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~~RELATED CORRESPONDENCE~~

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
LOUISIANA ENERGY SERVICES, L.P.	)	Docket No. 70-3070-ML
	)	
(Claiborne Enrichment Center)	)	

APPLICANT'S ANSWER TO INTERVENOR'S MOTION
TO COMPEL ANSWERS TO INTERROGATORIES Q-4 AND Q-5

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.730(c), Applicant Louisiana Energy Services, L.P., opposes Intervenor Citizens Against Nuclear Trash's Motion to Compel Answers to Interrogatories Q-4 and Q-5.[1/] Applicant hereby moves the Licensing Board to deny the Motion.

II. BACKGROUND

On March 24, 1994, Intervenor served interrogatories on Applicant pertaining to, inter alia, Contention Q.[2/] Applicant timely objected to Interrogatories Q-4 and Q-5, and moved the Licensing Board to issue a Protective Order with respect to these

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1/ "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," May 2, 1994 ("May 2 Motion").

2/ "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" ("March 24 Interrogatories").

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questions.[3/] Intervenor has now filed its May 2 Motion to compel Applicant to respond fully to these interrogatories.

III. DISCUSSION

The interrogatories at issue are:

> Q-4. Describe in detail all actual and/or potential contracts to sell the enriched uranium to be produced at the CEC facility.
>
> 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.

For the reasons described below, these interrogatories seek information well beyond the scope of necessary and permissible discovery in this proceeding.

A. Details of Applicant's Enrichment Contracts Are Not Relevant to a Matter in Issue

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.**

As characterized by the Licensing Board in Louisiana Energy Services, L.P. (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 358 (1991), the subject matter of Contention Q is that "LES has not demonstrated that it is financially qualified to build

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3/ "Applicant's Response to Intervenor's 3/24/94 Interrogatories," April 15, 1994 ("Applicant's April 15 Response").

and operate CEC because partners are not committed to fund the building and operation of the facility . . . ."

Applicant, in its April 15 Response at 11-12, objected to answering Interrogatory Q-4. In summary, Applicant's response to Interrogatory Q-4, which is incorporated herein by reference, objects on the grounds that details of contracts and potential contracts to sell enriched uranium produced at the CEC are not relevant to the subject matter involved in this proceeding, i.e., are not relevant to Contention Q as admitted by the Licensing Board.[4/] As discussed below, such details are not relevant the partners' commitments to fund the CEC.

Under the Commission's regulations:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. . . .
>
> It is not ground 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).

Although the test for discoverable matter is "general relevancy" (see Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 AEC 240 (1974)), the Licensing Board in Allied General Nuclear Services (Barnwell Fuel Receiving and Storage

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4/ To be correct, Applicant sells enrichment services, not enriched uranium.

Station), LBP-77-13, 5 NRC 489, 491 (1977), required the information sought by the intervenor to be "relevant or necessary for a proper decision in this proceeding [and] of substantive value to Environmentalists, Inc. [the intervenor], in the preparation of its case." Furthermore, the Licensing Board noted:

> that the parties should not be permitted to roam in shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so.

Barnwell, 5 NRC at 492 (quoting Broadway & Ninety-Sixth St. Realty Co. v. Loew's Inc., 21 F.R.D. 347, 352 (S.D.N.Y. 1958)).[5/]

In its May 2 Motion at 4, Intervenor argued that contract details were, in fact relevant, noting that it:

> 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 . . . .

Intervenor's own argument is not internally sound. Intervenor has provided no logical link between its knowing the details of all actual or potential contracts requested in Interrogatory Q-5 and its ability to determine whether "partners

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5/ It is interesting to note that the Licensing Board in Barnwell was facing an issue similar to the matter in issue here, i.e., discovery of the details of the applicant's contracts.

are not convinced that significant contracts can be obtained." In other words, Intervenor has not demonstrated how the details of an enrichment contract are relevant to learning whether partners are convinced that contracts can be obtained. These issues are not related. Contract details are not "relevant or necessary for a proper decision in this proceeding" or of substantive value to Intervenor in the preparation of its case. Barnwell, 5 NRC at 491.

