

April 29, 2004 (12:38PM)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

LOUISIANA ENERGY SERVICES, L.P. )

(National Enrichment Facility) )

Docket No. 70-3103

NMED'S MOTION FOR EXTENSION OF TIME TO FILE REPLY  
IN SUPPORT OF PETITION FOR LEAVE TO INTERVENE

Introduction

The New Mexico Environment Department (NMED) hereby requests an extension of time in which to file its Reply in Support of NMED's Request for Hearing and Petition for Leave to Intervene. NMED's reply is now due pursuant to 10 C.F.R. § 2.309(h)(2) on April 26, 2004. NMED requests an extension until May 14, 2004.

In its Memorandum and Order of April 15, 2004, the Atomic Safety and Licensing Board (Board) stated that motions for extension of time must be supported by "appropriate cause." Mem. and Order, p. 7. There are two reasons why NMED requests this extension, both of which constitute appropriate cause.

First, NMED and the New Mexico Attorney (Attorney General) intend to coordinate resources in this matter. NMED and the Attorney General have taken similar positions in their petitions to intervene on a number of contentions, and believe it is in the best interest of the State of New Mexico to coordinate preparation of pleadings and presentation of evidence in this proceeding. NMED and the Attorney General intend to coordinate efforts on behalf of the State while still maintaining separate party status (if permitted to intervene as parties). NMED

requires the additional time to begin to coordinate with the Attorney General.<sup>1</sup>

Second, in its answer to NMED's petition to intervene, Nuclear Regulatory Commission (NRC) Staff has argued that NMED's petition does not satisfy all the requirements of 10 C.F.R. § 2.309(f), which sets forth the showing that a petitioner must make for each contention raised. NMED acknowledges that its petition does not satisfy each of the requirements of 10 C.F.R. § 2.309(f) for each of its contentions. However, the requirements of that provision are rigorous, more rigorous than generally required for intervention in a legal proceeding. *Compare* Rule 24, Fed. R. Civ. P. (setting forth requirements to intervene in federal court proceeding). NMED did not initially have adequate time to prepare its petition. NMED therefore requests an opportunity to make the necessary showing in order to intervene. NMED requires at least until May 14, 2004 to make such a rigorous showing.

NMED is in a unique position, as the representative of the Governor of the State of New Mexico, and should be allowed the opportunity to make the necessary showing to participate in a proceeding that will determine whether a uranium enrichment facility will be licensed to operate within the State's borders.

Counsel for Louisiana Energy Services, L.P., the New Mexico Attorney General, the Nuclear Information and Resource Service, and Public Citizen do not oppose this motion. NRC Staff does not take a position at this time.<sup>2</sup>

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<sup>1</sup> In this regard, counsel for the Attorney General indicated to NMED counsel that they do not wish to be bound by NMED's extension. NRC Staff and Louisiana Energy Services, L.P. must still file answers to the Attorney General's petition to intervene, and the Attorney General must still evaluate how to respond and whether counsel for the Attorney General will need additional time to reply as well.

<sup>2</sup> Counsel for NRC Staff indicated that she would review NMED's motion and the reasons therefore, and respond. She indicated that she was concerned about the NRC's January 30, 2004 Notice of Receipt of Application of License in which the NRC stated that this matter would be moved expeditiously and that extensions causing unnecessary delay would not be granted absent unavoidable and extreme circumstances. NMED's request for a three week

For the foregoing reasons, NMED respectfully requests an extension until May 14, 2004 to file its reply in support of its petition to intervene.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT



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Certificate of Service

I hereby that a copy of the foregoing pleading was served by mail as indicated by an asterisk (\*), by electronic mail as indicated by a double asterisk (\*\*), and by facsimile as indicated by a triple asterisk (\*\*\*) on this 22<sup>nd</sup> day of April, 2004.

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extension does not represent substantial or unnecessary delay in the process, and NMED believes it has shown good cause for the extension, as required by the Board's recent order.

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