

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103-ML
)	
(National Enrichment Facility))	
)	

NRC STAFF RESPONSE TO MOTION ON BEHALF OF NUCLEAR
INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN
TO COMPEL COMPLIANCE AND SUSPEND THE HEARING

INTRODUCTION

In accordance with 10 C.F.R. § 2.323(c) the Nuclear Regulatory Commission Staff ("Staff") hereby responds to the motion filed on behalf of Nuclear Information and Resource Service and Public Citizen ("NIRS/PC") seeking the issuance of an order by this Board directing the Staff to make the hearing file in this case and all documents in the Agency Documents Access and Management System ("ADAMS") related to uranium enrichment public and to inform the Board and parties when the hearing file and ADAMS become publicly available and suspending the hearing in this case until thirty days after ADAMS is available to the public.¹ As discussed below, the remedy NIRS/PC seeks in regard to the public availability of NRC documents is clearly beyond the authority of this Board. Furthermore, NIRS/PC has failed to present a sound basis for requesting suspension of the hearing until after ADAMS is restored. Finally, there is no need for the Board to issue an order directing the Staff to inform the parties of the public status of ADAMS and the hearing file as the Staff has, and will continue to, comply with its obligations with regard to

¹ "Motion on Behalf of Nuclear Information and Resource Service and Public Citizen to Compel Commission Compliance with Hearing Rules and to Suspend Hearing Schedule Pending Release of Commission Files," December 15, 2004, ("Motion to Compel").

information relevant to the hearing. The motion by NIRS/PC should accordingly be denied.

Pursuant to the Board's order of December 16, 2004, the Staff provides, as Attachment A, the December 1, 2004, version of the Staff's draft protective order and, as Attachment B, an index of the documents relevant to the contentions to be litigated in the February 2005 hearing which were added to the hearing file after October 25, 2004. In addition, the Staff presents a proposal for proceeding with the upcoming hearing in light of the recent actions taken by the Commission and Staff in order to conduct further security screening of documents in the ADAMS systems of record.

BACKGROUND

NIRS/PC has provided a lengthy discussion of the background leading to the present situation in which public access to many of the documents on the NRC's ADAMS system has been temporarily suspended in order to allow the Staff to screen documents to ensure that information which may potentially be useful to terrorists is withheld. In addition, NIRS/PC has detailed its understanding of the Staff's actions to date to perform the screening and redaction process which is necessary before the documents may be released to the public.

With respect to the actions leading to the closing of ADAMS, NIRS/PC is correct in stating that it was action taken by the Commission that resulted in the closing of ADAMS to the public on October 25, 2004.² It is also true that NIRS/PC has asked Staff counsel to provide justification for the Commission's actions.³ However, it is not for this Board to determine whether the Commission's actions were appropriate - that issue must be brought before the Commission. The actions taken by the Staff to ensure that sensitive information is withheld were directed by the Commission in a Staff Requirements Memorandum ("SRM") issued by the Commission on

² Motion to Compel at 2.

³ *Id.*

November 9, 2004,⁴ directing the Staff to develop guidance for the handling of sensitive unclassified information with regard to NRC licensed facilities such as the proposed enrichment facility.

In regard to the Staff's actions following the temporary suspension of public access to ADAMS, NIRS/PC accurately represents selected aspects based on information provided during two extended telephone conferences held with all the parties on December 14 and 15. However, many of the representations made by NIRS are simply wrong, and the context of the information is misleading. Accordingly, the Staff is compelled to explain its actions in the context of responding to NIRS/PC's characterization rather than filing its own explanation as the Staff had intended to do shortly after the NIRS/PC filing.

Following the issuance of the Commission SRM on November 9, 2004, the Staff began developing criteria for determining whether information relating to materials and NRC facilities other than nuclear reactors could reasonably be expected to be useful to a potential adversary. While the Staff had already developed criteria for identifying such information with respect to nuclear reactors, different criteria were necessary to address the specific information which relates to other types of facilities and materials. These criteria, referred to as "screening criteria" are used to determine whether a document contains *any* information which could potentially be useful to an adversary, or "sensitive." A document deemed sensitive cannot be released to the public until the sensitive information has been removed, *i.e.*, redacted. The redaction process is a time consuming one in which a Staff reviewer must conduct a page-by-page review of the entire document.

