

October 18, 2005

NEF#05-031

ATTN: Document Control Desk
Director
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Louisiana Energy Services, L. P.
National Enrichment Facility
NRC Docket No. 70-3103

Subject: Application for Withholding Information from Public Disclosure

- References:
1. Letter NEF#03-003 dated December 12, 2003, from E. J. Ferland (Louisiana Energy Services, L. P.) to Directors, Office of Nuclear Material Safety and Safeguards and the Division of Facilities and Security (NRC) regarding "Applications for a Material License Under 10 CFR 70, Domestic licensing of special nuclear material, 10 CFR 40, Domestic licensing of source material, and 10 CFR 30, Rules of general applicability to domestic licensing of byproduct material, and for a Facility Clearance Under 10 CFR 95, Facility security clearance and safeguarding of national security information and restricted data"
 2. Letter NEF#04-002 dated February 27, 2004, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Revision 1 to Applications for a Material License Under 10 CFR 70, "Domestic licensing of special nuclear material," 10 CFR 40, "Domestic licensing of source material," and 10 CFR 30, "Rules of general applicability to domestic licensing of byproduct material"
 3. Letter NEF#04-029 dated July 30, 2004, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Revision to Applications for a Material License Under 10 CFR 70, "Domestic licensing of special nuclear material," 10 CFR 40, "Domestic licensing of source material," and 10 CFR 30, "Rules of general applicability to domestic licensing of byproduct material"

NMSO1

4. Letter NEF#04-037 dated September 30, 2004, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Revision to Applications for a Material License Under 10 CFR 70, "Domestic licensing of special nuclear material," 10 CFR 40, "Domestic licensing of source material," and 10 CFR 30, "Rules of general applicability to domestic licensing of byproduct material"
5. Letter NEF#05-021 dated April 22, 2005, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Revision to Applications for a Material License Under 10 CFR 70, "Domestic licensing of special nuclear material," 10 CFR 40, "Domestic licensing of source material," and 10 CFR 30, "Rules of general applicability to domestic licensing of byproduct material"
6. Letter NEF#05-022 dated April 29, 2005, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Revision to Applications for a Material License Under 10 CFR 70, "Domestic licensing of special nuclear material," 10 CFR 40, "Domestic licensing of source material," and 10 CFR 30, "Rules of general applicability to domestic licensing of byproduct material"
7. Letter NEF#05-025 dated May 25, 2005, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Revision to Applications for a Material License Under 10 CFR 70, "Domestic licensing of special nuclear material," 10 CFR 40, "Domestic licensing of source material," and 10 CFR 30, "Rules of general applicability to domestic licensing of byproduct material"
8. Letter NEF#05-029 dated June 10, 2005, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Revision to Applications for a Material License Under 10 CFR 70, "Domestic licensing of special nuclear material," 10 CFR 40, "Domestic licensing of source material," and 10 CFR 30, "Rules of general applicability to domestic licensing of byproduct material"
9. Letter NEF#05-016 dated March 31, 2005, from R. M. Krich (Louisiana Energy Services, L. P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding " Clarifying Information Related to Depleted UF₆ Disposition Costs and Request for License Condition"
10. Letter NEF#05-028 dated June 6, 2005, from R. M. Krich (Louisiana Energy Services, L.P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Transmittal of Department of Energy Report and Application for Withholding Information from Public Disclosure"
11. Letter dated June 27, 2005 from James W. Clifford (NRC) to Rod Krich (Louisiana Energy Services, L.P.) regarding "Approval of Louisiana Energy Services Request for Withholding Information from Public Disclosure"

(Louisiana Energy Services Gas Centrifuge Uranium Enrichment Facility),
docket no. 70-3103

12. Letter dated June 22, 2005 from Timothy C. Johnson (NRC) to Rod Krich (Louisiana Energy Services, L.P.) regarding "Louisiana Energy Services – Request for Additional Information on Depleted Uranium Disposition Costs", docket no. 70-3103
13. Letter NEF#05-030 dated August 12, 2005 from R.M. Krich (Louisiana Energy Services, L.P.) to Director, Office of Nuclear Material Safety and Safeguards (NRC) regarding "Response to NRC Request for Additional Information on Depleted Uranium Disposition Costs"

