

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
	)	
(National Enrichment Facility)	)	ASLBP No. 04-826-01-ML
	)	

NRC STAFF MOTION FOR PROTECTIVE ORDER
GOVERNING DISCLOSURE OF INFORMATION

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the NRC Staff ("Staff") files this motion requesting that the Atomic Safety and Licensing Board ("Board") issue a protective order governing access to and disclosure of information in the above captioned proceeding. The Staff requests that the Board adopt the attached draft protective order (with the attached Confidentiality and Non-Disclosure Agreement). In accordance with 10 C.F.R. § 2.323(b), counsel for Applicant Louisiana Energy Services, L.P. ("LES"), and Intervenor Nuclear Resource and Public Information and Public Citizen ("NIRS/PC"), New Mexico Environment Department ("NMED") and New Mexico Attorney General ("NMAG") were provided a copy of a draft of this motion and protective order, and were given an opportunity to comment. Counsel to LES notified the Staff that it was prepared to move forward with this motion and accompanying order. Counsel to NIRS/PC was consulted and responded that it did not agree to the Order. Counsel to NMED and NMAG commented that they would respond to this motion in writing.

BACKGROUND

On October 25, 2004, the Licensing Board was informed 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.¹ As a result, public access to the Electronic Hearing Docket ("EHD") for this 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 so that any information which might provide assistance to terrorists would be inaccessible. So that all parties may be afforded prompt access to hearing file documents and, thereby, continue the conduct of this proceeding in these unusual circumstances, the issuance of a protective order is appropriate. The protective order would cover all protected information in the hearing docket and/or hearing file to date, as well as protected information subsequently added to the hearing docket and hearing file. In essence, the terms of the protective order would set forth provisions on handling and treatment of protected information and restrict the distribution of such information to authorized persons pursuant to a Confidentiality and Non-Disclosure Agreement. 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.

¹See Letter from Angela B. Coggins, Counsel for NRC Staff, to the Board dated Oct. 25, 2004.

CONCLUSION

For the foregoing reasons, the Staff respectfully requests that the Board act expeditiously, given the time sensitive nature of these proceedings, to issue a protective order in the form attached.

Respectfully submitted,

/RA/

Lisa B. Clark
Darani M. Reddick
Counsel for NRC Staff

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

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_____	)	

MEMORANDUM AND ORDER
(Protective Order)

This Protective Order governs the disclosure and use of certain protected information¹

¹Protected information is defined as any document, in its entirety, currently in the Electronic Hearing Docket ("EHD") and/or hearing file and any document, in its entirety, subsequently entered into the EHD and/or hearing file that has not been screened and approved by the NRC Staff as not containing sensitive information. The definition of protected information also includes any document upon which a party relies that is not and will not be entered into the EHD or hearing file for this proceeding, but was obtained from any official NRC system of records, that has not been screened and approved by the NRC Staff as not containing sensitive information. A document that has been screened and approved by the NRC Staff as suitable for public release is not protected information under this Order, even if the Agencywide Document Access and Management System ("ADAMS") or the EHD for LES have not been restored in full.

Any document that is found to contain sensitive information shall have that sensitive information redacted, at which time the redacted version of the document will no longer be considered "protected information." However, unredacted versions of documents containing sensitive information will still be considered "protected information" under this Order. The Board previously issued a Protective Order on May 21, 2004, which covers confidential proprietary information ("protected materials") in connection with this proceeding. Therefore, for the purposes of the definition of "protected information" in this Order, even if a document has been screened and approved for public release by the NRC Staff, if it contains protected materials as defined by the May 21, 2004 Order, it will remain such until that Order is lifted. Furthermore, the definition of "protected information" in this Order does not include classified or safeguards information which would be the subject of separate provisions with respect to handling, use and disclosure; it includes

potentially relevant to the application of Louisiana Energy Services, L.P., (“LES”) for a license to support the National Enrichment Facility (“NEF”) in Eunice, New Mexico.

