

December 14, 2004

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

DOCKETED  
USNRC

December 21, 2004 (10:41am)

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Paul B. Abramson  
Dr. Charles N. Kelber

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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 SUPPLEMENTAL MOTION FOR  
LEAVE TO FILE A LATE-FILED CONTENTION**

On September 13, 2004, the New Mexico Attorney General filed a request with the Nuclear Regulatory Commission for permission for leave to file a late-filed contention.

The Commission remanded consideration of the Attorney General's request to this Licensing Board on December 8, 2004, because the "Board is best situated to consider and balance the fact-specific requirements under [the NRC's] 'late-filed' rules." CLI-04-035 at 13. On December 9, 2004, this Licensing Board ordered that the Attorney General address her request for leave to file a late-filed contention relative to the standards in 10 C.F.R. § 2.309(c), (f), to the extent that she has not already addressed such matters.

Pursuant the Licensing Board's December 9, 2004, Order (Schedule for Responses In

Connection with Matters Remanded in CLI-04-35), the Attorney General hereby files her Supplemental Motion for Leave to File a Late-Filed Contention.

The Attorney General previously addressed each of the filing requirements of 10 C.F.R. § 2.309(c) regarding timeliness, as well as the contention requirements of 10 C.F.R. § 2.309 (f). See New Mexico Attorney General's Motion for Leave to File a Late-Filed Contention and in the New Mexico Attorney General's Brief in Response to Commission's Order on NIRS/PC Contention D and Attorney General's Late-Filed Contention. The Attorney General references those arguments herein. The Attorney General would also assert that admission of the Attorney General's waste classification contention would not result in additional delay because the Attorney General has not only committed to working within the briefing schedule set forth by the Commission, but has also already submitted her brief on this contention to the Commission.

Furthermore, the distinct interests of the Attorney General and NIRS/PC are readily apparent with respect to the issue of waste classification. While NIRS/PC posits that this waste is not acceptable for disposal in a land disposal facility, the Attorney General posits that the tails are low-level radioactive waste by default. Compare Reply Brief on Behalf of Petitioners Nuclear Information and Resource Service/Public Citizen in Support of NIRS/PC Contention EC-3/TC-1, at 9 with the New Mexico Attorney General's Brief in Response to Commission Order on NIRS/PC Contention D and Attorney General's Contention, at 1. Given the likelihood that these differences may give rise to collateral controversies, the Attorney General respectfully requests that she be permitted to pursue this contention with primary responsibility for litigation of the contention.

Respectfully submitted,

PATRICIA A. MADRID  
Attorney General



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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the NEW MEXICO ATTORNEY GENERAL'S SUPPLEMENTAL MOTION FOR LEAVE TO FILE A LATE-FILED CONTENTION have been served upon the following persons by electronic mail, facsimile, and/or first class U.S. mail this 14<sup>th</sup> day of December, 2004:

Office of Commission Appellate  
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December 14, 2004

Secretary of the Commission  
United States Nuclear Regulatory Commission  
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Washington, D.C. 20555-0001  
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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 SUPPLEMENTAL MOTION FOR LEAVE TO FILE A LATE-FILED CONTENTION. The New Mexico Attorney General would appreciate it if you would kindly file, endorse and return a copy of each 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