RAS 9653

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	March 23, 2005
USEC Inc. (American Centrifuge Plant)	)	Docket No. 70-7004

USEC INC. ANSWER TO PETITION TO INTERVENE BY GEOFFREY SEA

I. INTRODUCTION

USEC Inc. ("USEC") submitted to the U.S. Nuclear Regulatory Commission ("NRC" or "Commission") a License Application ("Application") for the construction and operation of the American Centrifuge Plant ("ACP") on August 23, 2004. The Commission's October 7, 2004 "Notice of Receipt of Application for License; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order," stated that any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a petition for leave to intervene in accordance with the provisions of 10 CFR § 2.309.[1] The Commission subsequently granted a request for extension of time to, among others, Geoffrey Sea ("Petitioner") to file petitions to intervene.[2] Petitioner submitted two petitions to intervene in this proceeding. Petitioner submitted his first Petition via electronic mail on February 28, 2005, but did not mail the copies required by

1 Notice and Order, CLI-04-30, 69 Fed. Reg. 61,411, 61,412 (Oct. 18, 2004).

2 Order, slip op. at 3 (Dec. 29, 2004), p. 3 ("time for filing intervention petitions should be extended for a full sixty days from the date of this Order").

TEMPLATE = SECY-037

SECY-02

10 CFR § 2.304(f) to complete that filing. Petitioner sent the second on March 1, 2005, after the deadline for filing intervention petitions, but did not address the factors applicable to late petitions.

To be admitted as a party to this proceeding, Petitioner must make two separate showings: first, that he has legal standing to request a hearing regarding the ACP Application; and second, that he has submitted at least one admissible contention related to the Application.[3] Petitioner has done neither.

Section II below summarizes why both Petitions should be dismissed on the basis of their failure to comply with applicable NRC filing requirements. Section III summarizes the legal standards governing standing and describes why Petitioner has failed to demonstrate standing to intervene in this proceeding. Finally, Section IV addresses the standards governing the admissibility of proposed contentions and demonstrates that Petitioner has failed to identify a single admissible contention. For the reasons discussed below, both Petitions must be denied.

II. BOTH PETITIONS SHOULD BE REJECTED FOR FAILURE TO COMPLY WITH APPLICABLE FILING REQUIREMENTS

Both Petitions should be rejected because neither was filed in accordance with the Commission's Order and regulations. The Federal Register Notice and Order established December 17, 2004 as the deadline for filing petitions to intervene in this proceeding.[4] On December 29, 2004, however, the Secretary of the Commission granted Petitioner an extension of 60 days.[5] Since the 60 day period ended on Sunday, February 27, 2005,

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[3] *Id.* at 3.

[4] Notice and Order, 69 Fed. Reg. at 61411.

[5] Order at 3 (Dec. 29, 2004).

Petitioner had until Monday, February 28, 2005 to file a timely petition – 133 days from the Federal Register Notice.

Petitioner transmitted his first Petition by e-mail on February 28, 2005. This method of filing is authorized by 10 CFR § 2.304(f), only *if* in addition, within two days, the petitioner mails to the NRC Secretary, the original and two copies that comply with the requirements for document format and signature. Petitioner did not provide the proof of service required by 10 CFR § 2.302(b) and apparently did not mail the original or any copies of the first Petition to the NRC or USEC. This latter omission is particularly significant because the version sent via e-mail on February 28 purported to rely on a number of exhibits that Petitioner did not include. Because Petitioner did not complete the filing of the first Petition in accordance with Section 2.304(f), that Petition should be rejected.

Petitioner transmitted his second Petition by Federal Express (FedEx) on March 1, 2005. This second Petition was not a copy of the first Petition. Although there was considerable overlap between the two, there also were quite substantial differences,[6] including the addition of a new contention. This second Petition also was not accompanied by proof of service. The package sent to USEC was marked for 2-day delivery.

USEC's investigation found that the package was delivered to FedEx at 8:25 p.m. on March 1.[7] In response to our further telephone inquiry, FedEx confirmed that the 8:25 p.m. time stamp is when the package was actually given to FedEx, and that the package

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[6] *See* the attached comparison (Attachment 1).

[7] This information was initially determined using a feature of the FedEx Internet page, which provides a package history. Attachment 2 is the FedEx history.

was dropped off at the FedEx Center at 156 W. 72nd Street, in New York City, a facility that is staffed with employees. Since the package was not left at an unmanned drop box, there is no uncertainty about the time it was sent.

Petitioner's letter transmitting the second Petition attempts to provide an excuse for his late filing. That excuse, however, does not constitute good cause for failure to file on time in accordance with 10 CFR § 2.309(c). Petitioner states that he delayed his Petition in order to include the statements of Charles Beegle and Karen Kaniatobe.[8] Petitioner does not explain why he could not obtain those statements within the time allotted to prepare his Petition. Nor does he explain why there was insufficient time to mail the Petition after receiving the statements. Mr. Beegle's letter is dated February 27 and was faxed on February 28 at 7:02 p.m.[9] and Ms. Kaniatobe's letter is dated February 24.[10]

More importantly, Petitioner's only explanation for his decision to file his Petition late, rather than filing it without the letters, was: "While I am not speaking for them, they both decided to support my intervention in lieu of challenging the Commission's ruling limiting intervention to specific parties."[11] Thus, Petitioner tacitly admits that the Petition could have been filed on time without these statements, and that he simply decided to ignore the filing deadline. This excuse does not provide the requisite good cause[12].

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8 Cover Letter to Revised Petition to Intervene by Geoffrey Sea (Feb. 28, 2005).

9 Petition, Exhibit B.

10 Petition, Exhibit N.

11 Cover Letter to Revised Petition.

12 *See Sequoyah Fuels Corporation* (Gore, Oklahoma Site), LBP-03-24, 58 NRC 383, 386-91 (2003) *aff'd* by CLI-04-02, 59 NRC 5 (2004).

Furthermore, the fact that the filing was only one day late does not relieve Petitioner of the need to show good cause for his delay. As one NRC Administrative Judge recently explained in dismissing a filing that also was only one day late, "if relative brevity of the tardiness were deemed of itself to make the tardiness excusable, the deadline would be stripped of real meaning."[13]

Finally, consideration of the remaining factors specified in Section 2.309(c) clearly weighs against admission of Petitioner. Those other factors are as follows:

ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;

(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

(v) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;

(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.[14]

Factors (ii) through (vi) all relate to protection of a petitioner's interests. The discussion of standing in Section III below demonstrates that no cognizable interest of Petitioner is affected by this proceeding. Therefore, these factors favor dismissal of the Petition. Factor (vii) also weighs against granting the Petition since, as discussed below in Section IV, Petitioner seeks to broaden the issues in this proceeding. Finally, Petitioner

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13 *Id.* at 390 n.9.

14 10 CFR § 2.309(c)(2005).

has not shown that his participation would assist in developing a sound record. Therefore factor (viii) also favors dismissing the Petition.

Based on the above, Petitioner has failed to meet the applicable NRC filing requirements. Accordingly, his Petition should be denied.[15]

III. PETITIONER HAS FAILED TO DEMONSTRATE LEGAL STANDING

A. Applicable Legal Standards

The Commission's Notice and Order required petitioners to set forth "with particularity" not only their interests in the proceeding but also how those interests may be affected by the results of the proceeding.[16] In addition to providing its name, address, and telephone number, a petitioner must also "specifically explain" why it should be permitted to intervene, with particular reference to the following factors: (1) the nature of its right under the Atomic Energy Act ("AEA") to be made a party to the proceeding; (2) the nature and extent of its property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be issued in the proceeding on its interest. These requirements are embedded in both the Commission's Notice and Order for this proceeding and its general rules of practice.[17]

A petitioner must have standing at the commencement of the proceeding.[18] To determine whether a petitioner has established the requisite interest to intervene in a

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15 The balance of this Answer focuses on the Petition filed on March 1, 2005, because Petitioner's transmittal letter states that this second Petition supersedes the one filed on February 28, 2005.

16 Notice and Order, CLI-04-30, 69 Fed. Reg. 61,411, 61,412 (Oct. 18, 2004).

17 *Id.*; 10 CFR § 2.309(d)(1)(2005).

18 *Park v. Forest Service*, 205 F.3d 1034, 1037-38 (8th Cir. 2000), citing *Lujan supra* 504 US at 568; *see also Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 334-36 (1979).

proceeding, the NRC applies judicial concepts of standing.[19] Accordingly, a petitioner in this proceeding must demonstrate that if the USEC Application is approved:

(1) It will likely suffer a direct, palpable injury;

(2) The injury is within the zone of interests protected by the governing statutes, *e.g.*, the AEA or the National Environmental Policy Act of 1969 ("NEPA");

(3) The injury is traceable to the NRC's approval of the USEC Application (*i.e.*, causation); and

(4) The injury can be redressed by a decision in this proceeding.[20]

These elements constitute the "irreducible constitutional minimum" requirements for standing in federal courts, also apply in NRC proceedings and are further discussed below.[21]

1. Required Elements For Standing

a. Injury In Fact

To demonstrate standing in this proceeding, a petitioner must first show that NRC approval of the Application is likely to cause it to suffer a distinct and palpable injury:[22]

> [T]he asserted injury must be "distinct and palpable," and "particular [and] concrete," as opposed to being "conjectural... [,] hypothetical," or "abstract"... [W]hen future harm is asserted, it must be "threatened," "certainly impending," and "real and immediate."[23]

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19 *U.S. Department of Energy (Plutonium Export License)*, CLI-04-17, 59 NRC 357, 363 (2004); *Georgia Inst. of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).

20 *Sequoyah Fuels Corp.* (Gore, Oklahoma Site Decommissioning), CLI-01-2, 53 NRC 9, 13 (2001).

21 *Bennett v. Spear*, 520 U.S. 154, 167 (1997); *Department of the Army* (Aberdeen Proving Ground, Maryland), LBP-99-38, 50 NRC 227, 229 (1999).

22 *Shieldalloy Metallurgical Corp.* (Cambridge, Ohio Facility), CLI-99-12, 49 NRC 347, 353 (1999).

23 *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), LBP-92-4, 35 NRC 114, 121 (1992) (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973); *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)).

An injury in fact showing also "requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured."[24]

b. Zone of Interests

A petitioner must also demonstrate that its injury falls within the zone of interests of the statutes governing this proceeding.[25] To make this assessment, the Commission has observed that "it is necessary to 'first discern the interests arguably . . . to be protected by the statutory provision at issue' and 'then inquire whether the plaintiff's interests affected by the agency action are among them.'"[26]

c. Causation

A petitioner must also establish that the injury is fairly traceable to the proposed activity – in this case, the approval of the Application.[27] Although a petitioner is not required to demonstrate that the injury flows directly from the challenged action, it must nonetheless show that the "chain of causation is plausible."[28]

d. Redressability

Finally, the Commission has observed that a petitioner is required to show that "its actual or threatened injuries can be cured by some action of the tribunal."[29]

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24 *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972).

25 *U.S. Enrichment Corp.* (Paducah, Kentucky Gaseous Diffusion Plant), CLI-01-23, 54 NRC 267, 272 (2001).

26 *Id.* at 272-73 (quoting *National Credit Union Administration v. First National Bank*, 522 U.S. 479, 492 (1998) (internal quotations omitted)).

27 *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994).

28 *Id.*

29 *Sequoyah Fuels*, CLI-01-2, 53 NRC at 14.

Furthermore, "it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision."[30]

B. Petitioner Has Not Demonstrated That He Has Standing

Petitioner bases his claims of standing on: (1) "his past residence and current property interest in Pike County"; and (2) "his past and current occupational interests in the Piketon atomic site" and "his longstanding commitment to historic preservation in Scioto Township and to industrial conversion of the Piketon atomic site."[31] None of these claimed bases is sufficient to demonstrate that Petitioner has standing. Accordingly, the Petition must be dismissed pursuant to 10 CFR § 2.309(a).

1. Petitioner Has Not Shown That He Will Suffer an "Injury-in-Fact" Based on His Current or Future Residence

Petitioner indicates that his residence is at "340 Haven Ave., Apt. 3C, New York, NY 10033 USA."[32] New York City is nearly 500 miles away from the proposed ACP location.[33] Petitioner has not alleged that any aspect of construction or operation of the ACP could injure him or any other persons in New York City. Consequently, his current residence clearly does not provide a basis for legal standing.

Petitioner's claim of "equitable title" based on a contract to purchase the Barnes Home also is not sufficient to establish standing, because Petitioner has not shown that his asserted property interest would be affected by NRC's approval of the ACP Application. Petitioner states that in September 2004 he signed a contract to purchase the

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30 *Sequoyah Fuels and General Atomics*, CLI-94-12, 40 NRC at 76 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotations omitted)).

31 Petition at 3-4.

32 *Id.* at 12.

33 Map *available at* http://www.indo.com/cgi-in/dist?place1=Piketon%2C+OH&place2=New+York%2C+NY

Barnes Home; in November, 2004 he arranged financing for the purchase; and that the purchase is anticipated to be completed soon.[34] He further asserts that he paid a substantial sum for a deposit, extended options and legal fees.[35]

As discussed above, standing must be determined at the commencement of the proceeding.[36] Petitioner's description makes clear that at the time of the Petition, he had at most only a contingent contractual right to purchase, and that this right was time-limited and had been extended from time-to-time. Despite the fact that his rights were clearly limited, Petitioner chose not to provide any description of those limits that would allow the NRC to determine for itself whether Petitioner's interests would be affected by NRC approval of the ACP Application.

Instead, Petitioner states that "[c]opies of the purchase contract and extension agreements are being withheld for proprietary reasons."[37] While Petitioner certainly is within his rights in withholding such information, the NRC cannot presume that the withheld information would support his position. Petitioner's generalized claims of "equitable title" cannot be credited when he has chosen to withhold the details that would explain the full extent of his property interest.

Petitioner's claim of standing based on a contract should be subject to particular scrutiny because its timing suggests that it is little more than an attempt to manufacture standing in order to provide a forum for publishing his views on broad public policy questions associated with the ACP. Although Petitioner asserts that the September 2004

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34 Petition at 5.

35 *Id.* at 6.

36 *Park v. Forest Service, supra* at n.18, at 1037-38.

37 Petition at 6.

contract was "prior to public notice of USEC's license application,"[38] he never alleges that he was unaware of USEC's proposal to locate the ACP at the Portsmouth site.