The Staff has now developed provisional screening criteria for reviewing documents related to fuel cycle facilities the proposed uranium enrichment facility. In view of the provisional nature

⁴ Staff Requirements - SECY-04-0191 - Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors From Public Disclosure. This document is available on the NRC's public web site.

of the criteria, the Staff has authorized release only under certain conditions until the criteria are finalized. In particular, the Staff has authorized release to the Board and to the parties provided that the parties agree to keep the criteria confidential until the NRC releases the criteria to the affected licensees.⁵

Throughout this time, the Staff advised the Board and the parties of the circumstances regarding the availability of ADAMS and continued to provide updates of the hearing file. Because the Staff was sensitive to the fact that documents were being placed in the hearing file which the parties could not access, it began to draft a protective order which would allow access to documents which contain sensitive information under protections similar to those which are imposed for proprietary information. In order to expedite the process, and in an attempt to develop an order acceptable to the parties, the Staff provided to the parties a proposed order in draft.⁶

By December 13, the Staff determined that it had sufficient information regarding the status and schedule for its review process to report to the Board. Accordingly, the Staff convened a telephone conference with the parties on December 13 in order to obtain their views before reporting to the Board. At the end of the conference, NIRS/PC stated that it needed additional time to consider the new information which had been provided by the Staff, at which time the parties agreed to another conference which was held on December 14. These conferences were arranged by the Staff, included all parties, and were held for the purpose of (1) providing the parties with information as to the current status of the Staff's screening process, (2) attempting to reach agreement on the Staff's December 13 draft protective order under which the parties could have

⁵ The Staff is providing a non-disclosure agreement by which the parties may obtain the criteria as an attachment to a letter sent with this filing.

⁶ For obvious reasons, it is our practice never to publically release drafts which have not been approved by Staff management. While we nonetheless shared these preliminary drafts with the parties in an effort to obtain consensus as early as November 29, 2004, it was with our belief that information in the drafts would not be released without our consent or knowledge as NIRS/PC has done in its filing of December 15.

full access to all information relevant to the hearing or, alternatively, to obtain the positions of the parties for the Staff's motion, and (3) to attempt to develop an approach to move forward with the submission of testimony and the hearing in as public a means as possible which could be presented to the Board.

As the Staff informed the parties during the conferences, it was intending to file a motion with the Board as early as December 15. However, during the conferences the parties raised questions regarding the draft protective order which the Staff stated it would address. Further, the Staff was advised by counsel for the New Mexico Attorney General ("NMAG") and the New Mexico Environmental Department ("NMED") that they had not yet had the opportunity to consult with their clients. Accordingly, the Staff stated that it would wait before filing so that it could address the issues raised regarding the protective order and report on their positions on the motion consistent with 10 C.F.R. 2.323(a).⁷ It was therefore with great surprise to the Staff to receive the December filing of NIRS/PC later on the 15th, alleging that the Staff had failed to bring the present circumstances to the attention of the Board.

The motion of NIRS/PC is incorrect in certain significant respects. First, despite its assertion that it has sought informal solutions to the problem of access to hearing files,⁸ NIRS/PC has done no more than, at the suggestion of the Staff, simply identified the documents placed into the hearing file after ADAMS was closed to the public that it would like to obtain. Despite repeated requests by the Staff for suggestions to revise the draft protective order to address its interests,⁹

⁷ Staff was advised by both parties on December 16 that they would respond to the Staff's motion in writing.

⁸ Motion at 3.

⁹ The Staff provided preliminary drafts to NIRS/PC and all the other parties for comment on November 24, November 30, and December 13. The draft provided on November 30 was dated December 1 and is Attachment A of this filing. On the morning of December 16, the Staff provided a version reflecting comments provided during the phone conferences in anticipation of our filing. The December 16 version is the one contained in the "Staff's Motion for Protective Order

NIRS/PC's only response until the phone conferences was that it would not sign a nondisclosure agreement under any of the draft protective orders provided by the Staff up until that time. Not until December 16, the day after filing this motion, did NIRS/PC provide written comments on the draft to the Staff.

