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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Administrative Judges:
Thomas S. Moore, Chairman
Richard F. Cole
Frederick J. Shon

SERVED JUN - 3 1994

In the Matter of

LOUISIANA ENERGY
SERVICES, L.P.

(Claiborne Enrichment Center)

Docket No. 70-3070-ML

ASLBP No. 91-641-02-ML
(Special Nuclear
Material License)

June 1, 1994

MEMORANDUM AND ORDER
(Ruling on Intervenor's May 2, 1994
Motion to Compel)

We have before us the motion of the Intervenor, Citizens Against Nuclear Trash (CANT), to compel interrogatory responses from the Applicant, Louisiana Energy Services (LES). For the reasons set forth below, the Intervenor's motion to compel is granted in part and denied in part.

1. As part of its discovery on contention Q, which challenges the Applicant's financial qualifications to build and operate the Claiborne Enrichment Center (CEC), Intervenor's interrogatory Q-4 asks the Applicant to describe its actual or potential enrichment services contracts. In its discovery

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response, the Applicant objected to interrogatory Q-4 on the ground that the Applicant's enrichment contracts or potential contracts are not relevant to the subject matter of the proceeding.¹ Specifically, the Applicant claims that current industry practice calls for five-year enrichment services contracts and that it is premature for LES to seek contracts at this time for the 1998-1999 time frame when the facility is expected to operate. The Applicant asserts, therefore, that LES' present lack of contracts indicates nothing about its future ability to market its services and that "[i]t is inappropriate to link financial qualifications with the placement of enrichment services contracts that far in advance."²

The Intervenor's motion to compel with respect to interrogatory Q-4 is granted. In contention Q, the Intervenor has challenged LES' financial qualifications to construct and operate the CEC noting that several of the LES partners are not committed to continue funding the project if and when a license is obtained. As the Intervenor correctly asserts, it is entitled "to know why some of the LES partners are uncommitted; it may well be that these partners are not convinced that significant

¹ Applicant's Response to Intervenor's 3/24/94 Interrogatories (April 15, 1994) at 4-5 [hereinafter Applicant's Response].

² Applicant's Answer to Intervenor's Motion to Compel Answers to Interrogatories Q-4 and Q-5 (May 17, 1994) at 6 [hereinafter Applicant's Answer].

contracts can be obtained."³ The information the Intervenor seeks is certainly relevant to CANT's financial qualification contention, and the Applicant is directed to respond immediately to interrogatory Q-4. The Applicant's proffered explanation regarding why it is inappropriate to link financial qualifications with the placement of enrichment services contracts does not pertain to the relevance of the information the Intervenor seeks, but rather the Applicant's argument goes to the ultimate evidentiary weight that should be accorded the answers to interrogatory Q-4. Such an assertion is not a proper basis for denying discovery.

2. The Intervenor's interrogatory Q-5 states: "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."⁴ Further, the definition section of the Intervenor's discovery request states:

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

³ 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 3/24/91 Interrogatories (May 2, 1994) at 4.

⁴ 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, 1994) at 9.

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' 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, employee, agents, contractors, or any other representatives.⁵

In its discovery response, the Applicant objected to interrogatory Q-5 on the ground of relevance.⁶ In its answer to the Intervenor's motion to compel, the Applicant also objects that the interrogatory seeks discovery of information from the parent corporations of LES' general partners and that such discovery is not permissible.⁷ In particular, the Applicant argues that the information sought by interrogatory Q-5 "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."⁸ Additionally, the Applicant argues that any information from a general partner's nuclear utility parent corporation regarding a decision to recover costs associated with licensing the CEC as part of the utility's rate base is not allowed because it is not an area of direct management of the LES partner and requires an

⁵ Id. at 3.

⁶ Applicant's Response at 12-13.

⁷ Applicant's Answer at 7-10.

⁸ Id. at 7.

investigation into the internal affairs of the parent corporation.