In fact, it is highly likely that Petitioner did know of the ACP plans before September 2004. The site selection had been announced with considerable fanfare in January 2004.[39] Furthermore, Portsmouth was publicly identified as an alternative site at least as early as 2002, and there was public notice of the submission of USEC's Application in August 2004.[40]. If a petitioner can "manufacture" standing by merely making a deposit to purchase land, then any person can buy standing for the nominal consideration required to form a contract. At a minimum, the circumstances surely placed the burden on Petitioner to demonstrate that he actually possesses a sufficient property interest to confer standing. Petitioner has failed to provide sufficient detail to meet this burden, and has not shown that his property interests would be injured by NRC approval of the ACP Application.

Moreover, Petitioner's asserted intent to make his permanent residence in Scioto Township[41] is not relevant to his standing. This assertion does not appear under the heading of Standing in the Petition, so it is not clear whether he relies on his alleged intent to relocate as a basis for his claim of standing. On the other hand, the Petition asserts that Petitioner would be the maximally exposed individual ("MEI") if the

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38 *Id.* at 5.

39 Spencer Hunt, *Ohio Wins New Uranium Plant*, The Enquirer, January 13, 2004 *available at* http://www.enquirer.com/editions/2004/01/13/loc_loc1acoluran.html; Daniel Prazer, *Piketon Wins Plant, Work On New USEC Facility Begins in '06,* Chillicothe Gazette, January 13, 2004 *available at* http://www.chillicothegazette.com/news/stories/20040113/localnews/217634.html.

40 *See* USEC press releases dated June 18, 2002, September 5, 2002, December 14, 2002, and August 23, 2004 all of which are *available at* http://www.usec.com/v2001_02/HTML/News_Archive.asp.

Application is approved,[42] citing a statement in the Application indicating that the MEI is a hypothetical individual who resides on the DOE reservation 1.1 kilometers south-southwest of the ACP (the exposure is estimated to be less than 1 mrem/yr).[43] While the Barnes Home is more or less in a south-southwest direction from the ACP, it is not at the DOE reservation boundary (it appears to be about 500 feet to the boundary). More importantly, when he filed his Petition, Petitioner did not reside in the Barnes Home, and the NRC should not base its determination regarding Petitioner's standing on his alleged intent to move there.

Finally, even if Petitioner's statements about his intent to relocate are taken at face value, they are not sufficiently specific to confer standing. Petitioner does not state when he plans to relocate, whether his plans are contingent on other events, such as restoration of the Barnes Home (USEC understands that the Barnes Home is not currently occupied and that it would require substantial renovation before it would be habitable), or how long he will remain there. Such questions certainly are raised by Petitioner's statement that the Barnes Home should be "restored and opened to the public as a museum, a memorial site for the passenger pigeon, an educational center for the Hopewell earthworks, and as a tourist attraction for the county."[44] Thus, the Petition simply falls short of meeting Petitioner's burden to show that he will suffer an injury-in-fact if the Application is approved.

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41 Petition at 2.

42 *Id.* at 6.

43 *See* Environmental Report at 4-78.

44 Petition at 7.

2. Petitioner's Past Residence and Associations Do Not Establish His Standing

Petitioner's reliance on his "past residence" adds absolutely nothing to his claim. Petitioner states that he lived in the Piketon area intermittently between 1980 and 1982, and that Piketon was his principal residence between 1982 and 1986.[45] Petitioner's former residence clearly does not provide a basis for standing today. The Petition does not show that NRC approval of the ACP Application would affect any right or interest that may be based on such past residence.

The Petition also mentions: (1) Petitioner's "occupational interest in the Piketon atomic site"; and (2) "his longstanding commitment to historic preservation in Scioto Township and to industrial conversion of the Piketon atomic site."[46] Petitioner describes his current profession as "a writer, historian and preservation activist, and as a member of Heritage Ohio and Audubon Ohio . . ."[47] with an interest in the area.

The U.S. Supreme Court has held that such interests do not confer standing,[48] and the Commission has held that this same standard applies in NRC proceedings.[49] Citing *Sierra Club*, the Commission stated: "In finding that the Petitioners sufficiently have raised an injury for standing, we did not accept their claimed interests in preserving the

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45 *Id.* at 2.

46 *Id.* at 3-4, 7-10.

47 *Id.* at 9.

48 *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972).

49 *Cleveland Electric Illuminating Co.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87, 95 n.10 (1993).

'cultural, historical, and economic resources' of northeastern Ohio. Standing requires more than general interests in a geographic area."[50]

Thus, Petitioner has failed to demonstrate that he has standing to intervene in this proceeding. Accordingly, the Petition must be denied.

IV. PETITIONER HAS FAILED TO PROFFER AN ADMISSIBLE CONTENTION

A. Applicable Legal Standards

1. Requirements for One Admissible Contention

To intervene in an NRC licensing proceeding, an individual or group must propose at least one admissible contention.[51] The NRC will deny a petition to intervene and request for hearing from a petitioner who has standing but has not proffered at least one admissible contention.[52]

2. Petitioners Have the Burden

As the Commission has observed, "[i]t is the responsibility of the Petitioner to provide the necessary information to satisfy the basis requirement for the admission of its contentions and demonstrate that a genuine dispute exists within the scope of this proceeding."[53] In addition, "[a] contention's proponent, not the licensing board, is responsible for formulating the contention and providing the necessary information to satisfy the basis requirement for the admission of contentions."[54]

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50 *Id.*

51 10 CFR § 2.309(a)(2005).

52 *Florida Power & Light Co.* (Turkey Point Nuclear Power Plant, Units 3 and 4), CLI-01-17, 54 NRC 3, 5 (2001).

53 *Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant), CLI-98-14, 48 NRC 39, 41 (1998).

54 *Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18, 22 (1998).

3. Contentions Must Satisfy the Requirements in 10 CFR § 2.309

Pursuant to the Commission's Notice and Order,[55] the admissibility of contentions is governed by 10 CFR § 2.309. Section 2.309(f)(1) requires a petitioner to "set forth with particularity the contentions sought to be raised," and with respect to each contention proffered, the petitioner must:

> (i) Provide a specific statement of the issue of law or fact to be raised or controverted;
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> (ii) Provide a brief explanation of the basis for the contention;
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> (iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;
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> (iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
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> (v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and
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> (vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.[56]

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[55] Notice and Order, CLI-04,30, 69 Fed. Reg. at 61,412.

[56] 10 CFR § 2.309(f)(1)(i)-(vi)(2005) (emphasis added).

A contention that fails to meet any one of these requirements must be rejected.[57]

The Commission has described the agency's contention standard, now found in Section 2.309(f), as "strict by design."[58] This strict rule serves several purposes:

> First, it focuses the hearing process on real disputes susceptible of resolution in an adjudication. For example, a petitioner may not demand an adjudicatory hearing to attack generic NRC requirements or regulations, or to express generalized grievances about NRC policies. Second, the rule's requirement of detailed pleadings puts other parties in the proceeding on notice of the Petitioners' specific grievances and thus gives them a good idea of the claims they will be either supporting or opposing. Finally, the rule helps to ensure that full adjudicatory hearings are triggered only by those able to proffer at least some minimal factual and legal foundation in support of their contentions.[59]

Sections (a) through (f) below summarize the requirements of Section 2.309(f)(1) as they have been further developed by NRC case law.

a. Petitioners Must Specifically State the Issue of Law or Fact to Be Raised

Section 2.309(f)(1)(i) requires that petitioners "'articulate at the outset the specific issues they wish to litigate as a prerequisite to gaining formal admission as parties.'"[60]

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57 *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI- 99-10, 49 NRC 318, 325 (1999); *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155 (1991).

58 *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-01-24, 54 NRC 349, 358 (2001); *see also Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 334 (1999). In January 2004, the Commission adopted substantial revisions to 10 CFR Part 2, the NRC's Rules of Practice, which became effective on February 13, 2004. *See Changes to Adjudicatory Process*, 69 Fed. Reg. 2,182, 2,183 (Jan. 14, 2004). In the Statements of Consideration accompanying the Final Rule, however, the Commission noted that the contention standard set forth in new Section 2.309(f)(1) is the same standard that has been in effect since 1989 (*i.e.*, the same standard that was set forth in former 10 CFR § 2.714(b) and developed in NRC case law prior to the adoption of the current rule). *Id.* at 2,189-90.

59 *Duke Energy Corp.*, CLI-99-11, 49 NRC at 334 (citations omitted).

60 *Dominion Nuclear Connecticut, Inc.*, CLI-01-24, 54 NRC at 359 (quoting *Duke Energy Corp.*, CLI-99-11, 49 NRC at 388).

b. Petitioners Must Briefly Explain the Basis for the Contention

Pursuant to Section 2.309(f)(1)(ii), a petitioner must also provide a brief explanation of the basis for the contention.

c. Contentions Must Be Within the Scope of the Notice of the Proceeding

In addition, a petitioner must demonstrate that its contention falls within the scope of the proceeding.[61] The scope of permissible contentions is bounded by the issues specified in the Notice of Opportunity for Hearing.[62] Therefore, a contention that raises matters that are not within the scope defined by the notice cannot be admitted.[63]

d. Contentions Must Raise a Material Issue

To be admissible, a contention must raise a material issue.[64] As the Commission has observed, "[t]he dispute at issue is 'Material' if its resolution would 'make a difference in the outcome of the licensing proceeding.'"[65] In this regard, "[e]ach contention must be one that, if proven, would entitle the petitioner to relief."[66] In addition, contentions alleging a deficiency or error in an application must also "indicate

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61 10 CFR § 2.309(f)(1)(iii)(2005).

62 *Florida Power & Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), CLI-00-23, 52 NRC 327, 329 (2000); *Georgia Tech,* CLI-95-12, 42 NRC at 118.

63 *Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289 n.6 (1979); *see also Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-316, 3 NRC 167, 170-71 (1976).

64 10 CFR § 2.309(f)(1)(iv)(2005).

65 *Duke Energy Corp.*, CLI-99-11, 49 NRC at 333-34; *see also Rules of Practice for Domestic Licensing Proceedings – Procedural Changes in the Hearing Process*, 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989).

66 Notice and Order, CLI-04-30, 69 Fed. Reg. at 61,412.

some significant link between the claimed deficiency and either the health and safety of the public or the environment."[67]

e. Contentions Must Be Supported by Facts or Expert Opinions

A contention "will be ruled inadmissible if the petitioner 'has offered no tangible information, no experts, no substantive affidavits, but instead only 'bare assertions and speculation.'"[68] So too will "vague, unparticularized issues"[69] and "open-ended or ill-defined contentions lacking in specificity or basis."[70] As the Commission has observed, a petitioner "must do more than submit 'bald or conclusory allegation[s]' of a dispute with the applicant."[71] If a petitioner fails to provide the requisite support for its contentions, a Licensing Board may neither make factual assumptions that favor the petitioner, nor supply information that is lacking.[72]

f. Contentions Must Raise a Genuine Issue of Material Fact or Law

Section 2.309(f)(1)(vi) requires a petitioner to provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. For a contention to be admissible, it must refer to those portions of the license application

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67 *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-04-14, 60 NRC 40, 56 (2004), *aff'd in relevant part by* CLI-04-25, 60 NRC 223 (2004).

68 *Fansteel, Inc.* (Muskogee, Oklahoma, Site), CLI-03-13, 58 NRC 195, 203 (2003) (quoting *GPU Nuclear, Inc.* (Oyster Creek Nuclear Generating Station), CLI-00-6, 51 NRC 193, 208 (2000)).

69 *Pacific Gas and Elec. Co.* (Diablo Canyon Power Plant, Units 1 and 2), CLI-03-2, 57 NRC 19, 27 (2003).

70 *Dominion Nuclear Connecticut, Inc.*, CLI-01-24, 54 NRC at 359.

71 *Id.* at 358 (quoting 54 Fed. Reg. at 33,171).

72 *Louisiana Energy Services, L.P.*, LBP-04-14, 60 NRC at 56 (citing *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-01-35, 54 NRC 403, 422 (2001)).

that the petitioner disputes and indicate supporting reasons for each dispute.[73] As the Commission recently explained,

> [r]equiring the substance and presentation of contentions to be concrete and specific to the license application helps ensure that individual license applicants are not put into the position of defending the policies and decisions of the Commission itself. It also precludes an intervenor from making general allegations, with the hope of generating through discovery sufficient facts to show there is a genuine dispute.[74]

If the petitioner does not believe that the application adequately addresses a relevant issue, the petitioner is required to explain why the application is deficient.[75] Additionally, in such cases, the petitioner must provide "supporting grounds" for its contention that the application "must but does [not] consider some information required by law."[76] Furthermore, a contention that does not directly controvert a position taken in the application is subject to dismissal, as is a contention that mistakenly asserts the application fails to address a relevant issue.[77]

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73 *Florida Power & Light Co.*, CLI-01-17, 54 NRC at 19.

74 *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-04-22, 60 NRC 125, 130 (2004)

75 *Arizona Public Service Co.*, CLI-91-12, 34 NRC at 155-56.

76 *Florida Power & Light Co.*, CLI-01-17, 54 NRC at 19.

77 *See Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-98-7, 47 NRC 142, 181 (1998); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), LBP-93-23, 38 NRC 200, 247-48 (1993), *review declined*, CLI-94-2, 39 NRC 91 (1994); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC 370, 384 (1992).

4. Contentions May Not Challenge NRC Rules and Regulations

In addition, a licensing proceeding is an improper forum for challenging the validity of previously-issued NRC rules and regulations.[78] The NRC will reject as inadmissible any contention that attacks applicable statutory requirements or Commission regulations,[79] as well as any contention that seeks to impose stricter requirements than those set forth by the regulations.[80]

B. Analysis of Petitioner's Contentions

Petitioner has proposed seven contentions for litigation in this proceeding. As discussed below, none of those contentions satisfies the applicable standards for admissibility. As a result, the Petition should be denied.

Before addressing Petitioner's individual contentions, USEC would like to briefly provide its overall view of Petitioner's claims and allegations. Petitioner goes on at some considerable length to discuss cultural resources in the southern Ohio region. What Petitioner does not do, however, is ever demonstrate that any of those resources are on the ACP site, or that the ACP will adversely affect those resources in any way. Petitioner also repeatedly criticizes past and present activities of DOE that are beyond the scope of the proceeding, raises impermissible challenges to NRC regulations, and presents his own views on matters of domestic and international non-proliferation policy. His Petition raises no genuine dispute of material fact or law.

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78 10 CFR § 2.335 (2005); *Florida Power & Light Co.*, CLI-01-17, 54 NRC at 16; *Yankee Atomic Electric Co.*, CLI-96-7, 43 NRC 235, 252 (1996).

79 *Private Fuel Storage*, CLI-04-22, 60 NRC at 129.

80 *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI-87-12, 26 NRC 383, 395 (1987).