NIRS/PC is also incorrect when it states that the Staff "require[s] an opportunity to 'screen' any documents that may become public in this case to determine whether they contain information deemed 'sensitive.'" This representation is somewhat surprising given that much of the telephone conference on December 15 related to this issue and the Staff's position was quite different. As the Staff explicitly stated, quoting from the draft order, only documents from NRC's systems of public records need to be screened for sensitive information. The Staff's position as stated to the parties is quite simple: The screening criteria should be applied to documents contained in any official NRC system records before they are disclosed to the public. Contrary to NIRS/PC's version of what it thinks the Staff intends, the Staff has no desire to screen any and all documents in the proceeding that may become public.¹⁰ Moreover, the Staff has no intention of dictating the conduct of this proceeding to any party or the Board. It is unfortunate that our attempt to open a dialogue on possible options in an effort to assist the Board has been so misconstrued.

DISCUSSION

I. NIRS/PC Cannot Obtain the Remedy It Seeks From the Licensing Board

NIRS/PC correctly observes that Commission regulations generally call for NRC records and documents to be public. This general rule is, of course, subject to exception. This is because

Governing Disclosure of Information" filed with this response.

¹⁰ Indeed, during the conferences, the Staff proposed that in the event that screening of party filings would be necessary (because they rely on NRC documents which were not part of the hearing file) that this could be accomplished by the parties themselves if, as Staff counsel expected, they were provided with the screening criteria. However, because of objections raised by other parties as to their reluctance to assume responsibility for applying the criteria, the Staff offered to conduct any necessary screening.

the fundamental duties of the Commission under the Atomic Energy Act¹¹ - to protect the public health and safety and the promotion of the common defense and security - require the Commission to guard against the public release of information that could aid terrorists and thereby jeopardize the safety of nuclear facilities. This fundamental obligation is recognized in 10 C.F.R. 2.390 which provides:

NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying.

This was, of course, exactly the determination the Commission faced when it made the decision to temporarily suspend public access to ADAMS. At all times, the Commission must balance the desire for public access and the need for information security. The shutdown of ADAMS followed the Commission's determination that certain documents then available to the public could contain information that could aid terrorists.

The Commission, shortly thereafter, directed the Staff to develop criteria for handling sensitive unclassified information relating to NRC licensed facilities, including enrichment facilities, which could reasonably be expected to aid an adversary. As discussed above, the Staff is proceeding with that directive. At the same time, the Staff has not disclosed potentially sensitive information unless certain protections are in place to ensure that it is treated appropriately. In the Staff's view, to do otherwise would violate the Commission's recent directive.

NIRS/PC asks this Board to order public disclosure of all documents in the hearing file and related to uranium enrichment, regardless of whether they contain sensitive information.

¹¹ Atomic Energy Act 103 (b), (d), 104(d), 161(b), 182a, 189a(1)(B)(ii) and (ii); 42 U.S.C. 2133(b), (d), 2134(d), 2201(b), 2232(a)(1)(B)(ii) and (iii).

NIRS/PC's request, however, is far too broad – this Board clearly can direct the disclosure of information among the parties to this proceeding – under protective order if appropriate – but it does not have the authority to direct the Staff to provide access to the documents NIRS/PC seeks to the general public. In any event, NIRS/PC's participation in this proceeding is confined to representation of the interests of its members – it does not speak for the public at large.¹²

II. NIRS Has Not Established a Basis for Suspending the Hearing Pending Resumption of ADAMS

NIRS also asks that the Board suspend the hearing schedule until at least 30 days after the hearing file and ADAMS are available to the public. However, NIRS/PC fails to establish a sound basis for requiring such a substantial delay in the proceeding.

First, the relevant question is not whether the general public has access to documents but whether the party to upcoming hearing - here, NIRS/PC - has had access to the relevant documents. Up until October 25, NIRS/PC had long had access to the entire hearing file and ADAMS and ample opportunity to provide all relevant documents to its experts. Indeed, NIRS/PC must have done so because it filed responses to discovery, including lengthy statements by its proposed experts regarding each of the environmental contentions.