By letter dated December 12, 2003 (Reference 1), E. J. Ferland of Louisiana Energy Services (LES), L. P., submitted to the NRC applications for the licenses necessary to authorize construction and operation of a gas centrifuge uranium enrichment facility. Revision 1 to these applications was submitted to the NRC by letter dated February 27, 2004 (Reference 2). Subsequent revisions (i.e., revision 2, revision 3, revision 4, revision 5, revision 6, and revision 7) to these applications were submitted to the NRC by letters dated July 30, 2004 (Reference 3), September 30, 2004 (Reference 4), April 22, 2005 (Reference 5), April 29, 2005 (Reference 6), May 25, 2005 (Reference 7), and June 10, 2005 (Reference 8), respectively. In response to an NRC request, the Reference 9 letter referred to and provided the March 1, 2005 letter from the U. S. Department of Energy (DOE), "Conversion and Disposal of Depleted Uranium Hexafluoride (DUF₆) Generated by Louisiana Energy Services, LP (LES)," from Paul M. Golan (DOE) to Rod Krich (LES).

On May 31, 2005, the NRC conducted an in-office review of the information supporting the cost figures in the March 31, 2005 DOE letter. During this in-office review, the DOE agreed to provide the NRC with the report from its consultant LMI Government Consulting that supports the information in the March 31, 2005 DOE letter, "An Analysis of DOE's Cost to Dispose of DUF₆ (Depleted Uranium Hexafluoride)," report DE523T1, dated December 2004. Accordingly, this report was transmitted to the NRC by letter dated June 6, 2005 (Reference 10). The June 6, 2005 transmittal included an application to withhold from public disclosure the LMI report as confidential (i.e. proprietary) pursuant to 10 CFR 2.390. "Public inspections, exemptions, requests for withholding," paragraph (a)(4). This application was approved by the NRC as documented in its letter dated June 27, 2005 (Reference 11). Subsequently, NRC letter dated July 22, 2005 (Reference 12), transmitted an additional request for additional information or clarifications. Accordingly, the response to that request was provided as an enclosure to the August 12, 2005 letter (Reference 13). The clarifications in that enclosure were related to the information in the proprietary LMI Report and are also considered proprietary. Therefore, we requested that the enclosure be withheld from public disclosure based on the application submitted by LES letter dated June 6, 2005 (Reference 10). However, in response to a request from the NRC, we are submitting a separate declaration in support of our application. Accordingly a declaration from Larry W. Brown, DOE Senior Policy Advisor, supporting our request that the information provided by our August 12, 2005 letter be withheld from public disclosure is enclosed in accordance with 10CFR2.390(b)(1).

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If you have any questions or need additional information, please contact me at 630-657-2813.

Respectfully,

A handwritten signature in black ink, appearing to read 'R. M. Krich', written in a cursive style.

R. M. Krich
Vice President – Licensing, Safety, and Nuclear Engineering

Enclosure: Declaration

cc: T.C. Johnson, NRC Project Manager

Enclosure

**Declaration of Larry W. Brown,
U.S. Department of Energy
Senior Policy Advisor**

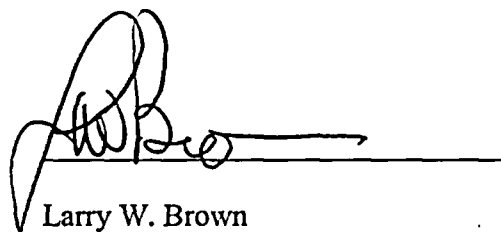
Declaration of Larry W. Brown

Larry W. Brown declares and states as follows:

