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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '94 JUN -6 AIO:48

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

OPPOSITION OF CITIZENS AGAINST NUCLEAR TRASH ("CANT")
TO LOUISIANA ENERGY SERVICES' ("LES")
REQUEST FOR LEAVE TO FILE A MOTION FOR
SUMMARY DISPOSITION OF CONTENTION H

Intervenor, Citizens Against Nuclear Trash ("CANT"), opposes the request by Applicant, Louisiana Energy Services ("LES"), for leave to file a summary disposition motion on Contention H. The time period for filing such motions has long since passed.

Pursuant to the Licensing Board's schedule set forth in its May 7, 1992 Memorandum and Order (Memorializing Prehearing Conference), summary disposition motions were to be filed sixty days prior to issuance of the Safety Evaluation Report ("SER"). The SER was issued at the end of January, 1994. Accordingly, by the end of October 1993, LES should have filed any such motions.¹ LES failed to do so, and never sought an extension of this deadline. LES acknowledges that the deadline has passed² and that LES does not have a right to file a summary disposition motion at

¹ The Board may have meant that summary disposition motions should be filed within 60 days after the issuance of the SER, but even so, that would put the deadline at the end of March, which LES has missed by nearly two months.

² "Louisiana Energy Services' Motion For Summary Disposition of Contention H" at f.1, May 25, 1994.

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this time, but LES asks in a footnote to its motion for leave to do so.³ Leave should not be granted.

Pursuant to 10 C.F.R. 2.749, the Licensing Board may "dismiss or hold in abeyance summary disposition motions filed shortly before the hearing or during the hearing if the other parties or the presiding officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion and thereby extend the proceeding." LES's motion, filed within weeks of the due date for prefiled testimony, would substantially divert CANT's resources from preparation of its prefiled testimony, and would therefore adversely affect CANT's ability to participate in the hearing scheduled to commence July 18, 1994. Under the current schedule, CANT's prefiled testimony is due July 1 -- less than two weeks after the answer to LES's summary disposition motion would be due.

Moreover, LES has demonstrated no reason for waiting until now to seek an extension of the deadline for summary disposition motions.⁴ LES claims that it was waiting for answers to

³ Id.

⁴ It is important to note that this is the second time that LES has sought to file an untimely motion for summary disposition. On April 13, 1994, LES filed a "Motion For Summary Disposition of the Safety Areas of Contention I" and acknowledged in footnote 1 that the motion was late, but requested leave to file it anyway. CANT did not object to LES's request. However, CANT presumed, and reasonably so, that this would be the end of summary disposition motions on contentions scheduled for the July 1994 hearing, as LES clearly acknowledged its awareness of the passed deadline. A second bite at the apple at this late date is entirely inappropriate.

interrogatories "to fully identify relevant issues,"⁵ but CANT has already put LES on notice of the issues it is raising, in the bases of Contention H, as admitted. Furthermore, CANT long ago answered the only interrogatories LES propounded concerning Contention H.⁶

And finally, there are clearly genuine issues of material fact which remain to be resolved with respect to Contention H, as the synopsis of the testimony of CANT's expert witness on Contention H reveals. As CANT has previously indicated to LES, this synopsis will be in final form and furnished to LES on or before June 10, 1994. Accordingly, to divert CANT's resources at this time to dealing with a motion for summary disposition on Contention H would not only be unfair and prejudicial to CANT, it would be a significant waste of time.

Respectfully submitted,

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⁵ "Louisiana Energy Services' Motion For Summary Disposition of Contention H" at f.1, May 25, 1994.

⁶ See "Answers to Applicant's First Round of Interrogatories to Citizens Against Nuclear Trash Regarding Citizens Against Nuclear Trash's Emergency Planning Contention H, bases 2-7, 10, 16, 17, 20 and 23" filed June 22, 1992.

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LOUISIANA ENERGY SERVICES, L.P.) ASLBP No. 91-641-02-ML BRANCH
)
(Claiborne Enrichment Center) (Special Nuclear
) Materials License)

CERTIFICATE OF SERVICE

I hereby certify that copies of the "OPPOSITION OF CITIZENS AGAINST NUCLEAR TRASH ("CANT") TO LOUISIANA ENERGY SERVICES' ("LES") REQUEST FOR LEAVE TO FILE A MOTION FOR SUMMARY DISPOSITION ON CONTENTION H" have been served on this 27th day of May, 1994, as follows:

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Washington, D.C. 20555

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