While it is true that additional documents have been placed into ADAMS and the hearing file since that time, only a limited number of those have any relevance to the environmental contentions. Further, on December 17, the Staff provided to NIRS/PC all nonsensitive documents that were added to the hearing file after October 25. By the Staff's assessment, at this time, NIRS/PC has all but one document from the hearing file relevant to the environmental contentions which was withheld because it contains sensitive information - Revision 3 of the Environmental Report. If NIRS/PC agrees to sign a non-disclosure agreement approved by the Board, it will be provided access to that document promptly thereafter. In any event, NIRS/PC will have access to

¹² See, *In the Matter of Chemtron Corporation*, LBP-94-20, 40 NRC 17, 19 (1994).

this document once the redacted version is publically released. As explained in the affidavit of Timothy Johnson, the Staff is currently working to redact that document and expects that the Environmental Report will be available to the public on December 23, 2004.¹³

The Staff expects that all sensitive documents in the hearing file will be redacted and available to the public by December 31, 2004. Thus, NIRS/PC will have had access to all information in the hearing file by December 31st. While it may be reasonable to allow some modest extension of time in which to file testimony in order to account for the fact that access to those documents was delayed, the remedy NIRS/PC seeks is far from reasonable. NIRS/PC has presented no sound basis to suspend this proceeding until after the entire ADAMS system is restored.

Rather, NIRS/PC and its proposed experts attempt to claim that general access to ADAMS is necessary because they require the ability to conduct internet searches of all NRC documents. This is simply not true. The issue is not whether NIRS/PC has been provided with a convenient database from which to work but whether they are prevented from obtaining information necessary to present its case. That they haven't shown. As explained above, the Staff expects that all relevant NRC documents will be available to NIRS/PC in full as soon as a non-disclosure agreement is signed under a protective order approved by the Board, and in redacted versions by December 31st.

III. The Board Need Not Direct the Staff to Advise the Board and Parties When the Hearing File and ADAMS are Available to Public Users

NIRS/PC also asks that the Board direct the Staff to advise the Board and parties when the hearing file and ADAMS are available to the public. The Staff intends to do so, just as it has up until this time – direction from the Board is unnecessary.

¹³ Affidavit of Timothy Johnson, Attachment C, ¶ 6.

IV. Staff Proposal for Conducting the February 2005 Hearing.

Regarding how to proceed under the current circumstances and allow the upcoming hearing to be as public as possible, the Staff offers the following option:

- 1) The Board issues a Protective Order providing for the release of sensitive unclassified information to the parties who agree to its provisions. Thus, the parties will be able to obtain access to all documents, including sensitive information.
- 2) The Staff completes redaction of all documents in the hearing file and makes them publically available by December 31, 2004. The parties will thus have access to all redacted NRC documents in the hearing file.
- 3) The parties identify all additional documents contained in an official NRC system of records upon which they intend to rely at the hearing to the NRC within 30 days before the beginning of the hearing for screening and redaction if this has not already been accomplished. The Staff completes redaction and releases the redacted versions to the public within 14 days.
- 4) Each party is responsible for reviewing the content of its testimony based on the redacted versions of the supporting documents and reporting to the Board whether any portion relies on information contained in the redacted portion of any NRC document. If so, the party must segregate that portion of the testimony, mark it as sensitive, and submit to the Board the sensitive testimony. The party must also separately file the non-sensitive portion of its testimony.
- 5) The Board will review the submissions of the parties and determine what issues or portions thereof rely on evidence from an NRC System of records which has been determined to be sensitive. The hearing on those specific issues, but only those, will be closed to the public. The remainder of the hearing will be open to the public.

Under this proposal, the Staff expects all of the February 2005 hearing is likely to be public because it does not appear that any of the sensitive information identified relates to the admitted contentions. However, this provides a means to ensure that if any sensitive information is used by a party, it will be identified before the hearing and that only the specific issue related to the

testimony is subject to a closed hearing. The Staff only provides this option as a “straw man” which may require refinement, but hopes that this may assist the Board in directing the further conduct of the hearing.

CONCLUSION

For the reasons stated above, the Board should deny NIRS/PC’s motion to direct that all documents in the hearing file and ADAMS be made public, to suspend the hearing until at least 30 days of the restoration of ADAMS, and to direct the Staff to advise the Board and parties of the availability of those documents should be denied. Additionally, the Staff requests that the Board direct the parties on the conduct of the February 2005 hearing consistent with the suggestions of the Staff and taking into account the views of the other parties.

