

Exelon Generation
4300 Winfield Road
Warrenville, IL 60555

www.exeloncorp.com

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Michael Lesar, Chief
Rules Review and Directives Branch
Division of Administration Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-001

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Subject: Comments on Louisiana Energy Services' White Papers

By notice in Volume 67 of the Federal Register (FR), page 61932 (i.e., 67 FR 61932), dated October 2, 2002, the NRC requested comments from the public concerning a number of "white papers" submitted to the NRC by Louisiana Energy Services (LES). These "white papers" discuss various policy issues concerning the licensing of LES' proposed gas centrifuge uranium enrichment plant. By notice dated October 25, 2002 (i.e., 67 FR 65613), the NRC extended the comment period to November 13, 2002. Exelon Generation Company (EGC), LLC, as a partner in LES, appreciates the opportunity to comment on these "white papers." EGC fully endorses the comments submitted by LES in its letter dated November 12, 2002, and by the Nuclear Energy Institute (NEI) in its letter dated November 8, 2002.

Based on its long history in the nuclear regulatory environment, EGC considers that the establishment of clear licensing requirements and associated acceptance criteria are fundamental and essential steps in embarking on any effort that requires NRC approval. The acceptance criteria or standards provide the yardstick against which the NRC, the hearing board, and all stakeholders, can evaluate whether the proposed facility satisfies the applicable regulatory requirements. In the case of LES, the previous licensing efforts of the early 1990s resulted in the articulation of criteria that relate to requirements that must be met concerning financial qualification of the facility licensee and the NRC's regulations with regard to need for the proposed facility, including the no action alternative, and the NRC's application of the environmental justice executive order. Since the previous LES licensing effort was initiated a number of statutory changes have been made that establish standards with respect to the NRC's treatment of depleted uranium tails, foreign ownership, and antitrust reviews. Given the disparate origins of these criteria, EGC considers that it is reasonable and prudent for LES to request, via the submission of "white papers," that the NRC collect and publish in one place (i.e., an order) these criteria so that all stakeholders will be clear as to the standards against which the proposed facility will be evaluated.

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ECDS = ADM-03
Call = T. Johnson (TCJ)

Contrary to the claim that LES' submittal of the "white papers" was intended to limit or even preclude a full and fair review of the issues, the intended NRC response should result in the ability of the stakeholders to focus on those issues that bear on the safety and environmental impact of the proposed facility. In this way, all stakeholders can expect to proceed through an effective and efficient licensing process. To suggest that the NRC not respond to the "white papers" and thereby not establish clear licensing standards would appear to go against the NRC's overall objective of an open and meaningful licensing process.

The following provides EGC's specific comments on the six policy issues covered in the "white papers."

Issue 1: Analysis of Need and the No Action Alternative

As discussed in the LES comment letter of November 12, 2002, the NRC has already concluded in 1998 in the previous LES licensing effort, that a facility as proposed by LES is needed to help to ensure a reliable and efficient domestic uranium enrichment industry. The U.S. Departments of Energy (DOE) and State recently reiterated this conclusion of need in the DOE's letter to the NRC dated July 25, 2002. Clearly, the need for an efficient enrichment services supplier is further bolstered by the fact that most, if not eventually all, nuclear power plants will be implementing power uprates and obtaining renewed operating licenses. Therefore, NRC recognition of the established need for the LES facility in an order will help to focus stakeholders' attention, as stated earlier, on safety and environmental questions.

Issue 2: Environmental Justice

The principal criteria proposed by LES are the same as those specified in draft NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," issued for interim use and comment in October 2001. Certainly delineating these criteria in an order would be entirely consistent with the guidance that already exists.

Issue 3: Financial Qualifications

An acceptable set of criteria for determining the financial qualifications of an enrichment facility licensee has been articulated by the NRC in 1997 in the previous LES licensing proceeding. LES' position that the NRC specify these same criteria as one, but not the only, way of judging an applicant's financial qualifications is entirely reasonable and justifiable.

Issue 4: Antitrust Review

As a result of statutory changes in 1990, the NRC is no longer required to conduct an antitrust review for facilities licensed under Sections 53 and 63 of the Atomic Energy Act (AEA). Since the proposed LES facility is within the scope of these sections of the AEA, no antitrust review by the NRC is required. Furthermore, any review by an interested observer would show that nothing in the formation, operation, or business dealings of LES involves any monopolistic activities. Therefore, clearly stating in an order that the NRC is not required to perform an antitrust review is reasonable and justifiable.

Issue 5: Foreign Ownership


The same statutory change cited above also established the standards for analyzing the issue of foreign ownership, control, or domination with respect to the licensing of facilities under Sections 53 and 63 of the AEA. Specifically, the NRC must find that granting a license would not be inimical to the common defense and security. That different restrictions apply to other operators licensed or certified under other sections of the AEA does not alter the standard that is required to be applied in this case. The standard, as understood by EGC, would allow the NRC to issue a license to an applicant that is partially or wholly foreign owned, controlled, or dominated so long as a finding that the license is not inimical to the common defense and security is made. Therefore, we conclude that specifying this standard in an order is reasonable and justifiable.

Issue 6: Tails Disposition

The standard that a proposed disposition of tails needs to constitute a "plausible strategy" was established by the NRC during the previous LES licensing effort. Since that time statutory changes have been made that address DOE's responsibility with regard to tails generated by private licensed or certified facilities. While these responsibilities are conditioned, the fact that such a statute exists should constitute a "plausible strategy." This is not to imply that this is the only plausible strategy; there are others that can be applied. In fact, the hearing board found, in the previous LES licensing proceedings, that burial of converted tails in deep mines was also a plausible strategy. Accordingly, these specific alternative plausible strategies (i.e., DOE's responsibility and deep mine burial) constitute standards against which proposed tails disposition can be evaluated. Therefore, providing these examples of plausible strategies in an order is reasonable and justifiable.

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

Respectfully,

A handwritten signature in black ink, appearing to read "R. M. Krich". The signature is written in a cursive, slightly slanted style.

R. M. Krich
Exelon Nuclear
Vice President, Licensing Projects

cc: Steven P. Kraft, Nuclear Energy Institute