The Intervenor's motion to compel with respect to interrogatory Q-5 is granted in part. The information sought is relevant to the Intervenor's contention on the financial qualifications of the Applicant to build and operate the CEC. Contrary to the Applicant's assertion, the information sought has a bearing on both the Applicant's financial qualifications and safety. The link between an applicant's financial qualifications and its ability to build and operate safely a facility forms the very basis for the Commission's financial qualification requirements so that nexus cannot be seriously questioned. Further, although the LES partners cannot recoup directly their expenditures for the CEC through any ratemaking process, to the extent that any nuclear utility parent corporation of an LES partner can do so for its subsidiary's expenditures, the financial standing of the subsidiary LES partner is enhanced. Thus, the information sought is relevant to the Applicant's financial qualifications to build and operate the CEC and the Applicant's relevance objection is misplaced. Accordingly, to the extent that any of the LES partners (or their directors, officers, employees or agents) have any information or knowledge concerning the matters asked in interrogatory Q-5, the LES partners must respond.

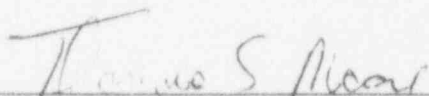
Further, as the Applicant acknowledges in its answer to the Intervenor's motion, parent or subsidiary corporations are considered to possess or control information available to each other.⁹ Therefore, to the extent the information sought by interrogatory Q-5 is available to any of the LES partners (or their directors, officers, employees or agents), the interrogatory must be answered. To the extent, however, that the information sought by interrogatory Q-5 is not available to any LES partner but is within the exclusive control of an LES partner's parent corporation, the interrogatory need not be answered. Indeed, the Intervenor's interrogatory, when read in light of the definition of "LES," "you," and "your" set forth in the definition section of its March 24, 1994 interrogatories, limits the responses it seeks to LES and its partners. Hence, on its face, the interrogatory does not apply to the parent corporation of any LES partner as the Applicant mistakenly assumes. In any event, as a general rule, subsidiary corporations do not control their parent corporations, and the former cannot direct the latter to take any action. This being the case, an order directed to a subsidiary corporation to disgorge information under the exclusive control of a nonparty parent corporation is inappropriate and unenforceable. Thus, absent a substantial showing why the traditional corporate form should be disregarded here, the Intervenor is entitled to no

⁹ Id. at 9.

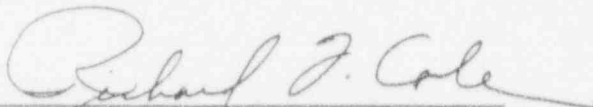
other relief with respect to interrogatory Q-5. If the Intervenor seeks further information within the domain of the parent corporations, it will have to direct its discovery efforts to those corporations.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



Thomas S. Moore, Chairman
Administrative Judge



Richard F. Cole
Administrative Judge



Frederick J. Shon
Administrative Judge

Bethesda, Maryland,

June 1, 1994

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(Claiborne Enrichment Center
SNM License)

Docket No.(s) 70-3070-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (RULING ON INT 5/2 MOT. have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Thomas S. Moore, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Frederick J. Shon
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Eugene Holler, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Diane Curran, Esquire
6935 Laurel Avenue, Suite 204
Takoma Park, MD 20912

W. H. Arnold
President
Louisiana Energy Services, L.P.
2600 Virginia Avenue, N.W., Suite 608
Washington, DC 20037

Peter G. LeRoy
Licensing Manager
LES - c/o Duke Engineering and
Services, Inc.
PO Box 1004
Charlotte, NC 28201

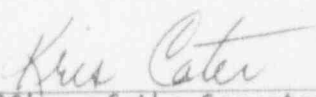
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LB M&O (RULING ON INT 5/2 MOT.

J. Michael McGarry, III, Esq.
Counsel for LES
Winston & Strawn
1400 L Street, N.W.
Washington, DC 20005

Nathalie M. Walker, Esq.
Robert B. Wiygul, Esq.
Sierra Club Legal Defense Fund, Inc.
400 Magazine Street, Suite 401
New Orleans, LA 70130

Ronald Wascom
Deputy Assistant Secretary
Office of Air Quality & Rad. Protection
Dept. of Environmental Quality
P.O. Box 82135
Baton Rouge, LA 70884

Dated at Rockville, Md. this
3 day of June 1994


Office of the Secretary of the Commission