Respectfully submitted,

/RA/

Lisa B. Clark
Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of December, 2004

December 1, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of)	
)	
LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
)	
(National Enrichment Facility))	ASLBP No. 04-826-01-ML
_____)	

NRC STAFF MOTION FOR PROTECTIVE ORDER GOVERNING
NON-DISCLOSURE OF INFORMATION

NRC Staff ("Staff") files this motion requesting a protective order governing access to and disclosure of information in the above captioned proceeding. The Staff requests that the Presiding Officer adopt the attached draft protective order (with the attached Confidentiality and Non-Disclosure Agreement). Applicant Louisiana Energy Services, L.P. ("LES"), and Intervenors Nuclear Resource and Public Information and Public Citizen ("NIRS/PC"), New Mexico Environment Department ("NMED") and New Mexico Attorney General ("NMAG") were provided a draft copy of this motion and protective order, and were given an opportunity to comment. Counsel to LES notified the Staff that it supports the approach taken in this motion. Counsel to NIRS/PC was consulted and responded that it did not agree with this motion. Counsel to NMED and NMAG did not respond to the Staff.

On October 25, 2004, the Atomic Safety and Licensing Board ("Board") was given notice that the Commission had blocked public access to all documents through the Agencywide Document Access and Management System ("ADAMS"), including those related to this proceeding.¹⁴ As a result, public access to the Electronic Hearing Docket ("EHD") for this

¹⁴See Letter from Angela B. Coggins to the Board dated Oct. 25, 2004.

proceeding was also blocked. The shut-down of ADAMS was ordered to facilitate a security review of publicly available documents to ensure that potentially sensitive unclassified information be removed from the NRC website. The Commission undertook this review so that any documents which might provide assistance to terrorists would be inaccessible. Given these unusual circumstances, the issuance of a protective order is appropriate so that all parties may be afforded prompt access to hearing file documents and, thereby, continue the conduct of this proceeding.

The protective order would cover all documents in the hearing file to date, as well as documents subsequently added to the hearing file. The protective order would remain in effect only until public access to the EHD for LES or ADAMS is restored.¹⁵ In the meantime, the Staff will continue to file updates to the hearing file every fourteen days, as required by 10 C.F.R. § 2.336(d). When the protective order is granted, the Staff will provide parties with all hearing file documents on a compact disc. While the protective order remains in effect, the Staff will provide parties with a compact disc containing new documents with each update of the hearing file.

Respectfully submitted,

Darani M. Reddick

Counsel for NRC Staff

Dated at Rockville, Maryland
this XX day of November, 2004

¹⁵To date, public access to the EHD has been restored for ten cases. However, Staff members conducting the EHD/ADAMS screening have indicated that due to the volume of documents in the LES proceeding, restoration of the EHD for LES may require an additional three to four weeks.

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HEARING FILE NO.	DOC. DATE	U.S NRC ADAMS ACCESSION NUMBER	DOCUMENT DESCRIPTION (Titled as input into ADAMS)	CONTENTION
207	9/30/2004	ML042860388	National Enrichment Facility, Environmental Report, Revision 3	EC-1, EC-2, EC-4, EC-7
218	10/16/2004	ML043060440	Comment (9) of Lee Cheney on NEF DEIS re: waste disposal	EC-4
		ML043060451	Comment (12) of the Citizens Nuclear Information Center on Draft Environmental Impact Statement for the Uranium Enrichment Facility Proposed by Louisiana Energy Services for Lea County, NM	EC-1
		ML043130370	Comment (15) of Janell Ward on NUREG-1790 Regarding the EIS for the Proposed National Enrichment Facility in Lea County, New Mexico	EC-7
		ML043150201	Comment (18) of Stephen R. Spencer on Draft EIS for the Proposed National Enrichment Facility in Lea County, NM	EC-1
		ML043150205	Comment (19) of Melanie Barnes on the Environmental Impact Statement (EIS) for the Proposed National Enrichment Facility in Lea County, New Mexico	EC-1
		ML043210421	Comment (21) of Phillip Barr on proposed LES enrichment plant	EC-1
		ML043240024	Comment (27) of Glen A. Graves on Public Comment Form Draft Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico NUREG-1790	EC-4, EC-7

