

May 7, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

May 12, 2004 (3:26PM)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of:)	
)	Docket No. 70-3103-ML
Louisiana Energy Services, L.P.)	
)	ASLBP No. 04-826-01-ML
(National Enrichment Facility))	

ANSWER OF LOUISIANA ENERGY SERVICES, L.P. TO
NEW MEXICO ATTORNEY GENERAL'S MOTION FOR EXTENSION OF TIME

I. INTRODUCTION

In accordance with the Licensing Board's May 6, 2004 Order,¹ Louisiana Energy Services, L.P. ("LES") hereby files its response to a motion² filed by the New Mexico Attorney General ("AG") on May, 5, 2004, requesting an extension of time to file a reply to the May 3, 2004 "Answer of Louisiana Energy Services, L.P. to the Requests for Hearing and Petitions for Leave to Intervene of the New Mexico Attorney General and Nuclear Information and Resource Service and Public Citizen" ("LES Answer"). The AG requests leave to file its reply on June 2, 2004,³ to permit the AG to evaluate certain proprietary information related to LES's depleted uranium tails disposition cost estimate. Secondly, the AG seeks this extension "to permit [it] the requisite time to analyze fully and properly the issues raised by Staff and LES" in their

¹ Licensing Board Order (Schedule for Response to Time Extension Motion) (May 6, 2004) (unpublished).

² New Mexico Attorney General's Motion for Extension of Time (May 5, 2004) ("Motion").

³ Absent the requested extension of time, the AG's reply is due on May 10, 2004.

answers to the AG's petition. (Motion at 1.) The AG cites the length of LES's Answer, the complexity of the issues in this proceeding, and budgetary constraints, as well as "technical difficulties" in the service of LES's answer,⁴ as bases for the requested time extension. (Id. at 3-4).

Although LES does not necessarily agree with the bases cited by the AG in support of its motion, LES would not object to a reasonable extension of time to permit the Attorney General to evaluate and reply to the Answer submitted by LES and the NRC Staff to the AG's Petition, bearing in mind, however, the importance of the schedule established by the Commission and the Licensing Board for the conduct of this proceeding. In this regard, LES does not believe that an extension of 23 days is warranted for this purpose. Instead, a shorter extension, on the order of 17 days, should be sufficient to permit the AG to submit a comprehensive reply and, at the same time, not delay the schedule established by the Commission and the Licensing Board in this proceeding.

With regard to the proprietary material sought by the AG, LES does not necessarily agree, given the nature of the information and the manner in which it was employed by LES in arriving at its cost estimate, that this information is necessary for the proper pleading of the AG's contention on the cost of DUF₆ disposal. In fact, the UDS information relied on by LES and referenced in the AG's Motion as proprietary is publicly available. LES can provide a copy of the information relied on by LES to the AG. With regard to the remaining limited proprietary information relied on by LES to confirm the validity of its estimate of the cost of DUF₆ disposal (i.e., information supplied by Urenco), the information sought by the AG is not

⁴ During a telephone call on the afternoon of May 4th initiated by counsel for LES, counsel for the AG agreed that LES timely served LES's Answer to the AG's April 5, 2004

essential to understanding the basis of LES's cost estimate, as discussed in more detail below, and hence is appropriate to address in the context of discovery. At that point, LES would be prepared to provide the proprietary information, under an appropriate nondisclosure agreement, should one or more contentions regarding the cost of DUF6 disposal be admitted by the Board. Nevertheless, LES will endeavor to make this information available to the AG as early as possible, subject to the entry of appropriate nondisclosure arrangements.

II. BACKGROUND

On February 6, 2004, the Commission published a Notice of Hearing and Commission Hearing Order in the *Federal Register* for the hearing to be held on the licensing of LES's proposed gas centrifuge uranium enrichment facility. In the Hearing Order, the Commission set forth specific guidance on both procedural and substantive matters. Among other things, the Commission 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 col. 2. The AG filed a request for hearing and petition for leave to intervene on April 5, 2004, to which LES responded on May 3, 2004. Under 10 C.F.R. 2.309, the AG may reply to the answer submitted by LES within seven days after service of the answer, that is, by May 10, 2004.