1. Contention 1: Assessment of Cultural Resources

a. Contention 1.1

Contention 1.1 alleges that "USEC failed to identify cultural resources potentially impacted by" the ACP.[81] As a basis for this contention, Petitioner provides a rambling nine page essay and a collection of letters and articles about: (1) archaeological and historic resources that are, or may be, or may have been in Central and South-Central Ohio; (2) actions of the DOE and the Atomic Energy Commission ("AEC") over the past 50 years; (3) an alleged government conspiracy to conceal archaeological information; and (4) the history of native American and European occupation of the general area. None of this material provides any basis for concluding that the ACP will affect any existing cultural resources.

The bulk of Petitioner's basis for this contention concerns alleged impacts of past development of the Portsmouth reservation by the AEC and DOE. Such past impacts are outside the scope of this proceeding and cannot be redressed by the NRC. Despite the length of the essay, Petitioner does not show that any of the existing resources he discusses will be affected by the ACP. The ACP will be located on the existing DOE reservation, and much of it is to be housed in existing buildings. The site has been largely disturbed by the government's development activities and there have been extensive government surveys of onsite resources.[82] In fact, the few specific resources mentioned by Petitioner are not even on the DOE reservation.

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[81] Petition at 14.

[82] *See* Environmental Report at 4-88, 4-89.

At one point, Petitioner speculates that, in addition to the identified offsite Hopewell earthworks (Scioto Township Works), there was a "larger circle [not mentioned by any of the sources Petitioner chronicles] . . . which passes . . . right through the area that USEC might want to pave over to connect [the southwest access] road to Route 23."[83] Although Petitioner cites his Exhibit H as support, that Exhibit does not mention a larger circle. Even the diagram Petitioner appended to his Petition does not show any resources on the DOE reservation.[84]

Moreover, the Application does not propose any such paving or connection to Route 23 and Petitioner does not cite any facts to support this speculation. In short, Petitioner does not indicate how any feature actually proposed as part of the ACP could have a significant effect on any existing cultural resources. Nowhere in Contention 1.1, its basis statement, or the associated exhibits does Petitioner describe any existing cultural resources in the area where the ACP will be located or provide any indication of how the ACP itself would have an impact on existing cultural resources.

Finally, Petitioner's discussion of the history of the general area does not identify any NRC requirement that USEC has failed to meet. The ER does discuss the Adena and Hopewell Indian mounds that existed in the general area, and that Native America Indian tribes are known to have had villages nearby.[85] Since the existing cultural or historic resources will not be affected by the ACP, they did not require detailed discussion in the ER.[86] Furthermore, since there is no showing that any offsite resources will be affected

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83 Petition at 17.

84 Petition, Exhibit A (Historic sites in relation to ACP).

85 *See* ER at 4-88, 4-89.

86 *Id.*

by the ACP, Petitioner's discussion of such resources is not material to the NRC's licensing decision.

In short, contrary to 10 CFR 2.309(f), Contention 1.1 raises matters beyond the scope of the proceeding and does not identify a genuine dispute of material fact or law. Accordingly, Contention 1.1 should be dismissed.

b. Contention 1.2

Contention 1.2 alleges that "USEC has failed to identify potential impacts" of the ACP on "nearby historic and prehistoric sites."[87] The basis statement for this contention consists of a list of five "potential adverse impacts of the ACP on cultural resources" that are not mentioned in the ER.[88] The five alleged "impacts," however, do not support the contention.

The first alleged impact is "potential direct damage to the Scioto River earthworks caused by renewed water pumping."[89] The Petition mistakenly claims that Exhibits B and N provide support for this assertion. The only statement in Exhibit B that is at all relevant to this claim is that "the government took 31.421 additional acres for a permanent easement during 1982. This was for a well field along the Scioto and for pipe lines and a road." Exhibit B does not suggest that renewed pumping could impact any feature. Petitioner's Exhibit N also does not show that there would be any such effect. Exhibit N states: "[w]e also need to consider potential destruction of earthworks along the river caused by additional water pumping . . . ." This statement adds nothing to the Petition's speculation, but only repeats it. Neither Exhibit N nor the Petition identifies

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87 Petition at 22.

88 Petition at 22-23.

any mechanism for such adverse impact, nor could they. The well field was established and used during operation of the GDP. It taps into the Scioto River Valley buried aquifer, which also is the source for most municipal and industrial water supplies in Pike County.[20] The pumping rates associated with the ACP are a small percentage of the design capacity of the well field.[21] The Petition does not cite any basis for concluding that such pumping will affect the Scioto earthworks. Nothing in the Petition or either exhibit identifies facts or expert opinions suggesting that there is a significant risk of damage due to such pumping.

The second and third alleged impacts ("[c]ontinuation of the DOE policy of using herbicides" and "[m]aintenance of the 'national security' regime") are not even alleged to be impacts of the ACP, but rather, current actions of DOE. The fact that these impacts are allegedly currently taking place provides clear evidence that they are unrelated to the ACP. Petitioner does not cite any part of the ACP Application that proposes such actions. Petitioner also does not even identify any impact these actions may have on any cultural or historic resource. Moreover, the actions of DOE are outside the scope of this proceeding.

Similarly, the fourth alleged impact ("discouragement of tourism and academic study caused by real and perceived nuclear dangers") is unsupported by any fact or expert opinion, and is contrary to common sense. The ACP location is on a DOE reservation that has been used by the government for uranium enrichment and tails storage for some

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[19] *Id.* at 23.

[20] *See* ER at 3-19

[21] *See id.* at 4-54.

50 years. The ACP would not change this character, nor would it entail any significant increase in "real or perceived" risk. Although the Petition cites Exhibit H as alleged support for this allegation, that exhibit says nothing about tourism and simply provides no support for this claim.

Finally, the fifth alleged impact (alleged damage to archaeological sites caused by "additional road-building, traffic congestion, waste storage and plant emissions") is vague and is not tied to any specific aspect of the ACP application or any particular archaeological site. The ER discusses the impacts of ACP construction and operation,[92] including transportation,[93] storage[94] and emissions.[95] Petitioner does not identify any deficiency in the ER or the Application. Finally, Petitioner does not cite any facts or expert opinion that would support the assertion that any archaeological site would be affected.

In short, nothing in Contention 1.2 or in the combination of Contentions 1.1 and 1.2, demonstrates that there is a genuine dispute on a material issue of law or fact. In fact, Contention 1.2 concludes by simply asserting that this subject "deserves serious study," tacitly conceding that the Petitioner does not have a basis for concluding that these impacts will occur.[96]

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92 *See Id.* at Chapter 4.

93 *Id.* at Section 4.2.

94 *Id.* at Section 4.1.

95 *Id.* at Section 4.6.

96 Petition at 23.

Contrary to 10 CFR §2.309(f), Contention 1.2 provides no supporting facts or expert opinion, raises matters beyond the scope of the proceeding, and identifies no genuine dispute of material fact or law. Accordingly, this contention should be rejected.[27]

2. Contention 2: Compliance with Federal Historic Preservation Laws

a. Contention 2.1

Contention 2.1 alleges that "[t]he USEC-DOE collaborative agreement is out of compliance with the National Historic Preservation Act [NHPA] and related legislation."[28] This contention clearly focuses on a matter that is beyond the scope of this proceeding. It does not claim that any aspect of the ACP Application fails to comply with any NRC requirement and does not raise any other issue that is material to the findings the NRC must make in reviewing the ACP Application. Alleged DOE noncompliance with the NHPA is outside the scope of this proceeding. Moreover, nothing in the proposed contention or its associated basis statement actually identifies any specific aspect of the USEC-DOE agreement that is alleged to be out of compliance.

Petitioner does not provide any facts to support Contention 2.1 or identify any other legislation with which the DOE-USEC Agreement allegedly does not comply. Consequently, proposed Contention 2.1 does not identify a genuine issue of material fact or law.

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27 *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generation Station), LBP-93-23, 38 NRC 200, 246 (1993)("A contention that simply alleges that some matter ought to be considered does not provide the basis for an admissible contention.").

28 Petition at 23. This apparently refers to the DOE-USEC Agreement that provides, in part, for USEC to develop, at its own expense, enrichment capacity using an advanced technology on either the Portsmouth or Paducah DOE reservations. *See* ACP App. at 1-50; DOE Press Release *available at* http://www.ne.doe.gov/home/06-18-02.html.

The basis statement for Contention 2.1 contains numerous assertions about NHPA requirements and alleged "shoddy" DOE compliance, none of which identifies any issue that is material to this proceeding. Even the statements that actually refer to the ACP fail to provide any support for the contention. The only references to the ACP Application are:

(1) A criticism of Section 3.8.2[99] for mentioning that another document, a draft historic context for the DOE reservation, addresses four development periods, starting with 1900-1951. Petitioner's criticism is that "USEC says the historic clock starts in 1900." The comment is frivolous. This section of the ER discusses an evaluation of the historic significance of the structures on the DOE reservation, none of which predate 1900. The same Section of the ER also references other surveys performed at the site. Further, Section 3.8.1 provides information concerning cultural resources including prehistoric and historic resources that have been identified in the region.

(2) A suggestion that the ER at page 3-64 is incorrect in stating that there are no scenic rivers in the area.[100] Petitioner asserts that in his judgment the Scioto River is scenic. There is a legal process for designating rivers as scenic in accordance with the Wild and Scenic Rivers Act.[101] The National Park Service lists three rivers in Ohio that have been designated as wild or

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99 Petition at 25.

100 *Id.*

101 16 USC § 1271 *et seq.* (2000).

scenic: Big and Little Darby Creeks, Little Beaver Creek and Little Miami, none of which is in the area of the ACP.[102] Moreover, Petitioner has not identified any way in which the ACP will affect the scenic values of the Scioto River.

(3) An assertion that USEC's consultation with the Ohio State Preservation Office was not adequate to comply with the NHPA,[103] because neither DOE nor USEC contacted the Absentee Shawnee Tribe of Oklahoma or Charles Beegle. Petitioner does not identify any NRC requirements that USEC failed to meet. NRC guidance directs an applicant to consult the State Historic Preservation Office ("SHPO")[104] and USEC did so. Furthermore, the NHPA consultation requirements are to be carried out by the NRC. In accordance with the NHPA, the NRC is conducting its own consultations in connection with its preparation of an EIS under the NEPA. The NRC has asked the SHPO for advice on who else should be consulted.[105] Petitioner has not raised an issue that is material to this proceeding.

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102 Information *available at* http://www.nps.gov/rivers/wildriverlist.html#oh.

103 Petition at 25-26.

104 NUREG-1748 "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," §§ 6.4.8, 1.4.

105 Letter from J. Davis, NRC, to M. Epstein, Ohio Historic Preservation Office, dated December 28, 2004, regarding Initiation of the National Historic Preservation Act Section 106 Process for the Proposed American Centrifuge Commercial Plant, Pike County, Ohio (Accession Number: ML043550029).

(4) Finally, Petitioner cites a letter from Dr. Thomas F. King (Exhibit Q), which makes no reference to any specific aspect of the ACP application and therefor does not provide meaningful support for the contention.

In short, contrary to 10 CFR § 2.309(f), Contention 2.1 raises issues that are beyond the scope of this proceeding and fails to identify a genuine issue of material fact or law. Consequently, Contention 2.1 must be rejected.

b. Contention 2.2

Contention 2.2 asserts that "[n]oncompliance with federal preservation law has undermined the legitimacy and legal basis of the USEC-DOE agreement."[106] This contention again does not raise any matter within the scope of this proceeding, or identify a genuine issue of material fact or law. Furthermore, it is not even clear which USEC-DOE agreement Petitioner is challenging. If the contention concerns the same "collaborative arrangement" mentioned in Contention 2.1, the above discussion demonstrates that the claim is beyond the scope of this proceeding, and that Petitioner has not identified any facts or expert opinion that support his claim.

On the other hand, in the basis statement, Petitioner mentions "USEC's lease agreement with DOE,"[107] which is a separate, much earlier document than the 2002 Agreement.[108] This lease was signed in 1993, and in the USEC Privatization Act[109] Congress directed that the lease be transferred to the privatized corporation (*i.e.*

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106 Petition at 27.

107 *Id.*

108 The lease is described in the Application at 1-49 and *available at* http://em.doe.gov/acd/rptg-3.html.

109 42 USC § 2297h (2000).

USEC),[110] and directed that the lease transfer shall not be considered a major Federal action.[111] Since transfer of the lease also did not meet the definition of an "undertaking,"[112] it was not subject to NHPA Section 106 consultation. Nevertheless, Petitioner asserts that the NRC must "inquire into" whether DOE complied with its legal obligations when it entered into an agreement with USEC. Such an inquiry would clearly be beyond the scope of this hearing. DOE's compliance with its legal obligations is simply not at issue in this proceeding and cannot be redressed by the NRC.[113] Consequently, contrary to 10 CFR § 2.309(f), Contention 2.2 raises matters that are beyond the scope of this proceeding and fails to identify a genuine dispute on any material issue of fact or law.

3. Contention 3: Consideration of Action Alternatives

a. Contention 3.1

Contention 3.1 states that "USEC has failed to consider a broad range of alternatives to the proposed action."[114] Without any legal support, Petitioner elaborates as follows:

> USEC, in its environmental report, considers only alternatives for USEC, not for the Piketon site or the community or the American public. Thus, USEC's alternatives" consist only of "no action," moving ACP to another part of the Piketon site, and moving ACP to Paducah, Kentucky. This is a

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110 *Id.* at 5(a).

111 *Id.* at 5(g).

112 36 CFR § 800.16(y) (2004).

113 Petitioner does not cite any facts supporting the assertion that DOE has not complied with the NHPA. Like the 2002 DOE-USEC Agreement discussed above, the lease did not meet any part of the definition of "undertaking," and therefor Section 106 consultation was not required. 36 CFR § 800.2 (2004). Moreover, since Congress specifically directed that the lease be transferred to USEC as part of its privatization (42 USC § 2297h-5(a) (2000)), it thereby ratified the lease.

114 Petition at 28.

> wholly inadequate approach to the whole question of alternatives. Especially when the applicant proposes to build and operate on public land, it's not the applicant's alternatives that are at issue but the public's alternatives.[115]

Petitioner then suggests various alternative site uses such as building a pyramid as a national monument to the passenger pigeon.[116] This contention should be rejected because Petitioner does not identify any alternatives, not addressed in the ER, that are required to be considered under the National Environmental Policy Act (NEPA). USEC has, in accordance with NRC guidance, considered a reasonable range of alternatives.

