

From: "Curtiss, James" <JCurtiss@winston.com>
To: "Tim Johnson (E-mail)" <tcj@nrc.gov>
Date: 5/18/06 10:37AM
Subject: Affidavits from Larry Brown for NEF-05-035 and NEF-06-005

Tim:

Enclosed please find the two subject affidavits. Please let me know if you need anything further.

Jim Curtiss

-----Original Message-----

From: Brown, Larry [mailto:Larry.Brown@hq.doe.gov]
Sent: Thursday, May 18, 2006 10:19 AM
To: Curtiss, James
Subject: RE: Two NEF letters

Scanned version is attached. Originals in the mail addressed to

James Curtiss
Winston & Strawn
1700 K Street, N.W.
Washington, DC 20006

Larry W. Brown
Global Nuclear Energy Partnership
Office of Nuclear Energy
U.S. Department of Energy
Washington, DC 20585
ph: (202) 586-6630

-----Original Message-----

From: Brown, Larry
Sent: Wednesday, May 17, 2006 8:22 PM
To: 'Curtiss, James'
Subject: RE: Two NEF letters

Jim:

I signed the two declarations, and can either fax (I need your fax number) them to you or have them scanned and emailed. The originals will be forwarded by mail to:

Winston & Strawn
1700 K Street, N.W.
Washington, DC 20006

Larry W. Brown
Global Nuclear Energy Partnership
Office of Nuclear Energy
U.S. Department of Energy

Washington, DC 20585
ph: (202) 586-6630

-----Original Message-----
From: Curtiss, James [mailto:JCurtiss@winston.com]
Sent: Wednesday, May 17, 2006 3:41 PM
To: Brown, Larry
Subject: Two NEF letters

Larry:

Attached are the two letters that you requested. Let me know if you need anything further.

Jim

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

CC: "Karl Gross (E-mail)" <kgross@nefnm.com>

Mail Envelope Properties (446C8690.9A1 : 13 : 51617)

Subject: Affidavits from Larry Brown for NEF-05-035 and NEF-06-005
Creation Date: 5/18/06 10:36AM
From: "Curtiss, James" <JCurtiss@winston.com>

Created By: JCurtiss@winston.com

Recipients

nrc.gov

OWGWPO02.HQGWDO01

TCJ (Timothy Johnson)

nefnm.com

kgross CC (Karl Gross (E-mail))

Post Office

OWGWPO02.HQGWDO01

Route

nrc.gov

nefnm.com

Files	Size	Date & Time
MESSAGE	2525	05/18/06 10:36AM
Declaration.pdf	261031	
Mime.822	361838	

Options

Expiration Date: None
Priority: Standard
Reply Requested: No
Return Notification: None

Concealed Subject: No
Security: Standard

Declaration of Larry W. Brown

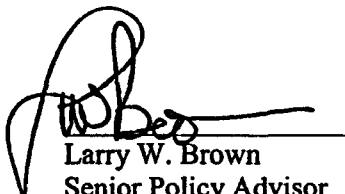
Larry W. Brown declares and states as follows:

1. My name is Larry W. Brown. I am the Senior Policy Adviser at the U.S. Department of Energy (the "Department").
2. I have been authorized by the Department of Energy to execute this affidavit in support of a request by Louisiana Energy Services (LES) to withhold NEF#05-035 regarding "Response to NRC Request for Clarifications on LES Response and Additional Information on Depleted Uranium Disposition Costs and Application for Withholding Information from Public Disclosure" dated December 30, 2007, hereinafter referred to as "NEF#05-035," from public disclosure in accordance with the U.S. Nuclear Regulatory Commission (NRC) regulations appearing in 10 C.F.R. 2.390(a)(4) and (5).
3. NEF#05-035 is a document prepared for the NRC pursuant to the agency's request for additional information on matters contained in the LMI Report "An Analysis of DOE's Cost to Dispose of DUF6 (Depleted Uranium Hexafluoride)," report DE523TI dated December 2004, hereinafter referred to as the "LMI Report." The LMI Report was designated as "proprietary" by the NRC on June 27, 2005. NEF#05-035 provides further information on the Department's cost estimate contained in the LMI Report, a document prepared for internal agency, predecisional purposes, and which also contains confidential internal analysis that is not publicly available. Specifically, NEF#05-035 provides clarification to the NRC on the LMI Report's detailed predecisional analysis, opinions, conclusions and estimates of the anticipated conversion, transportation, storage, and disposal costs for the depleted uranium hexafluoride (DUF6) source material to be generated by LES's proposed commercial uranium enrichment facility, in the event that LES were to request the Department to accept the DUF6 for disposal pursuant to the Department's relevant statutory authorities. Those cost estimates, in turn, are based in substantial part on financial information not contained in, but related to, the Department's current contract with Uranium Disposition Services (UDS) for the construction and operation of the conversion facilities at the Portsmouth and Paducah Gaseous Diffusion Plants and related DUF6 storage facilities.
4. The LMI Report was developed with the explicit understanding that it would be treated as an internal predecisional agency document. Consequently, further explanation of the contents of that report in NEF#05-035 are also extended the same treatment. The Department has consistently treated the LMI Report and the analysis contained therein as confidential and to be withheld from public disclosure. The Department also considers the subsequent substantive clarifications to the LMI Report, as contained in NEF#05-035, to be protected as a internal predecisional agency document as well.
5. The Department already has provided to LES, in a letter dated March 1, 2005, specific non-proprietary cost estimates for the conversion, transportation, storage, and disposal of DUF6 to be generated by LES's proposed commercial uranium enrichment facility, along with certain non-proprietary assumptions associated with those estimates. However, the specific bases for those estimates, as set forth in the LMI Report, the LMI Report itself, or in NEF#05-035 have not been publicly released for the reasons set forth above. Accordingly, withholding NEF#05-035 from disclosure will not adversely affect the

public. Therefore, the fact that the NRC Staff may request and/or receive a copy of NEF#05-035 from LES does not warrant public disclosure of the document.

7. Given the brevity of the contents of NEF#05-035 and its direct relationship to protected information in the LMI Report, it is not possible to designate only certain portions of the document as confidential. To attempt to redact specific internal agency information would render the remaining material essentially meaningless and of no value to the NRC. Rather, the entirety of the NEF#05-035 must be considered confidential, and the entire document should be withheld from public disclosure.
8. Predecisional materials like this fall under the "deliberative process" privilege of the Freedom of Information Act which permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of the process by which government formulates decisions and policies. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (*Sears*). The ultimate purpose of the exemption is to protect the quality of agency decisions by promoting frank and independent discussion among those responsible for making governmental decisions. *Sears*, 421 U.S. at 151; see *EPA v. Mink*, 410 U.S. 73, 87 (1973) (quoting *Kaiser Aluminum & Chem. Corp. v. United States*, 157 F. Supp. 939, 946 (Ct. Cl. 1958)). Thus, the harm that would result from release of NEF#05-035 is an impairment of the quality of agency decision making by curbing frank and independent internal discussion.
9. The Department understands that LES will submit NEF#05-035 to the NRC in confidence. The document and the information contained within it is of a sort customarily held in confidence by the Department, and, in fact, has been held in confidence and not previously publicly released.
10. I declare under penalty of perjury that the foregoing is true and correct

Executed on May 17, 2006


Larry W. Brown
Senior Policy Advisor
U.S. Department of Energy
Washington, DC 20585

Declaration of Larry W. Brown

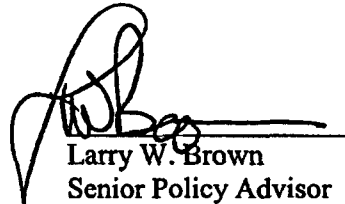
Larry W. Brown declares and states as follows:

1. My name is Larry W. Brown. I am the Senior Policy Adviser at the U.S. Department of Energy (the "Department").
2. I have been authorized by the Department of Energy to execute this affidavit in support of a request by Louisiana Energy Services (LES) to withhold NEF#06-005 regarding "Responses to NRC Request for Clarifications on Depleted Uranium Disposition Costs and Fuel Cycle Facility Performance Indicator Program and Application for Withholding Information from Public Disclosure" dated February 27, 2006, hereinafter referred to as "NEF#06-005," from public disclosure in accordance with the U.S. Nuclear Regulatory Commission (NRC) regulations appearing in 10 C.F.R. 2.390(a)(4) and (5).
3. NEF#06-005 is a document prepared for the NRC pursuant to the agency's request for additional information on matters contained in the LMI Report "An Analysis of DOE's Cost to Dispose of DUF6 (Depleted Uranium Hexafluoride)," report DE523T1 dated December 2004, hereinafter referred to as the "LMI Report." The LMI Report was designated as "proprietary" by the NRC on June 27, 2005. NEF#06-005 provides further information on the Department's cost estimate contained in the LMI Report, a document prepared for internal agency, predecisional purposes, and which also contains confidential internal analysis that is not publicly available. Specifically, NEF#06-005 provides clarification to the NRC on the LMI Report's detailed predecisional analysis, opinions, conclusions and estimates of the anticipated conversion, transportation, storage, and disposal costs for the depleted uranium hexafluoride (DUF6) source material to be generated by LES's proposed commercial uranium enrichment facility, in the event that LES were to request the Department to accept the DUF6 for disposal pursuant to the Department's relevant statutory authorities. Those cost estimates, in turn, are based in substantial part on financial information not contained in, but related to, the Department's current contract with Uranium Disposition Services (UDS) for the construction and operation of the conversion facilities at the Portsmouth and Paducah Gaseous Diffusion Plants and related DUF6 storage facilities.
4. The LMI Report was developed with the explicit understanding that it would be treated as an internal predecisional agency document. Consequently, further explanation of the contents of that report in NEF#06-005 are also extended the same treatment. The Department has consistently treated the LMI Report and the analysis contained therein as confidential and to be withheld from public disclosure. The Department also considers the subsequent substantive clarifications to the LMI Report, as contained in NEF#06-005, to be protected as a internal predecisional agency document as well.
5. The Department already has provided to LES, in a letter dated March 1, 2005, specific non-proprietary cost estimates for the conversion, transportation, storage, and disposal of DUF6 to be generated by LES's proposed commercial uranium enrichment facility, along with certain non-proprietary assumptions associated with those estimates. However, the specific bases for those estimates, as set forth in the LMI Report, the LMI Report itself, or in NEF#06-005 have not been publicly released for the reasons set forth above. Accordingly, withholding NEF#06-005 from disclosure will not adversely affect the

public. Therefore, the fact that the NRC Staff may request and/or receive a copy of NEF#06-005 from LES does not warrant public disclosure of the document.

7. Given the brevity of the contents of NEF#06-005 and its direct relationship to protected information in the LMI Report, it is not possible to designate only certain portions of the document as confidential. To attempt to redact specific internal agency information would render the remaining material essentially meaningless and of no value to the NRC. Rather, the entirety of the NEF#06-005 must be considered confidential, and the entire document should be withheld from public disclosure.
8. Predecisional materials like this fall under the "deliberative process" privilege of the Freedom of Information Act which permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of the process by which government formulates decisions and policies. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (*Sears*). The ultimate purpose of the exemption is to protect the quality of agency decisions by promoting frank and independent discussion among those responsible for making governmental decisions. *Sears*, 421 U.S. at 151; see *EPA v. Mink*, 410 U.S. 73, 87 (1973) (quoting *Kaiser Aluminum & Chem. Corp. v. United States*, 157 F. Supp. 939, 946 (Ct. Cl. 1958)). Thus, the harm that would result from release of NEF#06-005 is an impairment of the quality of agency decision making by curbing frank and independent internal discussion.
9. The Department understands that LES will submit NEF#06-005 to the NRC in confidence. The document and the information contained within it is of a sort customarily held in confidence by the Department, and, in fact, has been held in confidence and not previously publicly released.
10. I declare under penalty of perjury that the foregoing is true and correct

Executed on May 17, 2006



Larry W. Brown
Senior Policy Advisor
U.S. Department of Energy
Washington, DC 20585