Specifically, counsel and consultants for LES, Nuclear Information and Resource Service (“NIRS”), Public Citizen (“PC”), New Mexico Attorney General (“NMAG”) and New Mexico Environment Department (“NMED”) shall be permitted access to protected information upon the following conditions:

1. LES, NIRS/PC, NMAG and NMED shall execute the attached Confidentiality and Non-Disclosure Agreement.

2. Only individual counsel, consultants, and others representing a party² who have executed the attached Confidentiality and Non-Disclosure Agreement may have access to protected information. Protected information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except to the minimum number of counsel, consultants or other party representatives who are engaged in the conduct of this proceeding and who need to know the information in order to carry out their responsibilities in this proceeding. Individuals with access to protected information pursuant to this Order may make copies of and take notes on the protected information, but such copies and notes become protected

information that is unclassified, but potentially sensitive.

²The term “party” shall mean Louisiana Energy Services, L.P., Nuclear Resource and Information Service, Public Citizen, the New Mexico Environment Department, and the New Mexico Attorney General. For the purposes of this protective order, the term “party” does not include the NRC staff. The provisions of this Protective Order, unless expressly stated, do not apply to NRC employees, contractors, or consultants.

information. Such notes and copies will not be included in ADAMS or the EHD for this proceeding unless submitted for inclusion by the designated representative of that party.

3. Counsel, consultants, and others representing a party who receive any protected information shall maintain its confidentiality as required in the attached Confidentiality and Non-Disclosure Agreement, the terms of which are hereby incorporated in this Protective Order.

4. All pleadings and correspondence in this proceeding (including testimony) that contain protected information shall:

a. be served in a single, opaque envelope by United States first class, registered, express, or certified mail, internal NRC mail, or messenger-courier or overnight delivery service (e.g. , Federal Express); and

b. be served by electronic transmission; and

c. include an attached cover sheet identifying the attached pleading or correspondence as protected information; and

d. be served only on the Licensing Board, NRC's Office of the Secretary, and parties and persons authorized to receive protected material under this protective order.

5. Counsel shall take all reasonable precautions necessary to assure that protected materials are not distributed to unauthorized persons. Counsel are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

6. The terms of this Protective Order apply to protected information notwithstanding any prior releases in which this information was treated as public. A public release of protected information before this Order became effective shall not serve as grounds for subsequent distribution of protected information to unauthorized persons.

7. Protected information shall remain available to all parties until the later of the date that an order terminating this proceeding is no longer subject to judicial review, or the date that any other Commission proceeding relating to the protected information is concluded and no longer

subject to judicial review. The parties shall, within fifteen (15) days of the later date described above, return the protected information (excluding notes of protected information) to the party that produced them, or shall destroy the information, except that copies of filings, official transcripts and exhibits in this proceeding that contain protected information, and notes of protected information may be retained, if they are maintained in a secure place.³ Within such time period, each party shall also submit to the producing party an affidavit stating that, to the best of its knowledge, all protected information and all notes of protected information have been returned or have been destroyed or will be maintained in accordance with the above. To the extent protected information is not returned or destroyed, it shall remain subject to the provisions of this Protective Order.

8. Counsel, consultants or any other individual representing a party who has reason to suspect that protected information may have been lost or misplaced or that protected information has otherwise become available to unauthorized persons during the pendency of this proceeding shall notify this Licensing Board promptly of those suspicions and the reasons for them.

9. Any violation of the terms of this Protective Order or a Confidentiality and Non-Disclosure Agreement executed in furtherance of this Protective Order may result in the imposition of sanctions as the Presiding Officer or the Commission may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

10. The Licensing Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

For the Licensing Board

³Counsel are responsible for determining what measures are necessary to assure that protected information is kept in a secure place such that no distribution of protected information to unauthorized individuals will occur.

Dated at Rockville, Maryland
this ____ day of December, 2004

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify my understanding that access to the protected information is provided to me pursuant to the terms and restrictions of the Atomic Safety and Licensing Board's protective order, dated December __, 2004, in this proceeding, that I have been given a copy of and have read this protective order, and that I agree to be bound by it. I understand that the contents of the protected information, any notes or other memoranda, or any form of information that copies or discloses protected information shall not be disclosed to anyone other than in accordance with that protective order. I acknowledge that a violation of this declaration and protective order, which incorporates the terms of this declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Licensing Board or Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities.

WHEREFORE, I do solemnly agree to protect such protected information as may be disclosed to me in this NRC proceeding, in accordance with the terms of this declaration.

Name (printed):

Title:

Representing:

Signature:

Date:

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR PROTECTIVE ORDER GOVERNING DISCLOSURE OF INFORMATION" 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 * **

Paul Bollwerk

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