Petitioner claims that the ER only considers as alternatives, the "no action" alternative and the location of the ACP elsewhere at the Portsmouth site or at the Paducah site. The ER, however, also discusses: (1) non-centrifuge alternate enrichment technology (such as AVLIS and SILEX); (2) construction of a gas centrifuge at a non-Gaseous Diffusion Plant location; and (3) down-blending of highly enriched uranium (HEU) from either U.S. or Russian nuclear warheads.[117]

The NRC need not consider any of the additional "alternatives" suggested by Petitioner. "Under NEPA, an agency need only consider the range of alternatives "reasonably related" to the scope and goals of the proposed action"[118] and the "no action" alternative.[119] The purpose and need for the ACP is to provide a reliable and economical

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115 *Id.*

116 *Id.* at 30.

117 Environmental Report at 2-17 to 2-19.

118 *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 144-45 (1993) (citing *Process Gas Consumers Group v. U.S. Department of Agriculture*, 694 F.2d 728, 769 (D.C. Cir. 1981)).

119 40 CFR § 1502.14(d)(2005).

domestic source of enriched uranium.[120] Accordingly, aside from the "no action" alternative, the NRC is only required to consider alternatives that produce enriched uranium. Petitioner's suggestions, such as the pyramid, clearly would not produce enriched uranium.[121] Furthermore, Petitioner does not cite any authority for the assertion that the NRC must consider as additional alternatives, other "uses" of the property unrelated to the purpose of the proposed action.

Moreover, Petitioner offers no evidence that any of his speculative uses may occur. The Council on Environmental Quality has explained that the "no action" alternative generally would mean the proposed activity would not take place, and that the resulting environmental effects from taking no action should be compared with the effects of permitting the proposed activity or an alternative activity to go forward. Only where a choice of "no action" would result in predictable actions by others, should such a consequence of the "no action" alternative be included in the analysis of this alternative.[122]

Petitioner does not show that any other effects are predictable. For example, it is not predictable that denying the ACP license would result in building a pyramid as a monument to the extinction of the passenger pigeon. Furthermore, as the Commission has previously stated: "The extent of 'no-action' discussion is governed by a 'rule of reason.' It is clear that the discussion 'need not be exhaustive or inordinately

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120 Environmental Report at 1-10 to 1-12.

121 Petition at 28-31.

122 *Forty Most Asked Questions on CEQ NEPA Regulations*, 46 FR 18026, 18027 (March 23, 1981).

detailed.'"[123] The Petition does not show that the discussion in the ER[124] is unreasonable or fails to meet applicable legal requirements.

Thus, contrary to 10 CFR § 2.309(f), Contention 3.1 does not identify a genuine issue of material fact or law and should be rejected.

b. Contention 3.2

Petitioner contends that "USEC's stated action alternatives should be seriously evaluated."[125] Such a contention does not identify a genuine issue of material fact or law since it does not assert that there is any error or inadequacy in the Application.[126] As the basis for this contention, Petitioner argues that the ACP should be required to move to Paducah, Kentucky because of the alleged cultural resource impacts at the Piketon site.[127] In particular, the Petition claims that the southwest corner of the Piketon site is "the most sensitive in terms of multiple impacts to precious and sacred cultural resources."[128]

The only asserted basis for this claim is Petitioner's Exhibit N, a letter from the Tribal Historic Preservation Officer of the Absentee Shawnee Tribe of Oklahoma. That exhibit, however, does not provide meaningful support for the assertion (since it merely asserts that the ACP "may impact" historic sites that may exist in the area)[129] and does not

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123 *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), CLI-98-3, 47 NRC 77, 97 (1998) (internal citations omitted).

124 *See* Environmental Report Table 2.4-1, and the various sections of Chapter 4.

125 Petition at 31.

126 *See Sacramento Municipal Utility District*, LBP-93-23, 38 NRC at 248.

127 Petition at 31-32.

128 *Id.*

129 Petition, Exhibit N at 1.

identify any basis for concluding that any particular resource will be affected.[130] Furthermore, as Petitioner acknowledges, the ER does consider Paducah as an alternative site.[131]

Thus, contrary to 10 CFR § 2.309(f), the contention raises no genuine dispute of material fact or law, and should be dismissed.[132]

4. Contention 4: Impacts on Surrounding Area

a. Contention 4.1

Petitioner contends that "USEC neglects many potential impacts of [the] ACP on the local community."[133] To support this position, Petitioner presents the following bases: (1) "When security tightened at the plant-site after 9/11, the perimeter road was closed to local traffic"[134]; (2) alleged herbicide use by DOE or its contractors; and (3) Petitioner's speculation that the basis for the strong local support is because of a "sense of hopelessness" upon which community support for the ACP is allegedly based.[135]. These bases are outside the scope of this proceeding, and do not identify a genuine issue of material fact or law.

Both Bases 1 and 2 discuss actions alleged to have been taken by DOE before the ACP Application was even submitted. These are clearly not "impacts of [the] ACP" —

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130 *See also* the discussion of Contentions 1.1 and 1.2 above.

131 Petition at 31.

132 Finally, Petitioner's Contention 3.2 was proffered for the first time in the Petition transmitted on March 1. Accordingly, the contention is clearly untimely. Since Petitioner did not show good cause for the late filing of this contention, it must be dismissed.

133 Petition at 32.

134 *Id.*

135 *Id.*

which is the subject of the Contention and this proceeding. Nor are such alleged actions by DOE within the scope of this proceeding. Accordingly, Bases 1 and 2 are outside the scope of this proceeding, and must be rejected.

Petitioner's third claim -- that the Pike County residents support the ACP "out of a sense of hopelessness that no other major industry can be attracted"[136] -- does not allege any violation of NRC requirements, and does not raise a genuine issue of material fact or law. Thus, contrary to 10 CFR § 2.309(f), Contention 4.1 raises matters that are beyond the scope of the proceeding and demonstrates no genuine issue of material fact or law. Accordingly, Contention 4.1 must be rejected.

5. Contention 5: Impacts on Site Cleanup and Community Reuse

a. Contention 5.1

Contention 5.1 asserts that "USEC fails to consider that [the] ACP has resulted and will result in the relaxation of DOE cleanup standards at the site and reduced possibilities for community reuse of facilities."[137] Petitioner offers no basis for this assertion except an undefined and unidentified "sense in Piketon,"[138] and does not cite any supporting facts or expert opinion. Petitioner does not identify specific cleanup standards, explain why those standards would be relaxed, or indicate how such relaxation is related to the ACP. No explanation is provided for Petitioner's statement that "DOE has already proposed that certain cleanup standards be relaxed because of ACP's predominance on the site."[139]

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136 *Id.*

137 *Id.* at 33.

138 *Id.*

139 *Id.*

DOE's site cleanup is being conducted in accordance with various environmental laws, in coordination with Ohio and federal environmental protection agencies. There is no connection between the ACP and the DOE cleanup standards. Accordingly, contrary to 10 CFR § 2.309(f), Petitioner has failed to provide any supporting facts or expert opinion, has raised matters that are beyond the scope of this proceeding, and does not identify any genuine dispute of material fact or law. Thus, Contention 5.1 must be rejected.

6. Contention 6: Nuclear Proliferation Considerations

a. Contention 6.1

Petitioner asserts that "USEC has not accounted for the proliferation risks associated with centrifuge technology."[140] To support this assertion, he argues: (1) "It is obvious that when "The American Centrifuge" is announced as a fait accompli to the world, there will be a backlash[;]"[141] (2) "The Stockholm International Peace Research Institute warns that all centrifuge technology worldwide must be halted in order to avert uncontrolled proliferation[;]"[142] and (3) "new demand for nuclear fuel, at least in the United States, can be met by boosting the down-blending of old weapons-grade uranium[.]"[143] Contention 6.1 does not identify an issue within the scope of this proceeding.

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140 Petition at 34.

141 *Id.*

142 Petition at 35.

143 *Id.*

Both Bases 1 and 2 are essentially challenges to the NRC regulations, which do not prohibit the use of gas centrifuge technology for enrichment.[144] In addition, since the issues specified for consideration in this proceeding do not encompass such broad international policy considerations,[145] these matters are outside the scope of this proceeding. Despite Petitioner's personal views of non-proliferation policy, U.S. law clearly relies on an ample domestic enrichment capacity that can supply both domestic and international needs, as a cornerstone of its non-proliferation policy.[146] Indeed, the USEC Privatization Act specifically required that the privatization of the uranium enrichment operations provide for "the protection of the public interest in maintaining a reliable and economical domestic source of uranium enrichment."[147] The NRC is not responsible for reconsidering, and does not have the authority to reconsider, this policy.[148] Bases 1 and 2 are beyond the scope of this proceeding.

To the extent that Petitioner is arguing that domestic down-blending of previously enriched weapons grade uranium could meet domestic demand, the ER explicitly addresses this alternative and Petitioner does not identify any error or omission.[149] Accordingly, contrary to 10 CFR § 2.309(f), Contention 6.1 raises matters that are

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144 10 CFR Part 70 (2005).

145 *See* Notice and Order, CLI-04-30, 69 Fed. Reg. at 61,412 (Oct. 18, 2004).

146 22 USC § 3221 (2005).

147 42 USC § 2297h-1(a) (2005).

148 *See Louisiana Energy Services, L.P.*, LBP-04-14, 60 NRC at 70 (Rejecting contention on non-proliferation in a uranium enrichment facility proceeding).

149 Environmental Report at 2-19.

beyond the scope of this proceeding and fails to identify a genuine issue of material fact or law. Thus, Contention 6.1 must be rejected.[150]

7. Contention 7: Structure and Viability of USEC and of the USEC-DOE relationship

a. Contention 7.1

Petitioner contends that "USEC has not clarified the company's stability or long-term prospects, or how its relationship with the Department of Energy is intended to function, or how that relationship might evolve over time."[151] As alleged bases for this contention, Petitioner: (1) muses about the nature of USEC and its relationship with DOE; (2) speculates about USEC's economic viability; and (3) suggests that the NRC should reject the Application simply because the Petitioner disagrees with the division established by law between private and public responsibilities for various stages of the nuclear fuel cycle.[152]

Most of this is simply irrelevant, and none of it cites any supporting facts or expert opinion. The ACP Application makes clear that USEC is a corporation organized under Delaware law.[153] The Application also describes the Company's agreement with DOE for the construction of an ACP, and its lease of DOE facilities.[154] Petitioner does not identify any error or omission in the Application.

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150 The Petition sent by e-mail on February 28 contained a different Contention 6.1. Since Petitioner stated that the Petition sent on March 1 superceded the earlier Petition, that earlier contention has been withdrawn and is not further addressed here.

151 Petition at 36.

152 Petition at 36-37.

153 ACP App. at 1-47.

154 *Id.* at 1-50.

Instead, Petitioner refers to "ongoing speculation," a suggestion by a New York Times reporter (without any reference to a specific story), references to a lawsuit that has been dismissed, and an alleged "growing consensus."[155] On the basis of these unsupported charges, Petitioner concludes that the "NRC must conduct a through investigation of USEC's financial, management, and planning practices as part of the licensing process."[156]

As discussed previously, such an expression does not identify a genuine issue of material fact or law and does not constitute an admissible contention.[157] To the extent that some element of Petitioner's basis statement is viewed as implicating USEC's financial qualifications, the ACP Application discusses those financial qualifications in Section 1.2.2 and Petitioner has not challenged any statements made in that section or identified any omission. Accordingly, Contention 7 does not provide any supporting facts or expert opinion and does not identify a material issue of law or fact. Therefore, Contention 7 must be rejected.

V. CONCLUSION

The proposed ACP is an important step in the effort to increase the nation's energy security and to provide a reliable and economical domestic source of enriched uranium well into the future. Petitioner has submitted a Petition to Intervene in the ACP licensing proceeding, and is seeking the opportunity to participate as a party in an

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155 In *Cohen v. USEC*, No. 02-1459, slip op. (4th Cir. July 21, 2003), the U.S. District Court dismissed plaintiff's claims relating to certain information in a USEC registration statement and prospectus on the basis of defendants' Rule 12(b)(6) motion, and the U.S. Court of Appeals for the Fourth Circuit affirmed. *Id.*, slip op. at 4.

156 Petition at 36.

157 *See supra Sacramento Municipal Utility District*, LBP-93-23, 38 NRC at 246.

adjudicatory hearing process that, by law, must be completed before the license to construct and operate the ACP can be issued. Petitioner clearly lacks standing. He is a current resident of New York and neither his speculative statement about his future plans to relocate near the ACP, nor his occupational and academic interests are sufficient to create standing. Furthermore, Petitioner's contentions consistently raise matters beyond the scope of the proceeding, lack sufficient factual or expert opinion basis, and fail to demonstrate the existence of any genuine dispute of material fact or law.

Under these circumstances, the NRC should most carefully consider whether Petitioner has demonstrated legal standing and whether he has proffered any contentions that will meaningfully contribute to a reasoned and thorough licensing decision. As discussed above, USEC believes that Petitioner has failed on both accounts and that his Petition should be denied.

Respectfully submitted,

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Dated March 23, 2005

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Note to all recipients: In order to meet the filing deadline of 5 p.m., I am sending this off without proofreading corrections. The mailed copies, which will be postmarked by midnight tonight, will include some corrections and small additions. There may also be a reordering of the exhibits. The mailed copies will also include all exhibits, only some of which are available here in electronic form. On Page 36, there is a note to the electronic filing that lists the exhibits included here.

Thank you for your consideration,

Geoffrey Sea

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

In the Matter of	)	Filed February 28, 2005
USEC Inc. (American Centrifuge Plant)	)	Docket No. 70-7004

PETITION TO INTERVENE

BY GEOFFREY SEA

Pursuant to 10 CFR 2.309, the notices published by the Nuclear Regulatory Commission ("NRC" or the "Commission") in the Federal Register on October 18, 2004 (Volume 69, pages 61411-61416), and the Commission ruling of December 29, 2004,

Petitioner Geoffrey Sea hereby petitions to intervene in the above-captioned proceeding. As demonstrated below, Petitioner has standing to make this petition.

Description of Proceeding

This proceeding concerns an application by USEC Inc. for licenses necessary to authorize construction and operation of a gas centrifuge enrichment facility on the existing federal "atomic reservation" in Sargents, Ohio, in Scioto Township near the town of Piketon. On October 7, 2004, the Commission issued a Notice of Receipt of Application for License; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order, all related to USEC's application for a

license. If granted pursuant to 10 CFR 30.33, 40.32, and 70.23, the NRC licenses sought by USEC would authorize USEC to construct and operate perhaps the first full-scale gas centrifuge enrichment facility in the United States, and perhaps the first gas centrifuge facility outside of Russia to enrich uranium to the grade of 10% Uranium-235 ~~required by newly engineered naval propulsion reactors and research reactors~~. The proposed facility would also be unique in that it would be operated by a quasi-private company on federal land, using federally-owned equipment, under the special provisions of ~~Enrichment~~the USEC Privatization Act of 1998, a whole body of federal law that applies uniquely to this one company.

