an attachment to LES letter NEF #05-020 in response an NRC request.
4. The MOA is proprietary and confidential to WCS because it contains commercial information that is not publicly available. Specifically, the MOA sets forth detailed cost information regarding the disposal of depleted uranium.
5. The MOA was developed with the explicit understanding that the document itself and the information contained within it would be treated as proprietary and confidential. WCS has consistently maintained the position that the MOA and the information contained therein be withheld from public disclosure, and in fact WCS has refrained from publicly disclosing the document or its contents. The information sought to be withheld, to the best of my knowledge and belief, is not available in public sources.
6. If the MOA or its contents were publicly disclosed, WCS would suffer irreparable and incalculable harm. Specifically, WCS's competitors would gain valuable insight into otherwise unavailable details of the cost of disposing depleted uranium and related disposal alternatives. By knowing the specific cost and disposal alternatives assessed by WCS for the disposal of depleted uranium, competitors would obtain an unfair commercial advantage which would significantly affect WCS's ability to compete.
7. LES has already provided the non-proprietary cost estimate for the disposal of depleted uranium in other correspondence, e.g., LES letter NEF#05-001 dated January 7, 2005. However, neither the specific details of the MOA nor the MOA itself have been publicly released for the reasons set forth above. Accordingly, withholding the MOA from disclosure will not adversely affect the public. Therefore, the fact that the NRC Staff has requested a copy of the MOA does not warrant public disclosure of the document.

8. Given the inter-related nature of the various portions of the MOA, it is not possible to designate only certain portions of the document as proprietary and confidential. To attempt to redact specific proprietary information would render the remaining material essentially meaningless and of no value to the public. Rather, the entirety of the MOA must be considered proprietary and confidential, and the entire document must be withheld from public disclosure.
9. The MOA is being submitted to the NRC in confidence. The document and the information contained within is of a sort customarily held in confidence by LES and its general and limited partners, and in fact has been held in confidence and not previously publicly released.
10. I have read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information and belief.



George E. Dials
President & COO
Waste Control Specialists LLC

Subscribed and sworn to before me, a Texas
Notary Public, this 18 day of April, 2005:



My Commission expires: 10-17-2008

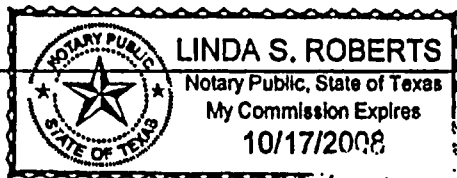


Exhibit 4

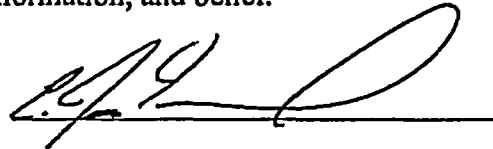
Affidavit of E. James Ferland

E. James Ferland, being duly sworn, hereby deposes and states as follows:

- 1. My name is E. James Ferland. I am the President and Chief Executive Officer of Louisiana Energy Services, L.P. ("LES"). My principal place of business is located in Albuquerque, New Mexico.**
- 2. I am authorized by LES to execute this affidavit in support of LES's request to withhold the "Memorandum of Agreement Between Louisiana Energy Services, L.P. and Waste Control Specialists, LLC," dated January 14, 2005 ("MOA") from public disclosure in accordance with the Nuclear Regulatory Commission ("NRC") Atomic Safety and Licensing Board's Memorandum and Order (Protective Order Governing Disclosure of Protected Materials), dated May 21, 2004.**
- 3. The MOA is proprietary and confidential to LES and Waste Control Specialists, LLC ("WCS") because it contains commercial information that is not publicly available. The NRC has approved, by letter dated May 10, 2005, LES's prior request that the MOA be withheld from public disclosure under 10 C.F.R. § 2.390, based on an April 18, 2005 affidavit executed by Mr. George E. Dials, President and Chief Operating Officer of WCS.**
- 4. LES considers the MOA to be proprietary and confidential for reasons apart from, and in addition to, those set forth in Mr. Dials' April 18, 2005 affidavit on behalf of WCS. Specifically, the MOA provides a specific framework for future confidential commercial discussions between LES and WCS regarding the possible disposal of depleted U₃O₈ at the WCS Facility. The MOA contains, among other things, confidential commercial information concerning potential terms of a possible contract between LES and WCS.**
- 5. The MOA was drafted and executed by LES and WCS with the explicit understanding of the parties that the document itself and the information contained within it would be treated as proprietary and confidential.**
- 6. LES and WCS have consistently maintained the position that the MOA and the information contained therein be withheld from public disclosure, and, in fact, LES and WCS have refrained from publicly disclosing the document or its proprietary contents. To the best of my knowledge and belief, neither the MOA nor the specific confidential commercial and legal representations contained therein are available in any public source.**
- 7. If the MOA or its contents were publicly disclosed, LES and WCS could suffer irreparable and incalculable harm. Specifically, potential competitors of LES and WCS would gain valuable insight into otherwise unavailable business strategies, operational plans, and prospective commercial and legal arrangements. Furthermore, public disclosure of the specific framework for**

possible future commercial negotiations between LES and WCS – negotiations that could culminate in a contract between those two parties – could undermine the confidentiality, and, hence, the viability of such negotiations. As set forth above, any discussions or negotiations held pursuant to the MOA are intended to be strictly confidential under the terms of the MOA.

