

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

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DOCKETED
USNRC

March 24, 2004 (10:00AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)
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)

LOUISIANA ENERGY SERVICES, L.P.)

(National Enrichment Facility))
_____)

Docket No. 70-3103

CLI-04-03

**THE NEW MEXICO ENVIRONMENT DEPARTMENT'S
REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE**

Pursuant to 10 C.F.R. § 2.309, the New Mexico Environment Department (NMED) hereby requests the Nuclear Regulatory Commission to conduct a full public hearing and to grant NMED permission to intervene in this matter. The following grounds support NMED's request for hearing and petition for leave to intervene:

1. Louisiana Energy Services, L.P. (LES) proposes in its Application (Application) to construct and operate a national uranium enrichment facility (Facility) within the boundaries of the State of New Mexico.
2. NMED is an agency of the State of New Mexico, and has the authority to serve as agent for the State in matters of environmental management and consumer protection in which the United States is a party. NMSA 1978, § 74-1-6.E.
3. The Governor of the State of New Mexico has designated NMED as the single representative for the State for the hearing in this matter.
4. NMED, as the representative of the State in which LES's proposed Facility is to

be located, has standing as a party in this matter pursuant to 10 C.F.R. § 2.309(d)(2)(i).

5. The contentions that NMED seeks to have litigated in a hearing in this matter include the following. Each of these contentions is within the scope of this proceeding and material to the Commission's findings to support issuance of a license to LES.

a. In its Application, LES requests to be allowed to buildup or store depleted uranium (DU) in the form of uranium hexafluoride (UF₆) throughout the life of the Facility. Application, § 4.13, Environmental Report, vol. 2. The life of the Facility is anticipated to be thirty years.

Buildup of DU waste for thirty years is not acceptable to the State of New Mexico and is contrary to the representations made by LES to the State. Storage of such highly dangerous waste over a thirty year period may pose a threat to the protection of health and property. 10 C.F.R. § 40.32(c). Furthermore, LES's proposed plan for storage of this waste is not sufficiently detailed, and does not demonstrate that issuance of a license will not be inimical to the health and safety of the public. 10 C.F.R. § 40.32(d).

Additionally, the DU waste could become a stockpile of legacy waste and, in the event of a default by LES, could become an above ground waste storage complex, for which adequate financial assurance is not provided. *See* Paragraph 5(c) below.

The DU waste should not be stored over the life of the Facility, but should be disposed of in a timely and safe manner.

b. Section 4.13.3.1.3 of the Application states that LES may classify the DU waste as resource material instead of as waste. The waste generated by LES's uranium enrichment process, UF₆ or uranium oxide waste, should not be classified as resource material. LES has not identified any use or economically viable market for this material. Therefore the material cannot

be properly categorized as resource material. The material should be categorized as a waste, and the Application should adequately provide for timely and safe disposal of this waste.

c. The proposed financial assurance amounts set forth in the Application are inadequate. Sections 4.13-10 and 10.3 of the Application set forth a cost estimate to decommission the Facility of \$850,000,000.00 and a cost estimate of approximately \$736,000,000.00 to dispose of the total DU.

The cost estimate provided in the Application fail to include the cost of conversion to uranium oxide and is based upon a disposal rate of \$2.51 per pound of DU. Radiation specialists from NMED contacted outside entities (including Thomas Gray and Associates and US Ecology) to determine the actual cost, based on a price scale or regulated rate, to dispose of the amounts of DU set forth in the Application. NMED's review found the actual cost for disposal to be between \$1,900,000,000.00 and \$7,200,000,000.00. The cost estimate for disposal of the DU, and the financial assurance associated with that cost, therefore are not adequate and do not meet the requirements 10 C.F.R. § 70.25 (a), (e).

d. The Application does not set forth any information regarding the economic viability of the proposed Facility. The economic viability cannot be evaluated without LES providing market projections and a business plan that take into consideration the market need for enriched uranium and a realistic cost of waste disposal. The economic viability of the proposed Facility is of critical importance to the State of New Mexico in light of the fact it is the State that will inherit the Facility and its waste should LES default on decommissioning the Facility or clean-up if its venture proves to be economically unsound.


e. The Application does not comply with the requirements of 10 C.F.R. § 20.1101 because it fails to provide sufficient information to demonstrate the establishment of an adequate

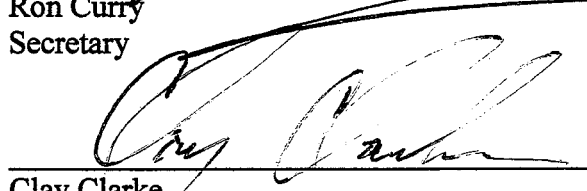
radiation protection program. Specifically, the Application is deficient in providing the technical bases for monitoring and assessing effluent discharge, and in estimating occupational and public radiation doses. *See e.g.* Application, §§ 4.6, Safety Analysis Report, vol. 4; 4.12, Environmental Report, vol. 2; 6.0, Safety Analysis Report, vol. 4; *see* 10 C.F.R. § 20.1101(b); Nuclear Regulatory Guidance Document 4.14 (setting forth the need for discharge and dosage information prior to and during operations of the uranium processing facility). The radiation dose quantities are provided, but are not supported by calculation protocols, formulae, or variables (e.g., occupancy factors, seasonal variations, diffusion coefficients). This additional information must be provided in order to verify the information in the Application.

Based on the foregoing, NMED respectfully requests the Commission to hold a hearing in this matter and to grant leave to NMED to intervene as a party in this matter.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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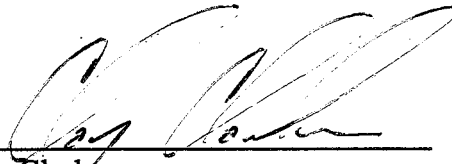
Certificate of Service

I certify that a copy of the foregoing pleading was served by mail and/or facsimile on March 23, 2004 to:

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