Description of Petitioner

Petitioner Geoffrey Sea is an American citizen who lived in the Piketon area intermittently between 1980 and 1982, and as ~~primary~~principal residence between 1982 and 1986, during which time he was employed as a staff consultant to the Oil, Chemical and Atomic Workers International Union, Local 3-689, which represented workers at the Piketon enrichment plant. Petitioner is now a writer under contract to write a historical, literary and scientific book about Piketon for Viking-Penguin. Petitioner has published and produced numerous works about Piketon including his senior honors thesis at Harvard College in 1981 and a long essay in the Winter 2004 issue of the *American Scholar* (Exhibit C). Petitioner has been in the process of relocating back to the Piketon area since the summer of 2004, and intends to make his permanent residence in Scioto Township. Petitioner is a member of organizations dedicated to historic preservation and ecological conservation in Ohio, including Heritage Ohio and Audubon Ohio.

Petitioner Geoffrey Sea was one of six parties granted an extension of time to petition to intervene ~~in~~by the Commission's ruling of December 29, 2004.

Standing

As required by NRC's Federal Register notice and 10 CFR 2.309, a petition to intervene must state:

(i) The name, address, and telephone number of the requestor or petitioner;
(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;
(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and
(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

Case law of the NRC further explains the standing requirement. The Atomic Safety and Licensing Board recently summarized these standing requirements:

> When determining whether a petitioner has established the necessary "interest" under section 2.714 [now 2.309], licensing boards are directed by Commission precedent to look for guidance to judicial concepts of standing. *See, e.g., Yankee Atomic Electric Company* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998); *Quivira Mining Co.* (Ambrosia Lake Facility, Grants, New Mexico), , CLI-98-11, 48 NRC 1, 5-6 (1998); *Georgia Institute of Technology* (Georgia Tech Research Reactor, Atlanta, Georgia), CLI-95-2, 42 NRC 111, 115 (1995). According to these concepts, to qualify for standing a petitioner must allege (1) a concrete and particularized injury that is (2) fairly traceable to the challenged action and (3) likely to be redressed by a favorable decision. *See, e.g., Steel Co. v. Citizens for a Better Environment,* 523 U.S. 83, 102-04 (1998); *Kelly v. Selin*, 42 F.3d 1501, 1508 (6th Cir. 1995). These three criteria are commonly referred to, respectively, as "injury in fact," causality, and redressability. The requisite injury may be either actual or threatened. *Yankee*, CLI-98-21, 48 NRC at 195 (citing, e.g., *Wilderness Society v. Griles*, 824 F.2d 4, 11 (D.C. Cir. 1987)), but must arguably lie within the "zone of interests" protected by the statutes governing the proceeding—here, either the AEA or the National Environmental Policy Act (NEPA). *See Yankee*, CLI-98-21, 48 NRC at 195-196; *Ambrosia Lake Facility,* CLI-98-11, 48 NRC at 6.

In re *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), LBP-04-04, __ NRC __ (March 4, 2004) (at 11-12).

Petitioner's standing to participate in this proceeding is demonstrated by his past residence and current property interests in Pike County, and by his past and current occupational

interests in the Piketon atomic site—his longstanding commitment to historic preservation in Scioto Township and to industrial conversion of the Piketon atomic site. These interests will be described in turn.

a. Residence and Property Interests

Petitioner has equitable title under a contract to purchase the Barnes Home and surrounding 87 acres, a historic property that borders on the proposed site of the American Centrifuge Plant and is the closest residence to the proposed project, located at 1832 Wakefield Mound Road. (See map prepared by Petitioner marked as Exhibit A ~~and verification of the accuracy of the map by local landowner Charles Beegle, marked as Exhibit B~~.)

The Barnes Home itself is between a half mile and a mile from the proposed centrifuge buildings. Petitioner's interest in this property goes back to 1983, when Petitioner began to investigate the shooting of the last passenger pigeon ever seen in the wild (known as the Sargents Pigeon). Petitioner is the first to discover the precise location of the shooting, about a mile south of the Barnes Home. After the shooting in March of 1900, the specimen was carried to the Barnes Home, where it was mounted and displayed between 1900 and 1915. (See Petitioner's essay, "A Pigeon in Piketon," attached as Exhibit C, letter from Robert Glotzhober, Natural ~~Bob Glotzhober of~~History Curator at the Ohio Historical Society attached as Exhibit D, and Statement of Support from Jerome Tinianow marked as Exhibit E.) In 1915, the specimen was donated by Henry Clay Barnes to the Ohio Historical Society, where it is now on display in Columbus.

The Barnes Home was built on top of and alongside one of the largest ancient earthworks in North America—a series of enormous circles and squares that came to be known as the Barnes

Works. (See Exhibit A, and the Statements of Roger Kennedy and John Hancock marked as Exhibits F and ~~G.~~)H.)

Petitioner first contracted and paid a deposit to purchase the Barnes Home in September of 2004, prior to public notice of USEC's license application. Subsequently, in November, 2004, while petitioner was arranging financing for the purchase, Petitioner filed a "questionnaire" with the Ohio Historic Preservation Office (OHPO), to have the property listed on the National Register of Historic Places. OHPO responded with a preliminary determination that the Barnes Home does qualify for listing, on the basis of its architectural significance, and for its association with the story of the Sargents Pigeon. (See attached letter from OHPO, Exhibit ~~H).~~I). Petitioner is now engaged in preparing the nomination paper for listing on the National Register.

The Barnes Home property has already been impacted by the existing and proposed enrichment plants in many ways. Much of the land for the atomic reservation, including the land under or near the proposed centrifuge site, was originally taken from the Barnes estate. (See deed description of Barnes property attached as Exhibit ~~I.~~)J.) Three powerline easements dating from the 1950s cross the current property. (See easement deed attached as Exhibit ~~J.~~)K.) The property shares a fence line approximately one mile long with the atomic site, a boundary marked by barbed wire fence and federal "no ~~trespassing signs."~~trespassing" signs. In 2003, the Department of Energy initiated a program of defoliating a ten-foot "security strip" along this fence line, utilizing the herbicide Garlan-4, which is Dow Chemical's successor to Agent Orange. (This information was provided to Petitioner verbally by the Department of Energy following Petitioner's questions on the subject at the semiannual environmental review meeting in Piketon on December 2, 2004). The existing buildings for the American Centrifuge Plant are clearly

visible from the back fence line of the property (see photograph from fence line attached as Exhibit ~~K),~~L), and the new proposed buildings would be even closer.

Petitioner has already paid a substantial sum (withheld for proprietary reasons) for deposit, extended purchase options and legal fees to arrange the purchase. Some of these costs have been necessitated by the difficulty of obtaining financing for a property so thoroughly threatened by a large nuclear project. The purchase is anticipated to be completed soon, but Petitioner has already been harmed by increased costs and delays. (Copies of the purchase contract and extension agreements are being withheld for proprietary reasons.)

If the license is granted and construction and operation of ACP proceed, the potential for future harm is enormous. The Barnes Home is in the direction of prevailing winds (USEC environmental report, Figures 3.6.1-2 and 3.6.1-3) and in the direction of previous offsite migrations of uranium hexafluoride gas, including the large accidental release that occurred in March, 1978. (See Exhibit C.) Two creeks cross the Barnes Home property, stemming from the direction of the ACP site. While the Department of Energy has acknowledged no contamination in these creeks in the past, there has been speculation in the community about potential contamination. The original well-water line for the Barnes Home was severed by construction of the A-Plant southwest access road, which makes future water supply for the house difficult if that road is opened or widened (it is not now in use). In terms of future radiation exposure, the USEC environmental report, not available for public review until December 29, 2004, ~~projects that the~~includes a projected model for the "Maximally Exposed Individual" member of the public or "MEI." On page 4-78 it states: "The model indicates that the MEI is a hypothetical individual living on the DOE reservation boundary 1.1 km south-southwest of the ACP." Petitioner has met ~~"maximally exposed member of the public" from operation of the ACP will be an individual~~

~~living at the "south-southwest boundary" of the site. That would be the Petitioner.~~ this hypothetical individual. It's him.

The ACP project may have significant adverse impacts on the remains of the Hopewell earthworks, in ways that have not yet been studied. New nuclear production may also have a significant impact on neighboring property values, and on the likelihood of attracting grants for historic preservation. It also could make Petitioner's property a target for terrorism or for invasive security measures aimed at combating terrorism

Petitioner is a single man who would like someday to raise a family. The Barnes Home once accommodated a family of ten children. That prospect is highly unlikely and of dubious merit if ACP proceeds.

In the 1960s, the Barnes Home was open for weekend public tours and the guest books from those days survive. It was and is the Petitioner's intention to see that the Barnes Home, which was built in 1804-1805, is restored and opened to the public as a museum, a memorial site for the passenger pigeon, an educational center for the Hopewell earthworks, and as a tourist attraction for the county. (See letter from Linda Basye, Executive Director of the Pike County Convention and Visitors Bureau attached as Exhibit ~~L.)~~M.) All of these plans will be severely impacted by building and operation of the ACP. (See Statement of John E. Hancock, attached as Exhibit ~~G.)~~H.)

Petitioner has presumptive standing by virtue of his equitable title, proximity to the proposed project, and injuries actual and potential.

b. Occupational Interests

In 1983, Petitioner proposed to his then employer, the Oil, Chemical and Atomic Workers Union, that the union initiate a project to plan for the alternative use of any facility at Piketon that would become surplus—either the gaseous diffusion site or the new centrifuge buildings or both. Subsequently the union did do this under the name Atomic Reclamation and Conversion Project (ARC), hiring the Petitioner as director. In this capacity, Petitioner became ~~the~~a leading advocate for alternative use planning at Piketon through writing, public speaking and lobbying. (A comprehensive analysis by the Petitioner of alternative use planning at Piketon was published in 1984: "Converting an Industry: Atomic Workers and Communities Organize Against Plant Closures," by Geoffrey Sea, *Plowshare Press*, January-February, 1984.) Petitioner also crafted the package of compensation and retraining provisions that became the basis for closure and environmental restoration at the Fernald, Ohio, uranium plant.

After Petitioner left the union's employment in 1985, Petitioner continued as director of ARC, which became a project of the Tides Foundation. Meanwhile, ARC had three direct spin-offs at Piketon—the Alternative Use Planning project at the Department of Energy, the Waste Heat Utilization Program, and the Southern Ohio Diversification Initiative.

In 2004, Petitioner returned to this topic with publication of his essay in the *American Scholar*. (Exhibit C.) A major theme of the essay, written before Petitioner had heard of the ACP and published one month before USEC announced Piketon as site for the ACP, was that the end of production at the gaseous diffusion plant at Piketon—in 2001—could be a godsend for the community by permitting an opening up of the site, environmental restoration, and conversion of some facilities to alternative use. Petitioner made the specific proposal that the X-326 building, which is highly contaminated and may need to be entombed, could become a major project in public art by making the entombed building into a national monument in recognition of the

extinction of the passenger pigeon. This proposal will be ~~fleshed out~~elaborated in Petitioner's forthcoming book.

These are serious ideas that have attracted serious interest, including from a former director of the National Park Service. (See Statement of Roger Kennedy, attached as Exhibit F, and the resume of Roger Kennedy attached as Exhibit G.)

First as a labor ~~consultant and then~~consultant, later as a writer, historian and preservation activist, and as a member of Heritage Ohio and Audubon Ohio, the Petitioner has acquired a career interest in seeing that historic preservation, environmental restoration, occupational retraining and industrial conversion proceed at the Piketon site unimpeded. ACP would dash all of these hopes and make Piketon into a showcase for ~~imaginative failure.~~the failure of imagination. (See Exhibits F and ~~G).~~H).

Interests of the Petitioner coincide with those of other parties who might have chosen to intervene had they had sufficient notice and opportunity to do so. Neither USEC nor the Department of Energy contacted owners of historic properties around the proposed site of ACP (see Exhibit B), nor did they contact Native American tribes with historic ties to the land (see Exhibit N). Between October 25, 2004, and December 29, 2004, all case related documents were removed from public access while NRC conducted a "security review." During this time there was no outreach to inform parties who might be impacted by ACP. When case documents were restored to public access, the day before New Year's Eve, NRC simultaneously issued a ruling limiting intervention to only those parties who had requested an extension of time while the project was still under wraps. Petitioner may be among the very few parties who both has standing and had the wherewithal to request an extension. Therefore, while Petitioner does not and cannot represent other parties in the intervention, interested parties who otherwise would

have standing by virtue of tribal or landowner status clearly look to Petitioner's intervention as an expression of their thwarted interests. (See Statements of Karen Kaniatobe and Charles Beegle, Exhibits N and B.)

In the brief period that has elapsed since information about the ACP has been accessible to the public, Petitioner's intervention has also drawn substantial support from experts and leaders in conservation and historic preservation. Enthusiastic statements of support have been provided not only by a Tribal Historic Preservation Officer and one of the most prominent landowners in Scioto Township, but also by the executive director of Audubon Ohio (Exhibit E), a former director of both the National Park Service and the National Museum of American History (Exhibit F), the director of the leading project for virtual reconstruction of the ancient Ohio Valley (Exhibit H) and the nation's leading expert on federal agency preservation (Exhibit Q). These authorities are of diverse backgrounds and opinions, but they share a common view that this case will represent a watershed in either the application or the demolition of federal preservation law.

For the protection of his vital interests, Petitioner seeks to ~~insure~~ensure that the American Centrifuge Plant is not licensed to be built or to operate at the proposed site in Scioto Township.

Specific Aspects of the Subject Matter as to which Petitioners Seek to Intervene

As contemplated by the Federal Register notice, Petitioner sets forth below the specific aspects of the subject matter of this proceeding as to which he wishes to intervene:

1. Whether the applicant has adequately assessed cultural resources in the area impacted by the proposed projects, or the potential impacts that might occur.

2. Whether provisions of the National Historic Preservation Act and related legislation have been met for the various components of federal involvement in the project.
3. Whether USEC's lease arrangement with the Department of Energy might be illegal or invalid due to DOE's failure to comply with the National Historic Preservation Act.
4. Whether the applicant has properly considered and assessed alternatives to the proposed action.
5. Whether the applicant has considered the diverse impacts of the project on surrounding areas in terms of environmental pollution, traffic congestion and road construction, reduced land values, impeded county development plans, and national-security restricted use including keeping the entire DOE reservation under national security restriction as opposed to opening the site or parts of the site to alternative use.
6. Whether the applicant has properly planned for and acknowledged the possibility of project failure at any point—including plans for the payment of cleanup and decommissioning costs.
7. Whether the applicant has accounted for the impact of the proposed project on the Department of Energy's plans and budgets for site cleanup, environmental restoration, and eventual community reuse.

