

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS

Nils J. Diaz, Chairman
Edward McGaffigan, Jr.
Jeffrey S. Merrifield
Gregory B. Jaczko
Peter B. Lyons

DOCKETED 04/20/05

SERVED 04/20/05

In the Matter of

EXELON GENERATION COMPANY, LLC

(Early Site Permit for Clinton ESP Site)

Docket No. 52-007-ESP

In the Matter of

DOMINION NUCLEAR NORTH ANNA, LLC

(Early Site Permit for North Anna ESP Site)

Docket No. 52-008-ESP

In the Matter of

SYSTEM ENERGY RESOURCES, INC.

(Early Site Permit for Grand Gulf ESP Site)

Docket No. 52-009-ESP

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

In the Matter of

USEC Inc.

(American Centrifuge Plant)

Docket No. 70-7004

CLI-05-09

MEMORANDUM AND ORDER

On March 18, 2005 the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel issued a Memorandum, LBP-05-07, 61 NRC ____, certifying certain questions to the Commission regarding “mandatory hearing” requirements in NRC enabling legislation and in NRC regulations. The Chief Judge’s Memorandum addressed the first four proceedings captioned above. On March 28th, USEC (the applicant in the fifth proceeding) filed with the Commission a motion for leave to submit its views on the certified questions. The Commission hereby grants review of those questions. In doing so, we follow our “customary practice” of accepting Board-certified questions. See, e.g., *Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2)*, CLI-04-11, 59 NRC 203, 209 (2004); *Private Fuel Storage, L.L.C. (ISFSI)*, CLI-01-12, 53 NRC 459, 461 (2001).

USEC argues that the certified questions are as relevant to its own application to construct and operate a uranium enrichment facility as they are to the Louisiana Energy Services’ pending application (captioned above). According to USEC, both applications were filed under the same statutory and regulatory provisions, both concern the same kind of facility, both are subject to mandatory hearings, and the two proceedings’ “Notice[s] of Hearing and Order” are substantially identical.

The Commission agrees that USEC should have the opportunity to present its views on the certified questions. The Commission therefore grants USEC’s motion and establishes the following filing schedule for both USEC’s brief and any response briefs. No later than 14 days after issuance of this Memorandum and Order, USEC may file with the Commission a brief setting forth its views on the certified questions. USEC’s brief may not exceed 20 pages, exclusive of the tables of contents and authorities (both of which we require). No later than 14

days after USEC files its brief, the parties in the remaining four above-captioned proceedings (exclusive of the NRC Staff) and the petitioners to intervene in the *USEC* proceeding may file response briefs with the Commission. Response briefs may address both USEC's brief and the points the Chief Judge raised in LBP-05-07, but need not repeat arguments already raised in the records before the various Boards in these proceedings. Each response brief may not exceed 20 pages, exclusive of the tables of contents and authorities (both of which we require).

For reasons unique to these certified questions, we establish a later filing deadline for the NRC Staff's reply brief. The Chief Judge reviewed, *inter alia*, the agency's hearing notices in the first four above-captioned cases, the Staff's various briefs to the Board regarding the certified questions, and the procedural regulations at issue. But he repeatedly indicated in LBP-05-07 that these various documents, or sets of documents, appear internally inconsistent as to the certified questions. To provide the Staff a sufficient opportunity to address these issues and the certified questions fully and to respond to any suggestions and arguments by other parties, we grant the Staff an additional week -- until 7 days after all other response briefs are filed -- to file its response brief.

The Staff's brief should address LBP-05-07, the certified questions, USEC's brief, and all other response briefs. Because we are establishing a particularly broad scope for the Staff's response brief, we impose upon it no page limit. As with the other parties and participants, we require the Staff to include tables of contents and authorities. Finally, though we are *permitting* all other entities to file their various briefs, we *require* that the Staff file its response brief.

IT IS SO ORDERED.

For the Commission

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, MD
this 20th day April, 2005