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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '94 MAY -6 P2:43

In the Matter of)	Docket No. 70-3070-ML	OFFICE OF SECRETARY
LOUISIANA ENERGY SERVICES, L.P.)	ASLBP No. 91-641-02-ML	DOCKETING & SERVICE
(Claiborne Enrichment Center)	(Special Nuclear	BRANCH
)	Materials License)	

**MOTION BY CITIZENS AGAINST NUCLEAR TRASH ("CANT")
TO COMPEL LOUISIANA ENERGY SERVICES ("LES")
TO RESPOND TO INTERROGATORIES Q-4 AND Q-5
OF CANT'S 3/24/94 INTERROGATORIES**

Pursuant to 10 C.F.R. § 2.740 (f), intervenor, Citizens Against Nuclear Trash ("CANT"), moves to compel Louisiana Energy Services ("LES") to respond fully to interrogatories Q-4 and Q-5 of the "3/24/94 Interrogatories and Request for Production of Documents Filed by Citizens Against Nuclear Trash and Directed to Louisiana Energy Services, L.P., Pertaining to Contentions B, H, and Q."

The interrogatories at issue are:

INTERROGATORY NO. Q-4:

Describe in detail all actual and/or potential contracts to sell the enriched uranium to be produced at the CEC facility.

INTERROGATORY NO. Q-5:

Indicate whether and when you have and/or intend to seek permission to recover any costs associated with the licensing of the CEC facility from the rate base of any of the entities who are members of the LES partnership.

LES objects to these two interrogatories, asserting that neither of the interrogatories is relevant to the subject matter

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involved in this proceeding. Further, with respect to interrogatory Q-5, LES asserts that even if this interrogatory were relevant, this interrogatory erroneously asks for LES's (rather than LES's partners') intentions regarding recovery of CEC costs from rate bases.

I.

THE INTERROGATORIES ARE RELEVANT

Applicant's objection that the interrogatories are irrelevant to the subject matter of these proceedings is based on an overly restrictive view of the concept of relevance. Because Applicant's answers to the objected-to interrogatories will yield information which relates to Intervenor's Contentions, they must be answered.

A. "Relevant" is broadly construed in the discovery context.

The Commission's Rules of Practice permit discovery of "any matter, not privileged, which is relevant to the subject matter involved in the proceeding" 10 C.F.R. § 2.740(b)(1) (1991). Although discovery "shall relate only to those matters in controversy which have been identified by the Commission or presiding officer," *id.*, discovery is not to be narrowly limited. Illinois Power Co. (Clinton Power Station Unit 1) LBP-81-61, 14 NRC 1735, 1742 (1981). ("The discovery rules . . . are to be construed liberally.").

The term "relevant" is more broadly defined for discovery purposes than for purposes of the law of evidence. The Rules of Practice state that "[i]t is not grounds for objection that the information sought will be inadmissible at the hearing if the

information sought appears reasonably calculated to lead to the discovery of admissible evidence." 10 C.F.R. § 2.740(b)(1). "The basic test for limiting discovery is one of relevance to the subject matter involved in the proceeding whether it be admissible at the hearing or not." Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), LBP-79-4, 9 NRC 164, 169 (1979). For discovery purposes, "relevancy is defined in terms of the likelihood that useful evidence may be uncovered." Boeing Airplane Co. v. Cogheshall,¹ 280 F.2d 654, 659 (DC Cir. 1960) (emphasis added). The information sought in Intervenor's Interrogatories is reasonably calculated to lead to admissible evidence and is relevant to Intervenor's contentions.

B. Interrogatory Q-4 is relevant to the financial qualifications of LES.

CANT believes that the financial viability of LES and the venture it proposes in the form of the Claiborne Enrichment Center ("CEC") are highly questionable. LES has not demonstrated that it is financially qualified to build and operate the CEC; in fact several LES partners are not even committed to continue funding the CEC proposal if and when a license is obtained. Memorandum and Order (Ruling on Contentions) at 50 (December 19, 1991); Citizens Against Nuclear Trash's Contentions on the Construction

¹ The quoted case actually deals with Fed. R. Civ. P. 33. However, as is the case here, "where an NRC rule of practice is based on a federal rule of civil procedure, judicial interpretations of that federal rule can serve as guidance for the interpretation of the analogous NRC rule." Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494-95 (1983).

Permit/Operating Licensing Application for the Claiborne Enrichment center at 51-2 (October 1991).

CANT wants to know why some of the LES partners are uncommitted; it may well be that these partners are not convinced that significant contracts can be obtained. In that vein, CANT has asked LES to describe all actual and/or potential contracts to sell the enriched uranium to be produced at the CEC facility.

The inability of LES to secure such contracts undermines LES's claims of financial qualification, and in turn calls into question the reasonableness of assuming that there will be other financially healthy entities willing to join the LES partnership once some of the current partners drop out.

In short, information regarding "any actual and/or potential contracts to sell the enriched uranium" is clearly both relevant to the subject matter of this proceeding -- LES's financial qualifications² -- or at the very least is likely to lead to uncovering "useful evidence." Boeing Airplane Co. v. Cogheshall, supra, 280 F.2d at 659.