~~8. Whether the applicant has been forthcoming about the intended use of its enriched uranium product—whether for power reactors or for naval propulsion.~~

8. Whether sufficient information has been provided concerning the risks to national security based on probable proliferation of nuclear weapons technology that may result from the construction of the proposed facility.

~~10.~~9. Whether sufficient information has been provided about the need, or lack of need, for the proposed facility in the market for uranium enrichment services, and about USEC's capacity to carry the project through to completion.

10. Lack of clarity and conflicts of interest in the public-private relationship between USEC and the federal government and in the nebulous quasi-private status and organization of USEC.

Conclusion

For the foregoing reasons, Petitioner has demonstrated his standing to intervene in the pending proceeding and to participate in the forthcoming hearing on the issuance of licenses to USEC to construct and operate the proposed facility. Petitioner should be admitted as an intervener.

Respectfully submitted,

Geoffrey Sea

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE SECRETARY

In the Matter of	)	Filed February 28, 2005
USEC Inc. (American Centrifuge Plant)	)	Docket No. 70-7004

CONTENTIONS ON THE CONSTRUCTION PERMIT/OPERATING LICENSE APPLICATION FOR THE AMERICAN CENTRIFUGE PLANT MADE BY GEOFFREY SEA

Pursuant to 10 CFR 2.309, the notices published by the Nuclear Regulatory Commission ("NRC" or the "Commission") at 69 Fed. Reg. 61411-61416 (Oct. 18, 2004), and the Commission ruling of December 29, 2004, Petitioner Geoffrey Sea presents the following contentions for hearing on the construction permit/operating license application by USEC Inc. Each of the contentions asserted herein is within the scope of this licensing proceeding and concerns matters that are material to the determinations to be made in such proceeding, as required by 10 CFR 2.309(f).

Contentions presented herein are organized into the following categories:

1. Assessment of ~~Cultural Resources~~cultural resources
2. Compliance with federal historic preservation laws.
3. Consideration of action alternatives.
4. Impacts on surrounding area.
5. Impacts on site cleanup and community reuse.
6. ~~Use of uranium product and nuclear~~Nuclear proliferation considerations.

7. Structure and viability of USEC and of the USEC-DOE relationship.

1. Assessment of Cultural Resources

1.1 Contention: USEC has failed to identify cultural resources potentially impacted by the American Centrifuge Plant.

Basis: In the executive summary of USEC's environmental report, USEC summarizes its ~~"search"~~search for impacted resources this way (page 4): "There are no wetlands, critical habitat, cultural, historical or visual resources that will be adversely affected by the refurbishment, construction or operation of the ACP at the DOE reservation in Piketon, Ohio."

This statement is somewhat akin to Baghdad Bob claiming to have routed American infidel invaders even as US forces ~~were bearing~~bear down upon him.

Nowhere in USEC's environmental report do the words "National Register of Historic Places" appear, and it is apparent by their absence that either no one at USEC or~~at~~ the Department of Energy checked to see if any National Register sites were nearby, or after checking no one wanted to admit of the findings. Had they done so, they would have discovered and reported that the only two prehistoric National Register sites in Pike County are in immediate proximity to the proposed ACP, and that these two sites, which once were connected, constitute one of the largest, most important and most beautiful examples of prehistoric architecture in the world. (See Exhibits A, B, ~~F and G). These sites~~F, H and N). These works are also considered sacred sites to Native American descendants of the Ohio Hopewell Indians who constructed them. (See the Statement of

Karen Kaniatobe, Tribal Historic Preservation Officer of the Absentee Shawnee Tribe, marked as Exhibit ~~M.)~~N.)

In 1820, Caleb Atwater surveyed "parallel walls of earth" near the Scioto River, and included a drawing of them in his treatise called *Description of the Antiquities Discovered in the State of Ohio and other Western States* (Plate XI). Atwater's plate was confusing because there are actually many ancient parallel walls of earth in this area, all of which mark segments of what ~~is called~~we now call the Great Hopewell Road. The most prominent segment has been dubbed the Piketon Works and is located just north of the atomic site—it is listed on the National Register (site 74001599). ~~Old time~~Old-time settlers along the Scioto River south of Piketon also had their parallel walls, on land owned by the Rittenour family. The Rittenours interpreted Atwater's Plate XI as referring to these segmented walls along the river, which is why Charles Beegle, who married Jean Rittenour, remembers his father-in-law talking about "Indian foot races" there—a somewhat bizarre ~~"an Indian racetrack" there—a description~~notion that derives directly from ~~Atwater. (See~~Atwater's treatise. (For Atwater, these ruins resembled the classical ruins of an Olympic stadium. See the Statement of Charles Beegle, Exhibit B.) All of the ancient earthen walls in this area should be considered as part of the Piketon Works. (See Roger G. Kennedy, *Hidden Cities: The Discovery and Loss of Ancient American Civilization,* Penguin, 1994.)

In ~~the 1950s, the Atomic Energy Commission seized~~1982, the Department of Energy seized by eminent domain a part of this riverfront land from the Rittenour-Beegle estate, including the segmented earthen walls along the river, apparently oblivious to them. ~~AEC (and DOE ever sinceused~~DOE (and AEC before it) has used these artificial

embankments to shield their~~water~~ wells from flood waters~~—waters—~~wells that supply the main atomic site with its water. (See Exhibit B.) The effects of the pumping of water out from under these earthworks has never been~~studied.~~

studied (See Exhibits B and N).

In 1846, Isaac Newton Barnes invited the famous archaeologists Ephraim Squier and Edwin Davis onto his land, to survey the astounding Hopewell circle and square—each covering some twenty acres—that he could see from his bedroom window, about a mile south of the Piketon Works. Squier and Davis dubbed these the Seal Township Works, and featured them prominently in their 1848 masterpiece, *Ancient Monuments of the Mississippi Valley* (Plate XXIV). The plate, which is attached as Exhibit ~~N,~~O, contains certain inaccuracies that should be noted. The square was larger and the circle smaller, so that they actually covered an approximately equal area. The connecting passage angled differently. And many features, both large and small, were missed due to overgrowth and absence of aerial perspective.

Snowden Sargent, who came from Sargents, Ohio, and whose two sisters married two Barnes brothers, had moved to Illinois where he became a major early backer of Abraham Lincoln's political ambitions. (Personal communication with staff at the Lincoln library.) When *Ancient Monuments* was published, Snowden Sargent probably showed a copy to Lincoln, because Lincoln made a serious detour in December 1848 on his way from Illinois to serve out his term in Congress, just so he could stay with Snowden's sister at the Barnes Home and view the famous circle and square. He was recorded as late arriving to Congress. (See letter from

Linda Basye of the Pike County Convention and Visitors Bureau, Exhibit M, for verification of the Lincoln visit. It should be noted that Ms. Basye followed local legend in asserting that the Lincoln visit happened in 1859. More recent research confirms that it happened in 1848.)

These earthworks were surveyed again in the 1880s, and included in the 1889 Smithsonian study by Cyrus Thomas called *The Circular, Square, and Octagonal Earthworks of Ohio*. They were featured also in Gerard Fowke's *Archaeological History of Ohio* of 1902—Fowke called them the Barnes Works. More recently, William Morgan's *Prehistoric Architecture in the Eastern United States* of 1980 discussed the works as an exemplar of ancient geometric landscape art, ~~in addition to Kennedy's~~and the eminent historian Roger Kennedy discusses the Barnes Works as a possible southern terminus or nexus of the Great Hopewell Road in *Hidden Cities: The Discovery and Loss of Ancient American Civilization.*

Called either the Barnes Works or the Scioto Township Works (since Scioto broke away from Seal), the small circle was largely destroyed by the modernization of Route 23 to accommodate increased traffic for the enrichment plant in 1952. The square and many of the smaller structures were partially destroyed around that same time by a gravel quarry, which included an asphalt plant that produced pavement for the atomic site. The Scioto Township Works are also now listed on the National Register (site 74001600), though little remains of what was apparent in the 19th century.

Because of this destruction wrought by the A-Plant and associated highways and gravel quarries, people forgot about these earthworks. No recent survey has been conducted. This is truly unfortunate because the nineteenth century surveyors lacked an essential tool for assessing the extent of the works—aerial photography. Today, if ~~you examine~~one examines an aerial photograph of the area from 1951—the year before the A-plant was ~~built—you~~built—one can

see the circle and square quite clearly, but also something else, a much larger circle whose edge passed precisely between the smaller circle and the square. This larger circle, which has also not been professionally surveyed, passes right by the A-plant's southwest access road and right through the area that USEC might want to pave over to connect that road to Route 23. This large circular enclosure is more than twice the size of the largest Hopewell enclosure previously known, at Chillicothe. (See Exhibit ~~G.)~~H.)

To give a sense of the relation of the earthworks to the proposed American Centrifuge Plant, Petitioner has constructed a map, Exhibit A, that is admittedly anachronistic. It depicts the full extent of the earthworks as they existed prior to modern destruction, compiled on the basis of nineteenth century surveys as can be corrected by twentieth century aerial photographs. Alongside these ancient works Petitioner has located the main A-Plant buildings as USEC would like to build them in the future. The map makes clear what a galactic oversight it has been for USEC and DOE to ignore some of the most striking and important cultural resources one could ever imagine. It's a bit like standing next to the Taj Mahal while claiming not to notice anything white.

~~imagine.~~

A few things immediately become clear upon perusal of this map. Both the Hopewell mound-builders and the monument builders of the Atomic Energy Commission oriented their rectangular structures to the cardinal directions. For the Hopewell this was essential to the sacred purpose of tracking the movements of the ~~sun; the atomic engineers probably had no commensurate rationale. (See Exhibit G.)~~sun and moon, and these works have been determined to exhibit sophisticated archaeoastronomical alignments (See Exhibit H.). The atomic engineers, by contrast, were more primitive and only used the compass bearings to keep otherwise crooked

lines straight. And though the AEC often boasted of building the largest structure in the world in terms of ground cover at Piketon, the adjacent ancient earthwork enclosure, much of which still stands, actually extends over more acreage. The latter has lasted about two thousand years; the former only fifty. Which structure is most likely to endure a hundred or a thousand years from now?

~~It's immediately clear that the Hopewell~~Not unlike the designers who envisioned a giant centrifuge plant of many small spinning circles within large cubic buildings, Hopewell engineers were engaged in an elaborate meditation on the forms of circle and square two thousand years ago—a small circle encompassed a tangent square, and the juxtaposed circle and square may have been of equal area (impossible to tell with precision since the circle was destroyed). Ratios also suggest mathematical sophistication—the main square had a side exactly one quarter the diameter of the large enclosure circle that contained it. (Put another way, the perimeter of the square was equal to the diameter of the large circle.) That these mathematicians were non-literate adds substantially to the wonder of these works. Hopewell Ohio emerges as the full and long-sought North American equivalent of ancient Mesoamerica and Peru. What secrets have they yet to reveal?

The great philosophers of the nineteenth century (apparently unread by USEC) realized as much. In 1841, Ralph Waldo Emerson wrote:

> "All inquiry into antiquity—all curiosity respecting the Pyramids, the excavated cities, Stonehenge, the Ohio Circles, Mexico, Memphis—is the desire to do away this wild, savage, and preposterous There and Then, and introduce in its place the Here and Now." (*Essays, First Series*, "History.")

Mapping the Piketon Works and the Barnes Works together clarifies the former's purpose. Undoubtedly, the roadway once connected to the ceremonial center just south of it—the

rare straight section of the river has worked to preserve this one segment alone. Probably, this once extended northward all the way along the river to Chillicothe, and then on to Newark, where surviving road remnants have been dubbed "The Great Hopewell Road." The Piketon Works may be the last vestige of the whole middle part of the pathway, which likely continued southward to Portsmouth, where substantial road segments also once were found (but have been destroyed). (See Kennedy, *Hidden Cities: The Discovery and Loss of Ancient North American Civilization.*)

The most astounding lesson of this map is just how close and interrelated the Hopewell Works and the A-Plant really are. How could these earthworks have been forgotten? Or have they been?

When the central portion of the A-Plant site was leveled by bulldozers in 1952, at least one ancient burial mound was encountered and destroyed. Other indigenous remains and artifacts found on the site since then have always been identified as Adena, as if to suggest that they are part of isolated and insignificant ancient burials. (The Adena did not build large ceremonial and cosmopolitan centers as did the Hopewell.) When asked to produce evidence that the artifacts found onsite are Adena, DOE cannot. (Nor does there appear to be a record of the 1952 excavations, except in local newspapers.)

In fact DOE has kept secret ~~an~~two archaeological surveys conducted in 1996 and referenced vaguely in the USEC environmental report for the ACP in section 3.8.1. Apparently these surveys focused only on the land that is within the perimeter road—that is, land already massively disturbed by GDP construction in 1952. Petitioner has tried to obtain a copy of ~~this survey report,~~these survey reports or even determine when ~~it~~they would be released: no dice. It appears ~~to be a~~that they are perpetual "working drafts." DOE officials have suggested that the

reports cannot be released because ~~it~~they might contain unreliable or unanalyzed information. And yet they provided copies ~~a copy~~of the reports or data from them to USEC, which uses vague references to ~~it~~the data as support for its contention that no important cultural resources survive on the site. This is a flim-flam game. DOE claims the~~report as a draft,~~reports as drafts, unready for release, yet USEC cites the ~~report's~~reports' authority to justify a license. (Obviously, the reports must now be released so that the public can evaluate ~~its~~their contents.)

It's pretty clear what's really going on here. The "secret" contained in ~~that report, or in its~~those reports, or in the omissions, is that most artifacts on the A-Plant site are Hopewell, not Adena. Look at the map again. The Hopewell did not build isolated ceremonial sites. The giant earthworks were the public spaces at the centers of large residential and occupational complexes. The Barnes Works includes the largest Hopewell enclosure found to date. That means that Piketon may have been the largest cosmopolis in North America, two thousand years ago. (Paul Pacheco has given a generalized model for Hopewell settlement patterns, depicted in Exhibit ~~O.~~)P.)

~~Construction~~Earth-moving activity at the A-Plant site very likely has run into all manner of archaeological treasure, in 1952 and since. But atomic secrecy has served as the perfect cover for sweeping it all under the rug and into that great dust heap called History. Who knows what we have not been told, and why has federal preservation law never been applied at Piketon?

