

September 17, 2004 (12:23PM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE COMMISSION

In the Matter of)

LOUISIANA ENERGY SERVICES, L.P.)

(National Enrichment Facility))

Docket No. 70-3103-ML

ASLBP No. 04-826-01-ML

NEW MEXICO ATTORNEY GENERAL'S ANSWER BRIEF

Pursuant to CLI-04-25, the New Mexico Attorney General ("Attorney General") hereby files her answer brief addressing the issue raised in Nuclear Regulatory Commission Staff's Brief-in-Chief concerning the proper venue in which to seek admission of a late-filed contention.

In its Brief-in-Chief filed September 8, 2004, NRC Staff states On September 3, [2004], the New Mexico Attorney General filed before the Commission "New Mexico Attorney General's Motion for Leave to File a Late-Filed Contention" and "New Mexico Attorney General's Brief in Response to Commission's Order on NIRS/PC Contention D and Attorney General's Late-Filed Contention." In those filings, the Attorney General seeks admission of a late-filed contention relating to the appropriate waste classification of DU. These filings misinterpret the Commission's direction, which was to file briefs on the contention already admitted in this proceeding, and therefore should not be considered by the Commission. The appropriate venue to seek admission of late-filed contentions is the Licensing Board, not the Commission.

NRC Staff Brief on Classification of Depleted Uranium as Waste, p.1 n.2

(September 8, 2004).

Rather than focusing on the merits of the Attorney General's late-filed contention or Brief-in-Chief regarding the waste classification matter, NRC Staff seeks to preclude Commission consideration on a technicality that NRC Staff has not even demonstrated

exists. NRC Staff has identified no regulation nor Commission precedent that would support its bald assertion that where, as here, the Commission has exercised its discretion to decide a discrete issue that is the subject of a late-filed contention and supporting brief, that "[t]he appropriate venue to seek admission of late-filed contentions is the Licensing Board, not the Commission." NRC Staff Brief on Classification of Depleted Uranium as Waste, p.1 n.2 (September 8, 2004). Additionally, the New Mexico Attorney General would not object to the Commission referring this matter back to the Licensing Board. The process, however, suggested by NRC Staff appears to be a useless exercise since the Commission has already exercised its discretion to decide this matter on the merits. Accordingly, the Attorney General respectfully requests that this Commission admit her late-filed contention and consider her Brief-in-Chief in support thereof.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the NEW MEXICO ATTORNEY GENERAL'S ANSWER BRIEF have been served upon the following persons by electronic mail, facsimile, and/or first class U.S. mail this 17th day of September, 2004:

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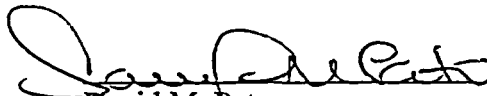
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September 17, 2004

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Re: **In the Matter of Louisiana Energy Services, L.P. (National
Enrichment Facility)**
 Docket No. 70-3103

Dear Rulemaking and Adjudications Staff:

Enclosed is the original and three copies of the New Mexico Attorney General's Answer Brief. The New Mexico Attorney General would appreciate it if you would kindly file, endorse and return a copy in the enclosed self-addressed, stamped envelope provided herewith.

Thank you for your assistance.

Sincerely,

David M. Pato
Assistant Attorney General
New Mexico Attorney General's Office

Enclosures