This lack of a logical link is particularly apparent in light of the current industry practice of engaging in five-year enrichment services contracts. LES' potential customers currently are negotiating contracts for 1996. It would be premature for LES to seek contracts at this time to provide services in the 1998-1999 time frame (i.e., when the CEC is expected to be operational). Thus, a present lack of contracts indicates nothing regarding LES' ability to secure future contracts, nor would the details of any contracts now in place be any indication of LES' ability to meet the targeted market in the latter part of this decade. After licensing, LES expects to market its services to meet the supply requirements that will exist at the end of the decade.[6/] Utilities cannot be expected to contract for such services today. Because of delay in the

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6/ It is a matter of public record that LES has one enrichment services contract with Northern States Power Co. However, this contract was negotiated when it was anticipated that the CEC would begin operation in the mid-1990 time frame. Applicant and Northern States Power Co. consider the terms of this contract to be proprietary.

licensing schedule and the resulting consequences in the schedule for plant construction, however, contracting for LES services has necessarily been postponed accordingly. It is inappropriate to link financial qualifications with the placement of enrichments services contracts that far in advance--U.S. utilities are not prepared at this time to place contracts for supply that would not begin until the end of the decade.

Attempting to link the existence of enrichment services contracts to financial qualifications reflects a misunderstanding of the techniques required by a private enterprise to obtain capital from the financial markets. Applicant discussed these techniques in its April 15 Responses to Interrogatories Q-1 and Q-8. In this context, it appears that Intervenor is seeking information that is not at all relevant to matters in issue and "which does not presently appear germane on the theory that it might conceivably become so." Barnwell, 5 NRC at 492. Interrogatory Q-4 is, therefore, objectionable and discovery should not be had.

B. A Question Regarding LES Partners' Parents' Plans is Overreaching

Interrogatory Q-5 seeks information on the intent of LES' general partners to seek cost recovery from their rate bases.

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 CEC facility from the rate base of any of the entities who are members of the LES partnership.

This question raises two issues: relevance and whether discovery of information from parent corporations of general partners is permissible. Applicant discussed the matter of relevance in its response to Interrogatory Q-5 in Applicant's April 15 Response, at pages 12-14. The response to Interrogatory Q-5 is incorporated herein by reference.

To summarize, in its April 15 Response, Applicant argued that Interrogatory Q-5 is not relevant to commitments made by the partners, nor does it appear to be reasonably calculated to lead to the discovery of admissible evidence. Such information would merely be a ratemaking issue before the relevant public utilities commission with no bearing on the safety of the CEC or on Applicant's financial qualifications.

Applicant also discussed in that response the issue of the proper designation of LES as the party in this proceeding. Applicant has not sought to shield its general partners from answering discovery, and does not dispute the Licensing Board's conclusions in its June 18, 1992, Memorandum and Order (Ruling on Discovery Disputes Pertaining to Contentions B, H, I, J and K), that "LES cannot avoid revealing information simply because that information is in the hands of one of its partners." LES established, in its May 4, 1992, Response[7/] that a Delaware Limited Partnership is an entity separate from its partners, that

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7/ "Applicant's Response to 'First Set Of Interrogatories And Request For Production Of Documents Filed by Citizens Against Nuclear Trash And Directed To Louisiana Energy Services, L.P. Pertaining To Contentions A, H, I, J and K,'" May 4, 1992, section I, "Proper Designation of Applicant."

LES (as such a partnership) was the party to this proceeding, and that the general partners were not parties to this proceeding. Applicant can no more shield its general partners from discovery than a corporation can shield its officers. This analogy is apt, as evidenced by the ample case law cited by Intervenor in its May 2 Motion at 6 n.3. However, the issue is not one of shielding--it is one of relevance and scope.

