

October 24, 2006

Mr. John Swailes, Chief Nuclear Officer
Vice President - Operations
National Enrichment Facility
220 West Broadway, Suite B
Hobbs, NM 88240

SUBJECT: APPROVAL OF LOUISIANA ENERGY SERVICES REQUEST FOR
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE (LOUISIANA
ENERGY SERVICES GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY)

Dear Mr. Swailes:

In your letter, dated September 18, 2006 (NEF-06-00037), you submitted, in response to the July 21, 2006, correspondence from the Nuclear Regulatory Commission (NRC), additional support for LES's request to withhold decommissioning funding information from public disclosure. By an email letter, dated May 18, 2006, Mr. James Curtiss, representing LES, submitted two affidavits, dated May 17, 2006, executed by Mr. Larry W. Brown of the U.S. Department of Energy (DOE). These affidavits related to decommissioning funding information provided in LES letters to the NRC, dated December 30, 2005 (NEF-05-035), and February 7, 2006 (NEF-06-005). This information originated from a proprietary DOE report on uranium tails disposition costs.

In Mr. Brown's affidavits, he stated the information in the response to the NRC Request for Additional Information (RAI) should be withheld from public disclosure for the following reasons:

1. It is proprietary information that is customarily held in confidence by DOE and is, in fact, held in confidence and has not been previously publicly released.
2. The information was developed with the explicit understanding that the document would be treated as an internal pre-decisional agency document. DOE has consistently treated the information as confidential and to be withheld from public disclosure.
3. It was transmitted to and received by the U.S. Nuclear Regulatory Commission in confidence.
4. It is pre-decisional material that falls 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. Thus, the harm that would result from release of the report is an impairment of the quality of agency decision making by curbing frank and independent internal discussion.

We have reviewed the affidavits and are not satisfied with the justifications for not making the information available to the public, particularly the deliberative process claim. Nonetheless, based on our review of the documents and our extensive familiarity with the context in which the information was generated, the NRC staff is prepared to treat the designated information as proprietary. The NRC staff believes that a reasonable case can be made that the financial information claimed to be proprietary is customarily held in confidence and has not been

previously released to the public. The NRC staff notes that the information claimed to be proprietary was made available under a protective order to the parties in the now completed NRC adjudicatory proceeding. Our withholding this information from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, the NRC staff may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if these documents fall within the scope of a Freedom of Information Act request. In such a case, the NRC would likely require the private sector owner of the information to provide the NRC with an affidavit containing a satisfactory justification for the withholding of the information. In all review situations, if the NRC makes a determination that the information should be released to the public, you will be notified in advance of any public disclosure.

If you have any questions, please contact Mr. Timothy C. Johnson at 301-415-7299.

In accordance with 10 CFR 2.390 of the NRC's Rules of Practice, a copy of this letter will be available electronically from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Brian W. Smith, Branch Chief
Enrichment and Conversion Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103
License No.: SNM-3103

cc:

William Szymanski/DOE
Monty Newman/Hobbs
Peter Miner/USEC
Glen Hackler/Andrews
Matt White/Eunice
Cindy Padilla/NMED
Joseph Malherek/PC
Tannis Fox/NMED
Roger Mulder/Texas

Fred Seifts/Jal
James Curtiss/W&S
Betty Richman/Tatum
Lue Ethridge/Lea Cty
Richard Ratliff/Texas
CO'Claire/Ohio
Ron Curry/NMED
Patricia Madrid/NMAG
Karl Gross/LES

Lindsay Lovejoy/NIRS
Troy Harris/Lovington
Reinhard Hinterreither/LES
John Parker/NMED
M. Marriotte/NIRS
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D. Watchman-Moore/NMED
Glen Smith/NMAG

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