

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

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In the Matter of

Docket No. 70-3103

Louisiana Energy Services, L.P.  
National Enrichment Facility

ASLBP No. 04-826-01-ML

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**MOTION FOR EXTENSION OF TIME  
TO FILE APPELLATE BRIEF  
ON BEHALF OF  
NUCLEAR INFORMATION AND RESOURCE SERVICE  
AND  
PUBLIC CITIZEN**

Pursuant to its order dated July 19, 2004, the Atomic Safety and Licensing Board (the “Board”) has issued its decision concerning the admissibility of contentions advanced in this proceeding by intervenors Nuclear Information and Resource Service and Public Citizen (“NIRS/PC”), along with other intervenors New Mexico Environment Department (“NMED”) and New Mexico Attorney General (“NMAGO”). Although the Board authorized NIRS/PC to proceed with the presentation of several of its contentions, the Board declined to admit certain of its contentions. Contentions designated as “NIRS/PC EC-8/TC-5”, which concern the impact of the proposed project upon national security and non-proliferation efforts, were deemed inadmissible. Further, other contentions of NIRS/PC were admitted and, at the same time, referred to the Commission for further review (NIRS/PC EC-3/TC-1). The Board has also referred certain contentions proposed by NMED and NMAGO to the Commission pursuant to 10 CFR Sec. 2.319(l). See Order, July 19, 2004, Sec. II.B.3, at 18. Although the hearing order

dated January 30 calls for submission of novel issues to the Commission (at Sec. III.C), no schedule has been directed for submission of papers in connection with the referred matters.

The parties are currently involved in negotiating a proposed discovery schedule to manage document and deposition discovery in connection with the contentions admitted by the Board in its order dated July 19, 2004. When a Commission decision on matters referred pursuant to 10 CFR Sec. 2.319(l) has been issued, any matters that the Commission determines should be the subject of further litigation will probably require additional investigation through discovery, thus affecting the discovery schedule. The same can be said for matters appealed to the Commission pursuant to 10 CFR Sec. 311; any Commission order supporting admissibility would necessitate further discovery. The situation calls for coordination of schedules for the Commission review of matters that may affect the discovery schedule.

In addition, counsel are now occupied in developing the discovery schedule, and the rules require that briefs in support of an appeal pursuant to 10 CFR Sec. 2.311 be filed within ten days of the order appealed, or on July 29, 2004. In the present situation counsel for NIRS/PC request that the Board exercise its authority pursuant to 10 CFR Sec. 2.319, in consideration of the schedules of counsel, to extend the time for filing of the appellate brief.

In the present situation NIRS/PC submits that the Board should enter its order directing that the time for filing of an appellate brief by NIRS/PC be extended from July 29, 2004, to August 19, 2004, or to such other date as the Commission may direct.

### **Conclusion**

For the reasons set forth herein, the Board should enter its order allowing NIRS/PC to have until August 19, 2004, to file its brief in support of an appeal to the Commission from that

portion of the Board's order dated July 19, 2004, which declined to admit the contention designated as NIRS/PC EC-8/TC-5.

Respectfully submitted,

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May 27, 2004

## CERTIFICATE OF SERVICE

Pursuant to 10 CFR § 2.305 the undersigned attorney of record certifies that on July 25, 2004, the foregoing Motion for Extension of Time to File Appellate Brief on Behalf of Nuclear Information and Resource Service and Public Citizen was served by electronic mail and by first class mail upon the following:

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