The general partners of a Delaware Limited Partnership (e.g, LES) are in the position of officers of a corporation which is a party to a proceeding. In sustaining an objection to portions of interrogatories calling for information regarding the activities of subsidiary or affiliated corporations, the Court in Stanzler v. Loew's Theatre and Realty Corporation, RKO, 19 F.R.D. 286, 289 (D. R.I. 1955) held that, under the Federal Rules of Civil Procedure:

> the answering officer of a corporation shall furnish such information as is within the knowledge of the officers of such corporation. Such officer may not be compelled to undertake an investigation of the internal affairs of any other corporation.

This applies directly to Applicant. None of Applicant's general partners are utilities. However, two general partners, Claiborne Energy Services, Inc., and Graystone Corp. are subsidiaries of utilities. Claiborne Energy Services, Inc., is a wholly owned subsidiary of Duke Power Company. Graystone Corp. is a subsidiary of NRG Group, Inc., which is owned by Northern States Power. Thus, answers to Interrogatory Q-5 will require these two general partners to investigate the internal affairs of

a parent or "grandparent" corporation, which for purposes of discovery can be considered to hold a position similar to that of an affiliate or subsidiary. See generally 19 A.L.R.3d 1134, 1139.

Although it is generally true that parent or subsidiary corporations are considered to possess or control information available to each other, the mere possession or control does not automatically render information discoverable. Where the corporation is operator of a business, as is true in Applicant's case, "the corporation is not required to produce witnesses to testify to circumstances attending the occurrence of an act not connected with the conduct of a party's area of direct management." Garshol v. Atlantic Refining Co., 12 F.R.D. 204, 205 (S.D.N.Y. 1951). In the instant situation, a question seeking information from a general partner's parent or grandparent regarding a decision to recover CEC licensing costs from the rate bases is (1) not an area of direct management, and (2) requires an internal investigation into the internal affairs of the parent/grandparent corporation. This question is counter to both Stanzler and Garshol, and is therefore, objectionable and need not be answered.[8/]

[8/] As a related matter, limited partners, as opposed to general partners, have no power to control a limited partnership and are statutorily denied the right to participate in management. See generally 68 C.J.S. §§ 449-471. Thus, for a limited partner, all acts of the limited partnership are outside the limited partner's area of direct management.

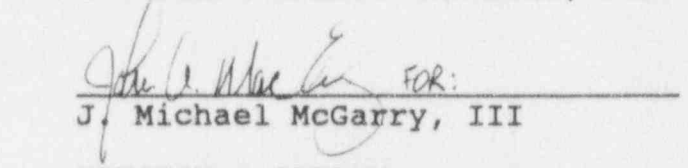
IV. CONCLUSION

For the reasons given, discovery should not be had regarding Interrogatories Q-4 and Q-5. Applicant considers the details of existing or potential enrichment services contracts to be proprietary. Therefore, if the Licensing Board orders disclosure of such details, Applicant reserves the right to move for disclosure to be subject to a suitable protective order.

Applicant also trusts that the matter of the proper designation of LES as the party to this proceeding has been adequately identified. As acknowledged by Intervenor in its May 2 Motion, the relationship of LES' to its general partners is analogous to the relationship of a corporation to its officers. Thus, this issue is not one of shielding the general partners from discovery. Rather, it is an issue of the propriety of discovery regarding matters outside the general partners' knowledge and area of direct management of LES. Intervenor cannot impose a greater duty on LES' general partners than would be imposed on the officers of a corporation-party.

On these grounds, Applicant moves that Intervenor's May 2 Motion be denied and that discovery not be had.

LOUISIANA ENERGY SERVICES, L.P.



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May 17, 1994

RELATED CORRESPONDENCE

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'94 MAY 19 P2:31

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of	)	
	)	
LOUISIANA ENERGY SERVICES, L.P.	)	Docket No. 70-3070
	)	
(Claiborne Enrichment Center)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPLICANT'S ANSWER TO INTERVENOR'S MOTION TO COMPEL ANSWERS TO INTERROGATORIES Q-4 AND Q-5" have been served on the following by deposit in the United States Mail, first class, this 17th day of May, 1994:

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