1. My name is Larry W. Brown. I am the Senior Policy Adviser in the Office of the Under Secretary at the U.S. Department of Energy ("DOE" or the "Department").
2. I have been authorized by the Department to execute this affidavit in support of a request by Louisiana Energy Services, L.P. ("LES") to withhold the "[LES] Response to the NRC Request for Additional Information on U.S. Department of Energy Depleted Uranium Disposition Cost Estimate" from public disclosure in accordance with the U.S. Nuclear Regulatory Commission "NRC") regulations appearing in 10 CFR 2.390(a)(4). LES transmitted the aforementioned document, hereinafter referred to as the "DOE Cost Estimate RAI Response," to the NRC by letter dated August 12, 2005 (NEF#05-030).
3. The DOE Cost Estimate RAI Response provides additional clarifying information concerning a December 2004 report, which was prepared for the Department by its contractor LMI Government Consulting, entitled "An Analysis of DOE's Cost to Dispose of [Depleted Uranium Hexafluoride] DUF₆, Report DE523T1," hereinafter referred to as the "LMI Report." LES transmitted the LMI Report, with the Department's approval, to the NRC by letter dated June 6, 2005 (NEF#05-028). The June 6, 2005 transmittal included an application to withhold from public disclosure the LMI Report as confidential (*i.e.*, proprietary) pursuant to 10 CFR 2.390(a)(4). The NRC approved that application by letter dated June 27, 2005 (ADAMS Accession No. ML051670303) based upon the justifications set forth in my prior declaration dated June 6, 2005.
4. The DOE Cost Estimate RAI Response should be withheld from public disclosure for the same reasons set forth in my June 6, 2005 affidavit concerning the LMI Report. Specifically, insofar as the DOE Cost Estimate RAI Response provides additional clarifying information regarding the LMI Report (*i.e.*, a report prepared for internal agency, predecisional purposes), it contains confidential internal analysis that is not publicly available. Namely, the DOE Cost Estimate RAI Response sets forth additional detailed predecisional analysis, opinions, and conclusions concerning the Department's estimates of the anticipated deconversion, transportation, storage, and disposal costs for the DUF₆ source material to be generated by LES's proposed commercial uranium enrichment facility, in the event that LES were to request the Department to accept the DUF₆ for disposal pursuant to the Department's relevant statutory authorities.
5. Additionally, as stated in my June 6, 2005 affidavit, the Department's cost estimates are based in substantial part on financial information not contained in, but related to, the Department's current contract with Uranium Disposition Services ("UDS") for the construction and operation of the deconversion facilities at the Portsmouth and Paducah Gaseous Diffusion Plants and related DUF₆ storage facilities.
6. As indicated in the DOE Cost Estimate RAI Response, the responses contained therein were developed from confidential information provided to LES by the Department and its contractor. That information was provided to LES with the explicit understanding that it is predecisional agency information, and that any document transmitting that information to the NRC would be treated as an internal predecisional agency document to be withheld from public disclosure under 10 CFR 2.390. The Department has consistently treated the LMI Report and any analysis related thereto, including the additional information set forth in the DOE Cost Estimate RAI Response, as confidential and not subject to public disclosure.

7. The Department already has provided to LES, in a letter dated March 1, 2005, specific non-proprietary cost estimates for the conversion, transportation, storage, and disposal of DUF₆ to be generated by LES's proposed commercial uranium enrichment facility, along with certain non-proprietary assumptions associated with those estimates. However, neither the specific bases for those estimates, nor the LMI Report and the DOE Cost Estimate RAI Response (which, in fact, set forth the specific bases for the cost estimates), have been publicly released for the reasons set forth above. Accordingly, withholding the DOE Cost Estimate RAI Response from disclosure will not adversely affect the public. Moreover, the fact that the NRC Staff has received the DOE Cost Estimate RAI Response from LES does not warrant public disclosure of the document.
8. Given the interrelated nature of the various portions of the DOE Cost Estimate RAI Response, it is not possible to designate only certain portions of the document as confidential. To attempt to redact specific internal agency information would render the remaining material essentially meaningless and of no value to the public. Rather, the entirety of the DOE Cost Estimate RAI Response must be considered confidential, and the entire document should be withheld from public disclosure.
9. Predecisional information of the type contained in the DOE Cost Estimate RAI Response falls under the "deliberative process" privilege of the Freedom of Information Act, which permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of the process by which government formulates decisions and policies. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (Sears). The ultimate purpose of the exemption is to protect the quality of agency decisions by promoting frank and independent discussion among those responsible for making governmental decisions. *See Sears*, 421 U.S. at 151. *See also EPA v. Mink*, 410 U.S. 73, 87 (1973) (quoting *Kaiser Aluminum & Chem. Corp. v. United States*, 157 F. Supp. 939, 946 (Ct. Cl. 1958)). Thus, the harm that would result from release of the DOE Cost Estimate RAI Response is an impairment of the quality of agency decision making by curbing frank and independent internal discussion.
10. The Department understands that LES submitted the DOE Cost Estimate RAI Response to the NRC in confidence. The information contained within that document, and thus the document itself, is of a sort customarily held in confidence by the Department, and, in fact, has been held in confidence and not previously publicly released.
11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 3, 2005

A handwritten signature in black ink, appearing to read 'LW Brown', is written over a horizontal line.

Larry W. Brown
Senior Policy Advisor
Office of the Under Secretary
U.S. Department of Energy
Washington, D.C. 20585