

October 18, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD October 18, 2005 (1:26pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)	
)	Docket No. 70-3103-ML
Louisiana Energy Services, L.P.)	
)	ASLBP No. 04-826-01-ML
(National Enrichment Facility))	

APPLICANT'S RESPONSE TO MOTION ON BEHALF OF INTERVENORS NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN ("NIRS/PC") FOR EXTENSION OF TIME TO COMPLY WITH ORDER DATED OCTOBER 17, 2005

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.323, Louisiana Energy Services, L.P. ("LES") hereby responds to the motion for extension of time submitted by intervenors Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") on October 18, 2005, and to the Nuclear Regulatory Commission ("NRC") Staff's October 18, 2005 response thereto. In short, LES opposes the motion because it is untimely, without good cause, and prejudicial to LES and the Staff. LES requests that the motion be denied for the reasons discussed by the NRC Staff and for the additional reasons set forth below.

II DISCUSSION

In their October 18, 2005 motion, which intervenors filed at approximately 1:30 p.m. Eastern Time today, NIRS/PC seek an extension of time for a deadline that had already passed. Specifically, NIRS/PC were obligated to comply with the Board's October 13, 2005 Order¹ on or before noon Eastern Time, on Tuesday, October 18, 2004. In this regard, their motion for an extension of time is untimely and should be denied on that ground alone.

¹ Memorandum and Order (Regarding Motions to Exclude Certain NIRS/PC Exhibits) (Oct. 13, 2005) ("October 13 Order").

Notwithstanding the lack of timeliness, NIRS/PC claim that their motion was prompted by the Board's October 17 Order,² which NIRS/PC claim "creates some confusion as to the format of the testimony that NIRS/PC should submit." To the contrary, the Board's October 17 Order merely clarifies the administrative requirements imposed by the Board in its October 13 Order. As the NRC Staff correctly notes, the October 17 Order does not impose any new burdens on the parties. Indeed, the intent of the October 13 Order was very clear: the parties were to revise their prefiled direct and rebuttal testimony to ensure that, where exhibits exceed five pages in length, their testimony refers to "the specific pages or other distinct portion of [those] exhibit[s] that directly support the specific testimony." October 13 Order at 3 (emphasis added).

Significantly, the Board emphasized that the parties are not permitted to "incorporate massive documents by reference," or to "include evidence on subject matters previously excluded by this Board," except to the limited extent such references "provide context for the specifically-referenced, relevant portions" of exhibits. *Id.* (citations omitted). In its October 17, 2005 Order, the Board simply amplified upon this requirement, emphasizing that "incorporation by reference of a document or documents as purported testimony or as evidentiary exhibits, including the incorporation by reference of documents cited in another document, is not an acceptable practice." October 17 Order at 1. As the Board indicated in its Order, it provided a similar instruction to the parties in connection with the February 2005 hearings. *See id.* n.2. NIRS/PC plainly were on notice of this clear and commonsensical requirement.

In requesting an extension of time, NIRS/PC propound a convoluted and meritless argument. Specifically, NIRS/PC argue that because Dr. Makhijani's prefiled testimony incorporates by reference his November 2004 and July 2005 reports, and neither LES

² Memorandum and Order (Regarding October 13, 2005 Memorandum and Order) (Oct. 17, 2005) ("October 17 Order").

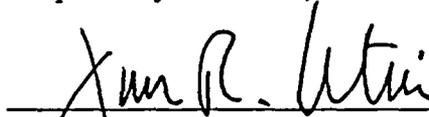
nor the NRC Staff objected to such testimony or incorporation by reference, NIRS/PC believed that those reports were somehow entitled to different treatment under the Board's October 13 Order. This argument falls far short of establishing good cause for an extension of time. First, LES and the Staff objected to the admissibility of numerous documents cited in the those reports. Second, and more importantly, the Board's directive that the parties provide appropriate exhibit references applies in any case, irrespective of any objections posited by LES or the Staff. The upshot is that, given the clarity of the Board's directive, and the absence of any legitimate reason for failing to comply with that Order, NIRS/PC have not shown the existence of "unavoidable and extreme circumstances," *i.e.*, good cause for their request. *See* CLI-04-3, 59 NRC 10, 20 (2004). Dr. Makhijani's other commitments likewise fail to provide good cause for a time extension.

Finally, LES agrees with the NRC Staff that the hearing schedule modification sought by NIRS/PC would be highly prejudicial to LES and the Staff. LES and the Staff would be afforded less than a day to review the "drastically" revised prefiled testimony contemplated by NIRS/PC and to prepare for cross-examination of Dr. Makhijani. This is particularly egregious and troubling in view of intervenors' repeated attempts to reintroduce issues previously excluded by the Board as outside the scope of the admitted contentions.

III. CONCLUSION

For the foregoing reasons, LES respectfully requests that the Board deny the intervenors' motion for an extension of time. Additionally, in view of the failure of NIRS/PC to comply fully with the Board's October 13 Order, LES also requests that the Board exclude Dr. Makhijani's November 2004 and July 2005 reports as evidence in this proceeding.

Respectfully submitted,



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Dated at Washington, District of Columbia
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
Louisiana Energy Services, L.P.)
(National Enrichment Facility))

Docket No. 70-3103-ML
ASLBP No. 04-826-01-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the "APPLICANT'S RESPONSE TO MOTION ON BEHALF OF INTERVENORS NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN ("NIRS/PC") FOR EXTENSION OF TIME TO COMPLY WITH ORDER DATED OCTOBER 17, 2005" in the captioned proceeding has been served on the following by e-mail service, designated by **, on October 18, 2005 as shown below. Additional service has been made by deposit in the United States mail, first class, this 18th day of October 2005.

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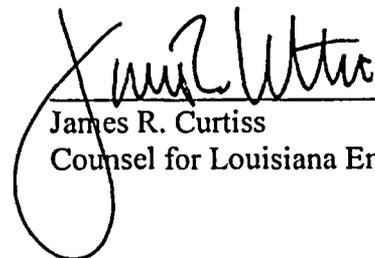
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