With respect to time limits in NRC adjudicatory hearings, 10 C.F.R. § 2.307(a) provides, in relevant part, that such time limits "may be extended or shortened either by the Commission or the presiding officer for *good cause*, or by stipulation approved by the

petition. In fact, counsel for the AG agreed that LES successfully and effectively served the filing electronically by 9:30 p.m. Eastern Time on May 3, 2004.

Commission or the presiding officer” (emphasis added). Consistent with this requirement, the Licensing Board stated in its initial prehearing order that “[a] motion for extension of time must . . . demonstrate appropriate cause that supports permitting the extension.” Finally, the Commission stated in the Hearing Order that “to avoid unnecessary delays in the proceeding, the Licensing Board should not grant requests for extensions of time absent *unavoidable and extreme circumstances*.” 69 Fed. Reg. 5877 col. 1 (emphasis added).

III. DISCUSSION

A. LES’s Position Regarding the Requested Extension of Time

In its Motion, the AG submits that “LES’s failure to provide all of the documents upon which it relies to arrive at its current estimate of \$5.50 per kgU for disposition of depleted Uranium Hexafluoride is an ‘unavoidable’ and ‘extreme’ circumstance, which has precluded the [AG’s] ability to address in a complete responsive manner LES’s grounds in support of its Application.” (Motion at 2.) The AG specifically cites the withholding of “the information from UDS [Uranium Disposition Services] and Urenco” as proprietary. (*Id.* at 3.) Further, the AG argues that it should receive an extension of time “because the issues in this docket are incredibly complex, because the [AG] has not had necessary information presented by LES to adequately respond to its allegation that its cost estimates and disposal strategy are plausible, and because of the extreme and unavoidable circumstance of having to operate under severe budget constraints.” (*Id.* at 5.)

Although LES does not necessarily agree with the foregoing bases, LES is nevertheless prepared to support a reasonable extension of time for the AG to prepare a comprehensive reply to LES's Answer to the AG's Petition. Bearing in mind the importance of the schedules established by the Commission and the Licensing Board, however, an extension of

23 days is unreasonable. Instead, an extension on the order of 17 days should be more than ample time to allow the AG to prepare a comprehensive response while, at the same time, not adversely impacting the schedule that has been established for the conduct of this proceeding.

B. LES's Position Regarding the Provision of Limited Proprietary Information to the AG

In its May 6, 2004 Order, the Licensing Board directed LES to explain whether it objects to providing the AG “under an appropriate protective order, the proprietary material cited by the AG as being referenced by LES in its May 3 response and/or its December 12, 2003 application.” As noted above, the AG cites information associated with the Department of Energy-UDS contract, and information supplied by Urenco to LES. To the extent LES might not object, the Board also directed LES to indicate “when such as order could be agreed to by the relevant participants and provided to the Licensing Board for signature.”

As an initial matter, it is necessary to clarify the nature and relative importance of the information at issue. In short, the DOE-UDS contract information relied upon by LES is publicly available, not proprietary, information. In fact, LES will provide to the AG a copy of the information relied on by LES in the formulation of its cost estimate. The proprietary information from Urenco, on the other hand, constitutes only limited proprietary input that LES employed solely for the purpose of confirming the reasonableness of its cost estimate for depleted uranium tails disposition, an estimate that was based upon the three publicly available primary source documents cited in the application. Understanding the approach taken by LES to the estimation of the cost of DUF6 disposal, as discussed in more detail below, the confirmatory information obtained from Urenco is not essential to understanding the Application, nor to the AG's ability to properly plead a contention.