C. Interrogatory Q-5 is relevant to the financial qualifications of LES.

The source of cost recovery for the CEC facility is entirely relevant to the portrait of financial instability which has thus

² The inability of LES to secure such contracts is also relevant to and in fact supports CANT's contention that there is no need for the facility, and without a need for the facility, the costs of this proposal cannot outweigh the benefits, as required by NEPA. Citizens Against Nuclear Trash's Contentions on the Construction Permit/Operating Licensing Application for the Claiborne Enrichment center at 35-7 (October 1991).

far emerged with respect to this entire project. Accordingly, CANT has inquired as to whether any portion of such costs will be recovered from the rate base of any of the entities who are members of the LES partnership. It is indisputable that information regarding the source of cost recovery is relevant to, or is at least likely to lead to the discovery of evidence that is relevant to, the financial qualifications of LES to construct and operate the CEC.

II.
PARTNERS OF LES MUST RESPOND
TO INTERROGATORY Q-5

LES claims that not only is Interrogatory Q-5 irrelevant, but that this interrogatory erroneously asks for LES's (rather than LES's partners') intentions regarding recovery of CEC costs from rate bases. CANT's Interrogatory Q-5 asks whether "you have and/or intend to seek permission to recover any costs associated with the licensing of the CEC facility from the rate base of any" LES partner. LES assumes that the "you" in the interrogatory is restricted to LES, and does not encompass its individual partners. LES therefore disingenuously asserts that LES, being a separate entity from its partners, "cannot seek permission for its utility partners to recover costs from their rate bases." LES at 13.

However, in the "Definitions" section of CANT's discovery request, CANT specifically made it clear that in some instances interrogatories would be directed to and would require responses from individual LES partners:

"LES," "you," and "your" refers to Louisiana Energy Services, L.P. and, in those instances where information necessary to

respond to an interrogatory is not within the body of knowledge possessed by LES or where documentation necessary to respond to a request for production of documents is not in LES's possession or under its control, but is within the body of knowledge possessed by LES's partners or is within the possession or under the control of LES's partners, then "LES," "you," and "your" also refers to all of LES's partners, employees, agents, contractors, or any other representatives.

3/24/94 Interrogatories and Request for Production of Documents Filed by Citizens Against Nuclear Trash and Directed to Louisiana Energy Services, L.P. Pertaining to Contention B, H, and Q at 3.

Thus, Interrogatory Q-5 is, in fact, directed to individual LES partners, and must be answered. LES's refusal to answer this interrogatory is an attempt to shield its partners from the need to respond to discovery of LES-related matters.³ This very issue has been visited before in these proceedings, and CANT concurs with the Licensing Board's Memorandum and Order of June 18, 1992 that "LES

³ Bollard v. Volkswagen of America, Inc., 56 F.R.D. 569, 583 (W.D.Mo. 1971) ("There is a duty to discover all information available to a corporation, through its officers, employees and others."); Holt v. Southern Railway Co., 51 F.R.D. 296, 299-300 (E.D.Tenn. 1969) ("In answering the interrogatories propounded to it . . . it was incumbent upon the [corporate defendant] railway to select an agent to answer them who could provide the information sought by the plaintiff"); International Ass'n of Machinists, District 169 v. Amana Refrigeration, Inc., 90 F.R.D. 1, 2 (E.D.Tenn. 1978) (a plaintiff labor organization could not "avoid answering proper interrogatories served upon it by the defendant by saying the labor organization doesn't know the answer, when it [could] obtain the information sought from it from its members or other sources under its control."); Sol S. Turnoff Drug Dist. v. Nederlandsche C.V.C. Ind., 55 F.R.D. 347, 349 (E.D.Penn. 1972), (plaintiffs interrogatories defined "you" and "your" to mean "the defendant corporation . . . [and] its domestically domiciled subsidiaries" The court held that "[i]f subsidiaries or controlled corporations possess the desired information and defendants' control over them is such that the information is "available" to defendants, defendants may not refuse to answer because the source of the information is a separate corporate entity.'" (quoting Erone Corp. v. Skoutras Theatres Corp., 22 F.R.D. 494, 498 (S.D.N.Y. 1958)).

has the responsibility for responding to the interrogatories and where it does not have the information directly it will obtain it from the partners if they possess it." Id. at 4.

Respectfully submitted,

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May 2, 1994.

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Motion by Citizens Against Nuclear Trash ("CANT") to Compel Louisiana Energy Services ("LES") to Respond to Interrogatories Q-4 and Q-5 of CANT's 3/24/94 Interrogatories" have been served on this 2nd Day of May, 1994, as follows:

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge) By first class mail
Richard F. Cole) 1 copy
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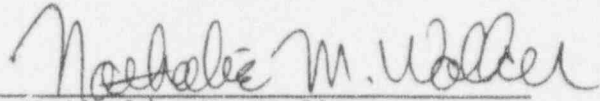
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Adjudicatory File
Atomic Safety and Licensing Board Panel
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Washington, D.C. 20555

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May 2, 1994.