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HEARING FILE NO.	DOC. DATE	U.S NRC ADAMS ACCESSION NUMBER	DOCUMENT DESCRIPTION (Titled as input into ADAMS)	CONTENTION
		ML043240031	Comment (29) of W.R. Stratton on Public Comment Form Draft Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico NUREG-1790	EC-4, EC-7
224	10/19/2004	ML043000091	Email from R. Krich to J. Mayer, ICF Consulting re: LLNL May 97 Cost Analysis Report, Page 45	EC-4
225	10/19/2004	ML043000109	Email from M Schwartz to T. Johnson re: LLNL May 97 Cost Analysis Report, Page 45	EC-4
226	10/14/2004	ML043090069	Transcript of 10/14/2004 Louisiana Energy Services Public Meeting in Eunice, New Mexico, Pages 1-128	EC-1, EC-2, EC-4, EC-7
234	11/15/2004	ML043240033	Comment (30) of R. M. Krich Regarding Draft Report NUREG-1790, Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico.	EC-1, EC-2, EC-4, EC-7
237	11/16/2004	Package.Subfolder Title	Public Comments/Responses 4	
		ML043310048	Comment (20) of Tannis Fox re New Mexico Environment Department Comments on draft EIS for proposed enrichment facility in Lea County, NM.	EC-1, EC-2, EC-4
		ML043230596	Comment (23) of Lee Cheney on LES & Flash Flooding.	EC-1
		ML043240028	Comment (28) of Donald F. Petersen on the proposal to build the National Enrichment Facility.	EC-7

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HEARING FILE NO.	DOC. DATE	U.S NRC ADAMS ACCESSION NUMBER	DOCUMENT DESCRIPTION (Titled as input into ADAMS)	CONTENTION
		ML043350230	Comment (44) re Louisiana Energy Services, L.P. (National Enrichment Facility)	EC-1, EC-7
		ML043350234	Comment (54) of Rat Battaglini in support for the National Enrichment Facility to be built outside of Eunice, New Mexico	EC-7
		ML043350206	Comment (31) supporting the planned National Enrichment Facility.	EC-2
		ML043350213	Comment (34) of Kathi Bearden supporting Louisiana Energy Services (LES) to obtain a license from the Nuclear Regulatory Commission for a Nuclear Enrichment Facility.	EC-7
		ML043350217	Comment (37) of Ben A. Kendrick in support of the planned National Enrichment Facility (NEF).	EC-7
		ML043350220	Comment (40) of K. R. Hawkins in support of the planned National Enrichment Facility (NEF).	EC-2
		ML043350231	Comment (52) of M. Espinos supporting the Louisiana Energy Services license application to build and operate the National Enrichment Facility (NEF) outside of Eunice, New Mexico.	EC-7
		ML043350233	Comment (53) of Harry Teague supporting the National Enrichment Facility (NEF.)	EC-7
		ML043350236	Comment (45) of John Good supporting the planned National Enrichment Facility (NEF), Lea County, NM.	EC-2

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HEARING FILE NO.	DOC. DATE	U.S NRC ADAMS ACCESSION NUMBER	DOCUMENT DESCRIPTION (Titled as input into ADAMS)	CONTENTION
		ML043350237	Comment (56) of Kristi L. Strubhart in support of the planned National Enrichment Facility (NEF).	EC-2
		ML043350239	Comment (46) of Gay G. Kernan in support of the National Enrichment Facility (NEF) project to be built outside of Eunice, New Mexico.	EC-7
		ML043350240	Comment (57) supporting the planned National Enrichment Facility (NEF).	EC-7
		ML043350251	Comment (50) of Glen E. Hackler and Mayor, Robert Zap in support of the City of Andrews for the National Enrichment Facility (NEF).	EC-7
		ML043350255	Comment (51) of Susan Mendoza supporting the planned National Enrichment Facility (NEF).	EC-7
		ML043350274	Comment (59) of Suzanne Holler supporting the planned National Enrichment Facility (NEF).	EC-7
		ML043350241	Comment (58) of Alberto Caballero in support for Louisiana Energy Services (LES) and its efforts to build and operate the National Enrichment Facility (NEF) in Lea County, New Mexico.	EC-7
		ML043350279	Comment (60) in support of Louisiana Energy Services (LES) for the National Enrichment Facility (NEF) project.	EC-7
		ML043350280	Comment (61) in support of the planned National Enrichment Facility (NEF).	EC-7

