

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

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Docket No. 70-3103

NRC STAFF RESPONSE TO NMED'S MOTION FOR EXTENSION OF
TIME TO FILE REPLY IN SUPPORT OF PETITION FOR LEAVE TO INTERVENEINTRODUCTION

The Nuclear Regulatory Commission Staff ("Staff") hereby responds to a motion filed by the New Mexico Environment Department ("NMED") on April 22, 2004, requesting an extension of time to file a "Reply in Support of NMED's Request for Hearing and Petition for Leave to Intervene." NMED asks leave to file this reply on May, 14, 2004 because (1) NMED intends to coordinate resources with the New Mexico Attorney General and (2) NMED did not initially have sufficient time to prepare its petition to intervene given the rigorous nature of the NRC's requirements for such filings, and will need at least this much additional time to meet this standard. As discussed below, the Staff submits that while NMED has not demonstrated good cause for the requested extension, it does represent the state in which the facility will be sited. If NMED is therefore permitted the opportunity to advance further support of its contentions, the Staff requests the opportunity to respond.

BACKGROUND

On March 6, 2004, the Commission issued an Order providing notice of the hearing to be held on the licensing of the LES facility and setting forth directions specific to consideration of various procedural and substantive matters; the notice provided that any person who wished to participate as a party in the proceeding was required to file a written petition for leave to

intervene by April 6, 2004. 69 Fed. Reg. 5874. The Order also explicitly set forth the Commission requirements that apply to such petitions, including the necessity for setting forth contentions with supporting bases, and cited to the applicable regulation, 10 C.F.R. § 2.309. *Id.* NMED filed a request for hearing and petition for leave to intervene on March 23, 2004. Both the Staff and LES responded to the petition in filings submitted on April 19, 2004, pursuant to 10 C.F.R. § 2.309 (h)(1). Under that regulation, NMED has the right to file a reply to the answers submitted by the Staff and LES within seven days after service of the answers, that is, by April 26, 2004.

The Commission, in issuing the Order regarding the hearing set forth an ambitious schedule, calling for a final NRC decision on the application within 30 months. Accordingly, the Commission directed the Licensing Board to decide the admissibility of contentions within 60 days of referral by the Commission to the Board. 69 Fed. Reg. 5875-76. Further, the Commission stated that the Board should not grant requests for extensions of time absent unavoidable and extreme circumstances. *Id.* at 5877.

DISCUSSION

The request for extension requested by NMED does not meet the standards set forth by the Commission. In essence, NMED is asking for more time to provide supporting bases for their contentions because they did not have sufficient time to do so initially and/or didn't appreciate what is called for by the contention requirements in the Commission's regulations. However, the appropriate time for NMED to request the extension was when their intervention request was initially filed, not now. The Commission's standards for admission of contentions was fully explained in the Commission Order noticing the hearing, so there is no reason that NMED should not have been aware of the Commission's standards for admission at the time it made its initial filing. Further, NMED's coordination with the New Mexico Attorney General is a

prospective requirement, and is not necessary for the purpose of assessing the admissibility of contentions.

It is true, however, that NMED is a representative of the state where the facility is located. NRC regulations recognize the importance of obtaining participation of the state where a facility is located, and therefore do not impose standing requirements in these circumstances. 10 C.F.R. § 2.309(d)(2). Indeed, the regulations provide that a state may participate in a hearing even if it has not been admitted as a party, with the opportunity to introduce evidence, interrogate witnesses, advise the Commission on issues, file proposed findings and petition for review by the Commission on admitted contentions. 10 C.F.R. § 2.315(c). Thus, the State will have the opportunity to participate even concerning issues on which it has not propounded admissible contentions.

In the event that the Board nevertheless grants NMED's request in light of its status as a state representative, the Staff requests the opportunity to reply by May 28, 2004, to the extent that that NMED is not asking merely to reply to the Staff's response, but is actually asking for another opportunity to provide sufficient evidentiary support for its proposed contentions. In addition, the Staff requests the opportunity to reply in the event that the additional filing by NMED raises new issues¹ and to present a position as to whether the contentions, as newly framed, are admissible.

CONCLUSION

For the reasons stated above, the Staff submits that NMED has not provided good cause for requesting additional time for it to provide adequate supporting bases for its

¹It is the Staff's understanding, pursuant to a telephone conversation between Staff counsel and counsel for NMED, that NMED is not asking for the opportunity to raise new issues, but instead only to provide additional support for the contentions previously propounded.

contentions. Further, the Staff requests that if the additional filing is permitted, the Staff be allowed to reply by May 28, 2004, to the extent new matters not previously raised are submitted.

Respectfully submitted,

/RA/

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 26th day of April, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO NMED'S MOTION FOR EXTENSION OF TIME TO FILE REPLY IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), by electronic mail as indicated by a double asterisk (**), and by facsimile as indicated by triple asterisk (***) on this 26th day of April, 2004.

Administrative Judge * **
Paul Bollwerk
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-Mail: gpb@nrc.gov

Administrative Judge * **
Charles Kelber
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-Mail: cnk@nrc.gov

Administrative Judge * **
Paul Abramson
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555
E-Mail: pba@nrc.gov

Ron Curry, Secretary **
Clay Clarke, Assistant General Counsel
Melissa Y. Mascarenas, Legal Assistant
New Mexico Environmental Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110
E-mail: clay_clarke@nmenv.state.nm.us

Office of the Secretary * **
ATTN: Rulemakings and Adjudication Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

Patricia A. Madrid, N.M. Attorney General ***
Glenn Smith, Deputy Attorney General
P.O. Box 1508
Santa Fe, NM 87504-1508
Fax #: 505-827-4440

Office of Commission Appellate Adjudication*
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

Mr. Rod Krich, Vice President
Licensing, Safety and Nuclear Engineering
Louisiana Energy Services
2600 Virginia Avenue NW.
Suite 610
Washington, D.C. 20037

Lindsay A. Lovejoy, Jr. **
Nuclear Information and Resource Service
1424 16th Street, NW.
Suite 404
Washington, D.C. 20036
E-mail: lindsay@lindsaylovejoy.com

James. R. Curtis, Esq. **
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
E-mail: jcurtiss@winston.com

/RA/

Lisa B. Clark
Counsel for NRC Staff