In the recent Risk-Based End-State document for the Piketon site, the Department of Energy included a map (Figure 3.1a) that showed known "archaeological/historical sites" on the atomic reservation. But the map did not include the known Indian mounds that were destroyed during plant construction in 1952, nor did it include any of the famous Hopewell earthworks that are just offsite, even though they are listed on the National Register and even though they are

close enough to appear on the map. Nor did it include DOE's riverfront property, separated from the main site, where a section of the Piketon Works are located. Nor did it include any of the historical homes. These obvious and illegal omissions have allowed DOE to avoid its obligation of conducting thorough cultural resource impact assessments, to match its elaborate environmental impact assessments. And USEC has inherited that DOE record of negligence.

The ancient earthworks are not the only threatened cultural resources. The three core families who founded the town of Sargents—the Sargents, the Barnes and the Rittenours—all built astounding homes inspired by Hopewell geometrics in the first decades of the nineteenth century, and~~amazingly~~ all three homes still stand, ~~all three~~each made from the same local red clay brick that attracted the Hopewell to this same locale. These families all married into each other, to the point where they became one big clan. (See Exhibit B.) The Barnes Home is now in the process of nomination for the National Register. Charles Beegle wishes to also see the Rittenour Home in nomination (Exhibit B). The Sargent Home is in the worst condition, plagued by its location at the main entrance of the atomic reservation, but it too has qualities that would qualify it for the National Register.

Wakefield Mound Road, which unites these three homes, once was called the Scioto Trail and before that it was The Warriors Path—the main thoroughfare for annual Shawnee migrations. During the period of Shawnee occupation, this region was dense with Shawnee settlements (see Exhibit ~~M),~~N), the sites of which have gone undiscovered only because no one has looked for them. And two thousand years ago, before it was The Warriors Path, this was the Great Hopewell Road (we obviously don't know the indigenous name).

You don't have to look very hard ~~for~~to find important cultural resources in this area. Of course, there are none so blind as those who will not see.

Contention 1.2 USEC has failed to identify potential impacts of the American Centrifuge Plant on nearby historic and prehistoric sites.

Basis: Since USEC failed to identify any significant nearby cultural resources, its failure to identify potential adverse impacts on those resources follows logically (if illogically).

Among the potential adverse impacts of the ACP on cultural resources, none mentioned by USEC, are the following:

~~2.~~1. Potential direct damage to the Scioto River earthworks caused by renewed water pumping once ACP is in operation. (See ~~Exhibit B.~~)Exhibits B and N.)

2. Continuation of the DOE policy of using herbicides to defoliate ~~a ten-foot wide~~ "security strip" around the atomic site perimeter.
3. Maintenance of the "national security" regime, with its profusion of barbed wire fences, security gates, and closed access to rare cultural treasures.
4. The discouragement of tourism and academic study caused by real and perceived nuclear dangers. (See Exhibit ~~G).~~H).
5. Additional degradation, contamination and obliteration of priceless archaeological sites caused by additional road-building, traffic congestion, waste storage and plant emissions.

All of these impacts and more deserve serious study and consideration.

2. Compliance with federal historic preservation laws.

Contention 2.1: The USEC-DOE collaborative arrangement is out of compliance with ~~the~~the National Historic ~~Protection~~Preservation Act and related legislation.

Basis: Section 106 of the National Historic Preservation Act establishes a process for preventing and/or rectifying any federal action that adversely impacts a historical or archaeological resource. Specifically, it mandates a procedure intended to be equivalent to that established by the National Environmental Policy Act for protecting environmental resources. As with NEPA, the NHPA process essentially involves four stages of assessment, mitigation, negotiation and remediation. Section 106 kicks in when any federal action is contemplated that "may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register [of Historic Places] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association." (Section 800.5(a)(1))

Similarly, Section 110 of NHPA provides for ongoing federal preservation efforts, or "stewardship," for historic or prehistoric sites that extend onto federal land.

It is important to recognize that the impacted site must not necessarily be listed already on the Register—it must only have qualities that would qualify it for listing. In practice this often means limitation to properties that either are listed or are in the process of consideration for listing. More stringent criteria apply for sites that have or are being considered for status as National Landmarks, which are basically National Register sites that are recognized as having national significance.

It is also important to recognize that the impacted site does not have to be on federal property to be impacted. Section 106 mandates that "areas of potential effects" be established in the assessment phase, which are in every way comparable to environmental impact zones. Areas

of potential effects under NHPA—which may include zones of physical damage, of visual or noise impairment, of impact on public access or aesthetic appreciation—often tend to be larger than equivalent zones of environmental ~~impact.~~
impact. (For comprehensive discussion of Section 106 requirements, see Thomas F. King, *Federal Planning and Historic Places: The 106 Process.*)

Compliance with NHPA has been shoddy at best, especially for Department of Energy sites that generally predate the Act, with established operational modes that are hard to change. But this does not excuse the noncompliance.
Petitioner's inquiries to DOE and to the Ohio State Preservation Office as to why its noncompliance has been so conspicuous resulted in the explanation that DOE considers early Manhattan Project sites to be the main cultural resources worthy of protection on its land. This is confirmed by the section of USEC's environmental report titled "Architectural Historic Resources" (Section 3.8.2). There USEC says that the historic clock starts in 1900 and that no historic structures within the studied period of 1900-1985 have yet been identified. That's kinda funny, excluding the obvious historic properties built from 1800 -1900 even from the scope of analysis.

On page 3-64 of the environmental report, USEC says that "there are no scenic rivers in the area." That's pretty funny, too. Has anyone from USEC taken a walk down to the Scioto riverbank, just west of the ACP site, to the place that the Hopewell chose for its magical cosmic beauty? A photo of the view at that location is included as Exhibit S.

There is no evidence that either DOE or USEC has~~ever~~ taken~~its~~ obligations under NHPA seriously. Both the Piketon Works and the Barnes Works were added to the National Register of Historic Places in 1974. That should have triggered~~an~~ automatic reviews under the National

Historic Preservation Act, which had been initially passed in 1966 and has been strengthened through amendments numerous times since. It didn't happen.

On page 1-14 of USEC's environmental report, USEC states, without elaboration: "Informal consultations have been made with the responsible agencies in compliance with....the National Historic Preservation Act (NHPA), Section 106." USEC further states on page 1-30 that this responsibility consists entirely of consultation with the State Historic Preservation Office—a total misreading of the act. USEC accomplished a pro forma attempt to check off a box on its milestone chart. (Appendix B allegedly containing copies of the compliance letter with the Ohio Historic Preservation Office has been omitted in toto from the publicly available version of the environmental report.) But NHPA requires much more than that (and section 110 applies in addition to 106 since prehistoric sites extend onto agency land).

An absolute requirement of section 106 is that the agency contact any Native American tribe with historic connections to the locale for consultation. The Absentee Shawnee Tribe of Oklahoma—the tribe with the most clear historical connection to the land of Scioto Township (the Shawnee were driven out of Ohio in the ~~Township has~~War of 1812)—has received publicity notices for DOE groundbreaking ceremonies at Piketon, showing that DOE knows the tribe exists. But the tribe has never been asked to consult on a 106 or 110 review at Piketon, and neither DOE nor USEC contacted the tribe about the ACP. (Exhibit ~~M.)~~N.) Likewise, Charles Beegle, the owner of one of the most important historic homes and of land that borders on DOE ~~land,~~property, was never, since 1966, contacted for his participation in a 106 or 110 review, and was never contacted by either DOE or USEC about the ACP. (Exhibit B). These two cases ~~belie~~exhibit the general pattern.

In public forums, DOE defends its sensitivity to archaeological resources onsite by saying that it tries to avoid physical destruction of such sites, or where it cannot avoid this, by paying for professional excavation. This is a wholly inadequate approach to Section 106 obligations. Physical destruction covers only a small subset of adverse potential effects. Perhaps the largest adverse potential effect at Piketon is the whole umbrella of national security restriction. If the site is cleaned up and developed for diverse non-nuclear and non-military uses, the archaeological sites on and off-site might one day be united, restored, and opened to the public as a showcase of Hopewell earthwork magnificence, like at Chillicothe or Newark. (See Exhibits F and H.) Such a scenario would be consistent with a civilian manufacturing company leasing the GCEP buildings. It is inconsistent with a new centrifuge facility that would maintain a lock-down status for the entire area.

Exhibit PQ is the Statement of Thomas F. King, the foremost expert in federal preservation law and author of four books about the National Historic Preservation Act. Dr. King has carefully reviewed the record in this case and has concluded that there are serious compliance issues meriting this intervention and a full review of the matter by NRC. Dr. King's resume is attached as Exhibit R.

Contention 2.2: Noncompliance with federal preservation law has undermined the legitimacy and legal basis of the USEC-DOE agreement

Basis: It is not the intention of the Petitioner to suggest that NRC is responsible for forcing DOE's compliance with the law. Petitioner recognizes that DOE and NRC are two separate federal agencies. However, in this unusual case, DOE's compliance status has bearing on the viability of USEC's lease agreement with DOE, just as if DOE had failed to comply with NEPA

in laying the groundwork for the ACP project. Ultimately, DOE's compliance status and the complexities of the relationships between DOE, USEC and NRC will likely be determined by the Advisory Council on Historic Preservation. But as that process unfolds, NRC has a responsibility to determine if the license applicant has a legal basis for proceeding to build and operate. DOE's noncompliance may have undermined that legal basis. This is a consideration that NRC must give in its licensing deliberations. In other words, if the project is likely to fail in the end because cultural resource issues have not been ~~properly handled,~~handled properly, NRC should anticipate that outcome and either deny a license or send the applicant back into the process of negotiating its lease agreement with DOE—this time on a legal basis.

It should be pointed out that the obligations of NHPA do apply~~equally~~ to both DOE and NRC. In public statements, DOE officials have maintained that they are legally bound to lease facilities to USEC by the legislation that mandated enrichment privatization. However, that legislation did not exempt DOE from the requirements of NHPA, any more than it did from the requirements of NEPA. NRC must therefore consider in its licensing review that DOE made certain fatal errors in turning over the facilities for USEC use, without proper legal compliance, just as if DOE had failed to comply with NEPA. DOE has also suggested in private conversations with Petitioner that it intends to roll over its 106 responsibility for ACP to NRC, an action that would constitute a clear violation of the law. In other words, NRC must not only conduct its own Section 106 review process, but must also consider that in failing to conduct its 106 review properly, DOE may have undermined the legal basis of its lease to USEC.

3. Consideration of Action Alternatives.

Contention 3.1 USEC has failed to consider a broad range of alternatives to the proposed action.

Basis: USEC, in its environmental report, considers only alternatives for USEC, not for the Piketon site or ~~community.~~the community or the American public. Thus, USEC's "alternatives" consist only of ~~not proceeding with ACP,~~"no action," moving ACP to another part of the Piketon site, and moving ACP to Paducah, Kentucky. This is a wholly inadequate approach to the whole question of alternatives. Especially when the applicant proposes to build and operate on public land, it's not the applicant's alternatives that are at issue, but the public's alternatives.

This case is perhaps unique among NRC license applications because a private company is applying for a license to operate a quasi-private venture in existing buildings on a federal site. The process for considering "reasonable alternatives" under both NEPA and NHPA must therefore be suitably tailored to the specialness of the situation. Since the buildings already exist and are publicly owned, reasonable alternatives for those buildings include the full range of private leasing possibilities as well as other governmental uses. SODI, the Southern Ohio Diversification Initiative, was established and has been been sustained with grants from DOE and USEC to explore possibilities for expanding employment opportunities in the area of the site. However, once SODI actually located a private truck manufacturing company that expressed a desire to lease one of those buildings for a plant that would employ about 800 ~~people. That~~people, that option was rejected by DOE because of its special legislated commitment to USEC. But as part of NRC's environmental and cultural resource review process, that option must be revived and explored as a reasonable alternative use.

One pernicious aspect of the ACP proposal is that it is a relatively small operation that will nonetheless commandeer the entire site, primarily because of the security regime that must accompany it. In practice, DOE has prohibited discussion of community use of any part of the

main site, so that an unbroken "security zone" can be maintained for USEC's ACP. Therefore, the "reasonable alternatives" scenario must encompass not just a single other use for those centrifuge buildings, but a multiplicity of other uses for various parts of the very large site.

For example, what will happen to the old process buildings of the gaseous diffusion site? If the American Centrifuge Plant is built, the northern half of the site—the old diffusion plant—will wind up being cordoned off and left to decay, an enormous eyesore and environmental atrocity. That is clearly the intent of DOE and USEC, since they have built a new administrative office building on the south side of the site, intended to replace the old office building that will be fenced off with the diffusion plant, and perhaps demolished or entombed.

Another scenario is possible. In Petitioner's essay, "A Pigeon in Piketon," (Exhibit C), Petitioner suggests that the old X-326 building, the upper bomb-grade end of the Cascade which is forever contaminated, could be entombed ~~in an aesthetic way and made into a giant monument—a pyramid—for~~as a national monument—a pyramid—as a memorial to the passenger pigeon, which went extinct on this land. Such a monument, with an environmental education center in a clean building, could become a major draw for tourists and students—entirely consistent with a manufacturing company leasing the GCEP buildings. Under that scenario, much of the surrounding forested land could be turned over to the National Park Service or US Forest Service, which could run nature walks through some of the wilder areas and could create a companion site to its Hopewell park in Chillicothe. A pyramid to the passenger pigeon would complement the Hopewell park—examples of monumental mound architecture, ancient and modern. (See Exhibit F for former NPS Director Roger Kennedy's support of the concept that part of the site can be transferred to management by either the National Park Service, the US Forest Service, or the Ohio State Park system.)

We wouldn't have to stop there. Since the site will be a location of ongoing environmental cleanup, employing cutting edge cleanup technologies, why not move that part of Oak Ridge National Laboratory that does research on environmental cleanup to Piketon? Piketon suffered under control from Oak Ridge for decades. Why can't Piketon benefit from new federal spending on research and development? It's already federal land, of immense historical and archaeological value. Why waste that? A multiplicity of new public and private uses all with an environmental theme must be considered as a "reasonable alternative" to the construction of one iffy and dirty centrifuge plant.

When NRC considers the panoply of potential "reasonable alternatives," it must also consider that once the centrifuge facility is equipped and operated, that space will be irrevocably tainted, even if the project soon fails. That already happened once in those buildings. When construction of the Gas Centrifuge Enrichment Plant was underway in the 1980s and additional federal funding looked doubtful, local managers ran a "test run" of uranium through the new centrifuges—just for the purpose of contaminating that equipment and those buildings, so to frustrate all the talk of finding some alternative use. If they had not been permitted to do that, those buildings might have been occupied by a manufacturing company for the last fifteen years.

