

October 24, 2006

Mr. John Swailes, Chief Nuclear Officer  
Vice President - Operations  
National Enrichment Facility  
220 West Broadway, Suite B  
Hobbs, NM 88240

SUBJECT: APPROVAL OF LOUISIANA ENERGY SERVICES REQUEST FOR  
WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE (LOUISIANA  
ENERGY SERVICES GAS CENTRIFUGE URANIUM ENRICHMENT FACILITY)

Dear Mr. Swailes:

In your letter, dated September 18, 2006 (NEF-06-00037), you submitted, in response to the July 21, 2006, correspondence from the Nuclear Regulatory Commission (NRC), additional support for LES's request to withhold decommissioning funding information from public disclosure. By an email letter, dated May 18, 2006, Mr. James Curtiss, representing LES, submitted two affidavits, dated May 17, 2006, executed by Mr. Larry W. Brown of the U.S. Department of Energy (DOE). These affidavits related to decommissioning funding information provided in LES letters to the NRC, dated December 30, 2005 (NEF-05-035), and February 7, 2006 (NEF-06-005). This information originated from a proprietary DOE report on uranium tails disposition costs.

In Mr. Brown's affidavits, he stated the information in the response to the NRC Request for Additional Information (RAI) should be withheld from public disclosure for the following reasons:

1. It is proprietary information that is customarily held in confidence by DOE and is, in fact, held in confidence and has not been previously publicly released.
2. The information was developed with the explicit understanding that the document would be treated as an internal pre-decisional agency document. DOE has consistently treated the information as confidential and to be withheld from public disclosure.
3. It was transmitted to and received by the U.S. Nuclear Regulatory Commission in confidence.
4. It is pre-decisional material that 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. Thus, the harm that would result from release of the report is an impairment of the quality of agency decision making by curbing frank and independent internal discussion.

We have reviewed the affidavits and are not satisfied with the justifications for not making the information available to the public, particularly the deliberative process claim. Nonetheless, based on our review of the documents and our extensive familiarity with the context in which the information was generated, the NRC staff is prepared to treat the designated information as proprietary. The NRC staff believes that a reasonable case can be made that the financial information claimed to be proprietary is customarily held in confidence and has not been

previously released to the public. The NRC staff notes that the information claimed to be proprietary was made available under a protective order to the parties in the now completed NRC adjudicatory proceeding. Our withholding this information from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, the NRC staff may send copies of this information to our consultants working in this area. We will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, you should promptly notify the NRC. You also should understand that the NRC may have cause to review this determination in the future, for example, if these documents fall within the scope of a Freedom of Information Act request. In such a case, the NRC would likely require the private sector owner of the information to provide the NRC with an affidavit containing a satisfactory justification for the withholding of the information. In all review situations, if the NRC makes a determination that the information should be released to the public, you will be notified in advance of any public disclosure.

If you have any questions, please contact Mr. Timothy C. Johnson at 301-415-7299.

In accordance with 10 CFR 2.390 of the NRC's Rules of Practice, a copy of this letter will be available electronically from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Website at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA/

Brian W. Smith, Branch Chief  
Enrichment and Conversion Branch  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Docket No.: 70-3103  
License No.: SNM-3103

cc:

William Szymanski/DOE  
Monty Newman/Hobbs  
Peter Miner/USEC  
Glen Hackler/Andrews  
Matt White/Eunice  
Cindy Padilla/NMED  
Joseph Malherek/PC  
Tannis Fox/NMED  
Roger Mulder/Texas

Fred Seifts/Jal  
James Curtiss/W&S  
Betty Richman/Tatum  
Lue Ethridge/Lea Cty  
Richard Ratliff/Texas  
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Ron Curry/NMED  
Patricia Madrid/NMAG  
Karl Gross/LES

Lindsay Lovejoy/NIRS  
Troy Harris/Lovington  
Reinhard Hinterreither/LES  
John Parker/NMED  
M. Marriotte/NIRS  
Lee Cheney/CNIC  
D. Watchman-Moore/NMED  
Glen Smith/NMAG

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Sincerely,

**/RA/**

Brian W. Smith, Branch Chief  
Enrichment and Conversion Branch  
Division of Fuel Cycle Safety  
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Office of Nuclear Material Safety  
and Safeguards

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Lue Ethridge/Lea Cty  
Richard Ratliff/Texas  
CO'Claire/Ohio  
Ron Curry/NMED  
Patricia Madrid/NMAG  
Karl Gross/LES

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