8. For the foregoing reasons, the MOA meets the criteria set forth in Paragraph B of the Atomic Safety and Licensing Board's May 21, 2004 Protective Order, and should continue to be protected from public disclosure accordingly. Specifically, the MOA and its contents constitute information (1) that is of a type customarily held in confidence by its owner; (2) for which there is a rational basis for having customarily held it in confidence; (3) that has, in fact, been kept in confidence; and (4) that is not found in public sources.
9. I have read the foregoing affidavit and the matters stated therein are true and correct to the best of my knowledge, information, and belief.



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

Subscribed and sworn to before me, a New Mexico
Notary Public, this 22 day of August, 2005:

Sandra Langfeld Nunes

My Commission expires:

12-5-06



OFFICIAL SEAL
Sandra Langfeld Nunes
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12/5/06

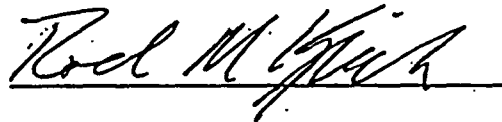
Exhibit 5

ENCLOSURE
Affidavit of Rod M. Krich

Rod M. Krich, being duly sworn, hereby deposes and states as follows:

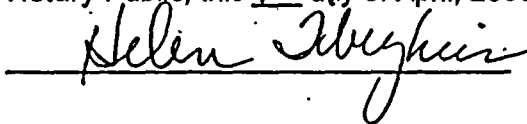
1. My name is Rod M. Krich. I am the Vice President, Licensing, Safety, and Nuclear Engineering for Louisiana Energy Services (LES), L.P.
2. I have been authorized by LES to execute this affidavit in support of LES's request to withhold the Estimated Costs for Deconversion of DUF₆ Using a Private Facility and the spreadsheet for estimating disposal costs, hereinafter referred to as the "Cost Estimates," from public disclosure in accordance with the Nuclear Regulatory Commission (NRC) regulations appearing at 10 CFR 2.390(a)(4).
3. The Cost Estimates are being submitted as proprietary and confidential documents in attachments to LES letter NEF #05-017 in response to an NRC request for clarifying information during a March 17, 2005 conference call.
4. The Cost Estimates are proprietary and confidential to LES because they contain commercial and financial information that is not publicly available. Specifically, the Cost Estimates set forth detailed cost information based on confidential information provided by other entities.
5. The Cost Estimates were developed with the explicit understanding that the document itself and the information contained within it would be treated as proprietary and confidential. LES has consistently maintained the position that the Cost Estimates and the information contained therein be withheld from public disclosure, and in fact LES has refrained from publicly disclosing the document or its contents. The information sought to be withheld, to the best of my knowledge and belief, is not available in public sources.
6. If the Cost Estimates or its contents were publicly disclosed, LES and the entities providing the input shown in the estimates would suffer irreparable and incalculable harm. Specifically, LES's competitors would gain valuable insight into otherwise unavailable details of costs estimated to be applicable to LES. By knowing the details associated with the Cost Estimate for the deconversion and disposal of depleted uranium, LES's competitors could obtain an unfair commercial advantage which would significantly affect LES's ability to compete.
7. LES has already provided the non-proprietary summary cost estimates in other correspondence to the NRC, e.g., letter NEF#05-001, dated January 7, 2005. However, neither the specific details of the Cost Estimates nor the Cost Estimates themselves have been publicly released for the reasons set forth above. Accordingly, withholding the Cost Estimates from disclosure will not adversely affect the public. Therefore, the fact that the NRC Staff has requested copies of the Cost Estimates does not warrant public disclosure of the document.

8. Given the inter-related nature of the various portions of the Cost Estimates, it is not possible to designate only certain portions of the document as proprietary and confidential. To attempt to redact specific proprietary information would render the remaining material essentially meaningless and of no value to the public. Rather, the entirety of the Cost Estimates must be considered proprietary and confidential, and the entire documents must be withheld from public disclosure.
9. The Cost Estimates are being submitted to the NRC in confidence. The documents and the information contained within is of a sort customarily held in confidence by LES and its general and limited partners, and in fact has been held in confidence and not previously publicly released.
10. I have read the foregoing affidavit and the matters stated therein are true and correct to the best of his knowledge, information and belief.



Rod M. Krich
Vice President, Licensing, Safety,
and Nuclear Engineering
Louisiana Energy Services, L.P.

Subscribed and sworn to before me, an Illinois
Notary Public, this 7th day of April, 2005:



My Commission expires:

June 26, 2007

