

June 16, 2004 (12:45PM)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFFBEFORE THE ATOMIC SAFETY AND LICENSING BOARDIn the Matter of )  
)  
)

LOUISIANA ENERGY SERVICES, L.P. )

Docket No. 70-3103

(National Enrichment Facility) )  
)  
)NMED'S MOTION TO CLARIFY CONTENTIONS  
AND SCHEDULE FOR ARGUMENT

The New Mexico Environment Department (NMED) hereby moves to clarify its contentions in light of the Atomic Safety and Licensing Board's (Board) orders regarding the schedule for argument during the June 15-16, 2004 prehearing conference.

On May 28, 2004, the Board issued a Memorandum and Order (May 28 Order) setting forth a schedule for the prehearing conference. In the May 28 Order, the Board grouped the various contentions raised by the parties who have petitioned to intervene into eleven categories.

There are two categories of contentions for which NMED now seeks clarification:

"Health/Safety/Environmental Impacts of Long Term Waste Storage" and "Plausible Strategy" for Waste Disposal." In the May 28 Order, the Board allowed NMED argument on "Health/Safety/Environmental Impacts of Long Term Waste Storage," but did not allow for argument from NMED on "Plausible Strategy" for Waste Disposal."

On June 9, 2004, the Board issued an Order (June 9 Order) revising the schedule for argument. In the June 9 Order, the Board allowed NMED argument on "Plausible Strategy" for Waste Disposal," but did not allow for argument on "Health/Safety/Environmental Impacts of Long Term Waste Storage."

In NMED's view, it has raised contentions in its petition to intervene and its reply in support that go to both categories of contentions. Therefore, NMED requests to be allowed to give argument on both types of contentions.

In its Petition for Leave to Intervene, NMED objected to the build up of depleted uranium waste over the life of the proposed uranium enrichment facility, arguing that the waste could be stockpiled and become legacy waste, that is, waste with no disposal pathway. NMED Pet. to Intervene, ¶ 5(a). This contention goes to whether the plan of Louisiana Energy Services, L.P. (LES) for disposal of depleted uranium represents a plausible strategy. In NMED's reply in support of its petition to intervene, NMED set forth in detail the basis for its contention that "LES does not put forth in its application to the NRC a plausible strategy for treatment and disposition of the DUF6 waste that the facility will generate." NMED Reply, p. 2; *see id.* at pp. 2-7. In its reply, NMED contended first that LES's plan for the private conversion and disposal of the depleted uranium is implausible because there is currently no such private facility, there is no viable market, and there is no viable place for disposal at present. *Id.* at pp. 3-5. NMED contended second that LES's plan for the United States Department of Energy (DOE) taking title and disposition responsibility for the depleted uranium is not plausible given the barriers and uncertainties of enacted federal legislation and the priority for disposition that will in all likelihood be given to DOE's current inventory of depleted uranium. NMED Reply, pp. 6-7. NMED's petition and supporting reply, therefore, make it clear that NMED contends that LES has not put forth a plausible strategy for disposal of the depleted uranium that will be generated by its facility.

Similarly, it is clear that NMED contends that there are significant health and safety concerns associated with the long-term storage of the depleted uranium. In its petition to

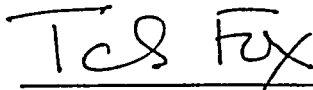
intervene, NMED contended the “DU waste should not be stored over the life of the Facility, but should be disposed of in a timely and safe manner” and that that LES’s license application “[did] not demonstrate that issuance of a license will not be inimical to the health and safety of the public.” NMED Pet. to Intervene, ¶ 5(a). In its reply, NMED detailed its health and safety concerns regarding long-term storage of the depleted uranium. *See* NMED Reply, pp. 7-14. In support of this contention, NMED cited, for example, DOE’s history of leaks from canisters of depleted uranium, the risks to humans if exposed to a release from a cylinder or from chronic exposure to uranium, and the dangers if a canister heats up above 125 degrees F. *Id.* at pp. 7-9. NMED identified the potential public health consequences of potential accidents and detailed the deficiencies in LES’s emergency preparedness plan. *Id.* at pp. 10-14. NMED, therefore, has put forth contentions regarding the “Health/Safety/Environmental Impacts of Long Term Waste Storage.”

Prior to filing this motion, NMED contacted counsel for the other parties. Counsel for LES, Nuclear Regulatory Commission Staff, the New Mexico Attorney General, and Nuclear Information and Resource Service/Public Citizen do not object to this motion.

Based on the foregoing, NMED respectfully requests the Board to allow NMED opportunity for argument during the June 15-16 prehearing conference on contentions involving “Health/Safety/Environmental Impacts of Long Term Waste Storage” and “Plausible Strategy’ for Waste Disposal.”

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing pleading was served by mail and, as indicated by an asterisk (\*), by electronic mail on this 10th day of June, 2004.

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