The Urenco-Supplied Information

The three sets of cost information relied upon by LES in its Application (the LLNL Report, the DOE-UDS contract, and the CEC licensing proceeding) provide the principal basis for LES's estimate in the Application of the total tails disposition unit cost. The information relied upon by LES from these three sources is publicly available.⁵

After LES derived total tails disposition unit cost figures from these three publicly available sources, it determined the average of the three unit costs to be \$5.24 per kgU. ER at 4.13-20; ER Table 4.13-7, note (e). As explained in the Application, LES then selected \$5.50 per kgU as its estimated total tails disposition unit cost after including some margin in its estimated unit cost. *Id.* LES then had Urenco review the \$5.50 per kgU cost estimate, given that Urenco is a commercial interest with actual experience in dispositioning depleted uranium hexafluoride in Europe. *Id.* As stated in the Application, Urenco confirmed the \$5.50 per kgU figure derived by LES from the LLNL Report, DOE-UDS contract, and CEC licensing proceeding to be a prudent one. *Id.* In this context – and in this context only – Urenco provided limited proprietary input to benchmark or confirm LES's estimated total tails disposition unit cost.

The limited proprietary information provided by Urenco is not essential to understanding the basis for the cost estimate in the application. Indeed the Urenco information was used solely for confirmatory purposes in the context of the estimate that LES arrived at based on its review of publicly available information. Thus, there is sufficient information available in the Application to demonstrate LES's sources, methodology, and conclusion with respect to the cost, and to allow the drafting of specific contentions. For these reasons, LES does

⁵ LES is prepared to provide copies of these references to the AG, or assist the AG in obtaining copies of these documents, in the event that the AG is unable to timely obtain these documents.

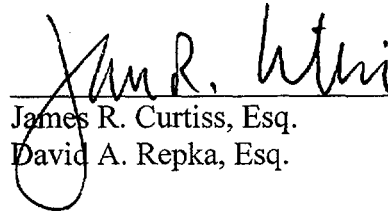
not believe it is necessary to provide the limited proprietary information at this point. Having said this, LES is prepared to provide this information under appropriate nondisclosure arrangements at the time of discovery, should one or more contentions related to the cost estimate for DUF6 disposal be admitted, and will endeavor to provide the information to the AG earlier.

IV. CONCLUSION

For the reasons stated above, LES is prepared to support a reasonable extension. In this regard, an extension of 23 days is an unreasonable period of time. Instead, LES is prepared to support an extension on the order of 17 days, assuming that this would not otherwise result in any delay in schedule established by the Commission and the Board.

With regard to the AG's request for access to the limited proprietary information relied upon by LES to confirm the validity of its DUF6 disposal estimates, LES does not believe the information is required to be provided at this time, as it is not central to the AG's ability to properly plead its contention given its confirmatory nature. LES will provide copies of the three principal reference documents to the AG for its review, as these documents are publicly otherwise available. In the event that one or more contentions is found admissible with regard to the reasonableness of the LES cost estimate, LES is prepared to provide this information as part of the discovery process, subject to the execution of appropriate nondisclosure agreements. Nevertheless, LES will endeavor to provide this information to the AG at an earlier time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James R. Curtiss", is written over a horizontal line.

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Dated at Washington, District of Columbia
this 7th day of May 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 70-3103-ML
)	
Louisiana Energy Services, L.P.)	ASLBP No. 04-826-01-ML
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(National Enrichment Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "ANSWER OF LOUISIANA ENERGY SERVICES, L.P. TO NEW MEXICO ATTORNEY GENERAL'S MOTION FOR EXTENSION OF TIME" in the captioned proceeding have been served on the following by e-mail service, designated by **, on May 7, 2004 as shown below. Additional service has been made by deposit in the United States mail, first class, this 7th day of May 2004.

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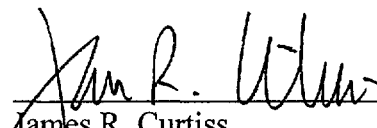
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