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		ML043350285	Comment (63) of Dannold Stephenson in support of the planned National Enrichment Facility (NEF).	EC-7
		ML043350287	Comment (64) in support of the planned National Enrichment Facility (NEF).	EC-7
		ML043350288	Comment (65) of W. E. Armstrong supporting the planned National Enrichment Facility (NEF).	EC-7
		ML043350290	Comment (66) in support of the planned National Enrichment Facility (NEF).	EC-7
		ML043350293	Comment (67) supporting the Draft Environmental Impact Statements' planned National Enrichment Facility.	EC-7
		ML043350316	Comment (75) of Ken J. Smith Supporting the Planned National Enrichment Facility	EC-7
		ML043350320	Comment (76) supporting the planned National Enrichment Facility (NEF).	EC-2
		ML043350324	Comment (78) supporting the planned National Enrichment Facility.	EC-7
		ML043350327	Comment (68) of Eugene Jennings supporting the planned National Enrichment Facility (NEF).	EC-7
		ML043350330	Comment (79) of Bill and Sue Weaver supporting the planned National Enrichment Facility (NEF).	EC-7

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		ML043350331	Comment (69) of supporting the planned National Enrichment Facility (NEF).	EC-7
		ML043350333	Comment (80) Supporting the Planned National Enrichment Facility.	EC-7
		ML043350337	Comment (81) supporting the planned National Enrichment Facility.	EC-7
		ML043350339	Comment (71) of Fay Thompson supporting the planned National Enrichment Facility.	EC-7
		ML043350344	Comment (82) supporting the planned National Enrichment Facility.	EC-7
		ML043350365	Comment (83) of Mary J. Fulla in support of the planned National Enrichment Facility (NEF).	EC-7
		ML043350419	Comment (88) of Debra P. Hicks supporting the planned National Enrichment Facility (NEF).	EC-2, EC-7
		ML043350425	Comment (89) in support for the construction of LES' proposed uranium enrichment facility to be built near Eunice, New Mexico.	EC-2
		ML043350428	Comment (90) of Steve McCleery in support of Louisiana Energy Services' (LES) application to build and operate a National Uranium Enrichment Facility in Lea County, New Mexico.	EC-7

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		ML043350432	Comment (91) supporting the planned National Enrichment Facility (NEF).	EC-7
		ML043350439	Comment (94) of Kelly Holladay supporting the planned National Enrichment Facility (NEF).	EC-1, EC-4, EC-7

December 20, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____)	
In the Matter of)	
)	
LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
)	ASLBP No. 04-826-01-ML
(National Enrichment Facility))	
_____)	

AFFIDAVIT OF TIMOTHY C. JOHNSON

I, Timothy C. Johnson, having first been duly sworn, do hereby state as follows:

1. I am employed at the U.S. Nuclear Regulatory Commission as a Project Manager overseeing the licensing for the proposed Louisiana Enrichment Services, L.P. ("LES") uranium enrichment facility near Eunice, New Mexico.
2. I have been involved in the screening and redacting of documents in this proceeding since the October 25, 2004 closure of public access to the NRC's Agencywide Document Access and Management System ("ADAMS").
3. The NRC Staff screened all documents in docket file (70-03103) for the LES project.
4. The screening process resulted in the identification of 65 documents in the proceeding containing sensitive information that is potentially useful to terrorists.
5. All 65 documents in this proceeding that contain sensitive information will have sensitive information redacted by the NRC Staff and such redacted versions will be publicly available.
6. The NRC Staff anticipates that redaction process for the Environmental Report, Revision 3; the Draft Environmental Impact Statement; and the LES responses to Environmental Report Requests for Additional Information will be completed by

Thursday, December 23, 2004.

7. The NRC Staff has established December 31, 2004 as the target date by which the remainder of sensitive information in this proceeding will be redacted.
8. In my professional judgment, no sensitive portions of documents are relevant to any of the environmental contentions that will be addressed at the February 2005 hearing. Specifically, no sensitive portions of these documents are relevant to the impacts of ground and surface water, water supplies, waste storage, or the need for the facility.

/RA/ 12/20/04

Timothy C. Johnson

/RA/

Notarized by: Circe E. Martin
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 1, 2007

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION ON BEHALF OF NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN TO COMPEL COMPLIANCE AND SUSPEND THE HEARING" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 20th day of December, 2004.

Administrative Judge * **

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