Contention 3.2: USEC's stated action alternatives should be seriously evaluated.

Basis: In its environmental report, USEC suggests the alternative of moving ACP only to shoot it down. By holding out the false hope that ACP might yet be relocated to Kentucky, USEC buys the continued loyalty of its Paducah workforce, while pressuring Ohio politicians into offering up yet more fealty and loot. In table 2.4-1, USEC compares impacts for the Piketon and Paducah alternatives and concludes—big surprise—that for either site, there will be "no significant

impact" in terms of historic and cultural resources, visual and scenic resources, socioeconomic factors, environmental justice, public and occupational health, and waste management. On page 2-10 of its environmental report, USEC concludes that Piketon gains advantage only because "siting the ACP at Portsmouth [Piketon] rather than Paducah, resulted in superior financial conditions, significant qualitative advantages, and slightly better regulatory and environmental conditions." In other words, USEC gains proprietary financial and competitive advantage at the expense of treasured public resources.

USEC treats the cultural resource impacts at Piketon and Paducah as if they would be the same. However, we now know that impacts would not be the same. The southwest corner of the Piketon site is precisely the most sensitive in terms of multiple impacts to precious and sacred cultural resources. USEC should therefore be taken at its word and be instructed to move ACP to Paducah. (See statement of Karen Kaniatobe, Exhibit N). The timeless qualities of the Piketon site take precedence over USEC's timing schedule.

4. Impacts on surrounding area.

Contention 4.1: USEC neglects many potential impacts of ACP on the local community

Basis: ~~Many~~Some potential local impacts are obvious but some are less so. When security tightened at the plant-site after 9/11, the perimeter road was closed to local traffic. This is a tremendous inconvenience to residents on the east side of the plant, whose access to town and the highways was blockaded. In 2003 and 2004, the herbicide Garlan-4 was used to defoliate a ten-foot strip around the entire outer boundary of the site, destroying the lush natural vegetation

and spreading a kill-zone onto adjoining properties. This was done either out of caprice or out of some new sense of enforcing "perimeter security."

Cleanup and alternative use development can slowly restore the area to some semblance of its great natural beauty and natural development pattern as existed prior to 1952. But construction of the ACP means continued atomic dependency and control, and an artificial economy for the region, continuing on into the indefinite future, perhaps irrevocably even if the project fails.

At the very least, given the many uncertainties of this project, NRC must consider what project failure as well as operation will mean for all the small hamlets and towns in Pike County and ~~beyond.~~

beyond. Many in the Pike County area support ACP, often out of a sense of hopelessness that no other major industry can be attracted to the area. Many feel that the gaseous diffusion plant has already done so much environmental and cultural damage, there is not enough indigenous value left to salvage.

Pierce the surface, however, create some hope in some alternative future beyond nuclear production for Pike County, and one finds deep resentment and anger at the legacy of atomic dependency. This is the feeling expressed by Charles Beegle when he writes: "The only thing that it did was ruin a once beautiful farming valley...From my perspective the plant has been a detriment and enlarging it will continue that degradation. In the process, it will destroy more Hopewell Indian relics and more of the early history of Ohio will be lost." (Exhibit B.)

In private communication, Mr. Beegle told the Petitioner that he brought gravel quarries onto his historic estate for only one reason—he did not want his children to stay in Ohio and

raise their families across from the enrichment plant. USEC should be compelled to interview Mr. Beegle and quantify that impact.

5. Impacts on site cleanup and community reuse.

Contention 5.1 USEC fails to consider that ACP has resulted and will result in the relaxation of DOE cleanup standards at the site and reduced possibilities for community reuse of facilities.

Basis: There is a sense in Piketon that DOE supports the USEC vision not just because it was congressionally mandated, but because new nuclear development will relieve DOE of its cleanup obligation and forestall the necessity of restoring parts of the site to safe industrial or agricultural standards. In fact, DOE has already proposed that certain cleanup standards be relaxed because of ACP's predominance on the site. This local concern must be taken seriously, and NRC must explore the cleanup and restoration pathways under both license award and license denial scenarios. ~~DOE has already proposed that certain cleanup standards be relaxed because of ACP's predominance on the site.~~

6. ~~Use of uranium product and nuclear~~Nuclear proliferation considerations

Contention 6.1:~~USEC has not made clear the intended use or market for its enriched uranium product.~~

~~**Basis:** Throughout USEC's environmental report, there is the suggestion that ACP is part of a solution to America's energy problem and that the principal market for its enriched uranium will~~

~~be for nuclear electric generating stations. However, this runs counter to to USEC's proposal to accept uranium feed that is 3.9% enriched, and to boost it to 10% U-235.~~

~~In North America, light water reactors use fuel that is between 3 and 5 % U-235, while Canadian heavy water reactors use natural uranium fuel. Accepting 3.9% enriched feed suggests that USEC intends to keep its Paducah gaseous diffusion plant open, thus negating the energy benefits of replacing diffusion capacity with centrifuges. It further suggests that the real intended market for USEC 10% enriched uranium is not electricity generation at all, but fuel for naval propulsion reactors and redesigned research reactors at universities. USEC may be steered toward this captive market by competition from LES and others. But USEC needs to be forthcoming with the Pike County Community, with NRC and with the American people. The risks and adverse impacts of a new centrifuge plant may be less acceptable if the real purpose is to keep military vessels powered at sea, rather than to make any gain toward energy independence.~~

~~Contention 6.2:~~ USEC has not accounted for the proliferation risks associated with centrifuge technology.

Basis: It certainly is an odd time to be pursuing an "American Centrifuge" project. USEC's announcement of the "award" of the plant to Piketon had to be postponed twice—first in October of 2003, when Iran preemptively announced that it had an Iranian Centrifuge, and then again in December of 2003, when Libya announced that it had a Libyan Centrifuge. Finally, out of possible fear of being preempted yet again by a Bolivian Centrifuge, USEC chose the day of the Iowa presidential caucuses to announce to a near-empty press gallery that America had its centrifuge, too.

USEC had apparently failed to get a briefing paper to the president, because when the Iranian Centrifuge program was made public, George Bush went on TV to say that such a program is "criminal." USEC might come forth and say that its centrifuge is peaceful and all that. But of course that is just what the Iranians say, as well.

It is obvious that when "The American Centrifuge" is announced as a fait accompli to the world, there will be a backlash. We will be accused of being hypocrites, because we are. Countries on the edge of reconsidering their compliance with the fraying Nonproliferation Treaty will teeter over the edge. That's what this project buys.

From a self-interested perspective in Ohio, we must consider this. What happens if this project travels down the road for a few years or more years and then the North Koreans or the Iranians or the Belarussians say that they will surrender their centrifuge plants, but only if the United States does likewise? Has USEC considered and planned for that scenario? Will the country go to war to save USEC's American Centrifuge Plant? Should it?

———Due to such considerations, reputable international policy experts have already started calling for an international ban on centrifuge technology. The Stockholm International Peace Research Institute warns that all centrifuge technology worldwide must be halted in order to avert uncontrolled proliferation:

> "Unfortunately, the centrifuge cat is already partially out of the bag, and a number of operating facilities already exist. Preferably, these facilities should be shut down and dismantled....If it should prove impractical or impossible to shut down the centrifuge plants, then the internationalized centrifuge facilities should be managed in such a way as to prevent the further dissemination of this process....Eventually, the objective should be to phase out the gas centrifuge technique for uranium enrichment." (*Uranium Enrichment and Nuclear Weapon Proliferation,* Alan Krass, Peter Boskma, Boelie Elzen, Wim A. Smit, Stockholm International Peace Research Institute, International Publications Service, Taylor & Francis, Inc. New York, 1983).

And that idea is bolstered by the fact that new demand for nuclear fuel, at least in the United States, can be met by boosting the downblending of old weapons-grade uranium, rather than by enriching more from ~~scratch.~~

scratch. And yet noplace in the USEC environmental report is the concept of nuclear proliferation even mentioned.

7. Structure and viability of USEC and of the USEC-DOE relationship.

Contention 7.1: USEC has not clarified the company's stability or long-term prospects, or how its relationship with the Department of Energy is intended to function, or how that relationship might evolve over time.

Basis: USEC is an odd thing. It was created, not for the purpose of enriching uranium, but for the purpose of closing the old diffusion plants down, without liability attaching to any politician. It is theoretically a private entity, but it exists only at the behest of the federal government, operating on federal lands, using federal equipment, its access to technology and facilities guaranteed by federal legislation, pumped with federal investment money, and with prominent national politicians serving on its board of directors. Anyone who gets to know about USEC gets uncomfortable with it. It is entirely unclear what this entity really is, whether it will exist tomorrow or the day after the next presidential election, and whether this quasi-nonentity can be relied upon to launch or manage any new production venture.

USEC has been financially unstable, subject to wild fluctuations in its stock price, and the subject of ongoing speculation as to its viability. (Matt Wald in the *New York Times* has suggested that plans are afoot to renationalize USEC.) USEC has had to defend itself against at

least one class action lawsuit by investors charging that the company engaged in fraudulent misrepresentation of the viability of ACP's predecessor, the AVLIS uranium enrichment program. Locally, ACP is sold to the Piketon community as a done deal and a sure bet. On Wall Street and in Washington, there is a growing consensus that ACP is a confidence scheme, intended only to dupe investors long enough to maintain inflated payrolls, while renationalization details are worked out behind the scenes. Surely, NRC must conduct a thorough investigation of USEC's financial, management, and planning practices as part of the licensing process.

How the public-private divide will evolve over the course of the centrifuge project is~~also~~ entirely unclear. The original privatization fervor that accompanied USEC's creation is as gone as USEC's stock price. Now it is clear that USEC's only hope for "private" survival rests on access to federal facilities for waste processing and disposal, paid for by American taxpayers. If USEC really is a private endeavor reliant on market economics, why doesn't NRC deny this license application, so that USEC can pursue its laissez faire ideal on private land, far away from any public investment, using private venture capital, with a privately funded repository for its waste? And if that scenario is as unlikely as we all know it to be, why are we enduring this charade?

Respectfully submitted,

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List of Exhibits

A. Map of Historic Sites in relation to American Centrifuge Project created by Petitioner Geoffrey Sea.

B. Statement of Charles W. Beegle, former Professor of Education at the University of Virginia, widower of Jean Rittenour and owner of the historic Rittenour Home ~~at 3755 US Highway 23, Piketon OH 45661-9703.~~and Scioto Trail Farm that adjoins the DOE reservation in Piketon.

C. "A Pigeon in Piketon" by Geoffrey Sea, *The American Scholar*, Winter 2004, Volume 73, Number 1, pages 57-84.

D. Letter from ~~Bob~~Robert Glotzhober, Curator of Natural History, Ohio Historical ~~Society~~ Society, to Barb Powers of the Ohio Historic Preservation Office, 11/9/04 (letter is undated)

E. Statement of Jerome C. Tinianow. Executive Director of Audubon Ohio and Vice President of the National Audubon Society.

F.. E-mail correspondence from Roger G. Kennedy, former director of the National Park Service and Director Emeritus of the National Museum of American History, author of *Hidden Cities: The Discovery and Loss of Ancient American Civilization.*

G. Resume of Roger G. Kennedy

H. Statement of John E. Hancock, Professor of Architecture and Associate Dean at the University of Cincinnati, Project Director of "EarthWorks: Virtual Explorations of the Ancient Ohio Valley"

~~H.~~I. Letter from Barbara Powers of the Ohio State Preservation Office to Geoffrey Sea, 12/22/04

~~I.~~J. Transfer Deed for the Barnes property, 1921

~~J.~~K. Powerline easement for the Barnes ~~property.~~property, 1953

~~K.~~L. Photograph taken by Petitioner of the proposed ACP buildings from the back fence line of the Barnes property.

~~L.~~M. Letter from Linda A. Basye, Executive Director of the Pike County Convention and Visitors Bureau, 10/21/04

~~M.~~N. Statement of Karen Kaniatobe, Tribal Historic Preservation Officer of the Absentee Shawnee Tribe of Oklahoma in Shawnee, Oklahoma.

~~N.~~O. Plate XXIV from Ephraim Squier and Edwin Davis, *Ancient Monuments of the Mississippi Valley*, 1848.

~~O.~~P. Generalized Model of an Ohio Hopewell Community, from Paul Pacheco, "Ohio Hopewell Regional Settlement Patterns," in *A View from the Core: A Synthesis of Ohio Hopewell Archaeology*, Ohio Archaeological Council, 1996, page 22.

~~P.~~Q. Statement of Thomas F. King, preservation consultant, author of four books on federal preservation including *Federal Planning and Historic Places: the 106 Process*

~~Q. Resume of Roger G. Kennedy~~

R. Resume of Thomas F. King

S. Photograph taken by Petitioner of Scioto River at point where the creek of the Barnes Works enters it.

Note to Electronic Filing:

The following three graphics are provided as jpeg or bitmap images. Other graphic exhibits will be provided with the mailed hard copies of the petition.

Exhibit A. Map of Historic Sites in relation to American Centrifuge Project created by Petitioner Geoffrey Sea.

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Exhibit ~~O.~~P. Generalized Model of an Ohio Hopewell Community, from Paul Pacheco, "Ohio Hopewell Regional Settlement Patterns," in *A View from the Core: A Synthesis of Ohio Hopewell Archaeology*, Ohio Archaeological Council, 1996, page 22.

The following ~~four~~six statements of support will be sent by mail in their original form. These electronic text versions are provided for convenience. Electronic versions are not available for other exhibits.

Exhibit B. Statement of Charles W. Beegle, former Professor of Education at the University of Virginia, widower of Jean Rittenour and owner of the historic Rittenour Home and Scioto Trail Farm that adjoins the DOE reservation in Piketon.

Exhibit E. Statement of Jerome C. Tinianow. Executive Director of Audubon Ohio and Vice President of the National Audubon Society

Exhibit F. E-mail correspondence from Roger G. Kennedy, former director of the National Park Service and Director Emeritus of the National Museum of American History, author of *Hidden Cities: The Discovery and Loss of Ancient American Civilization*

Exhibit ~~G.~~H. Statement of John E. Hancock, Professor of Architecture and Associate Dean at the University of Cincinnati, Project Director of "EarthWorks: Virtual Explorations of the Ancient Ohio Valley"

Exhibit N. Statement of Karen Kaniatobe, Tribal Historic Preservation Officer of the Absentee Shawnee Tribe of Oklahoma

~~P.~~Exhibit Q. Statement of Thomas F. King, preservation consultant, author of four books on federal preservation including *Federal Planning and Historic Places: the 106 Process*

Exhibit A. Map of Historic Sites in relation to American Centrifuge Project created by Petitioner Geoffrey Sea.

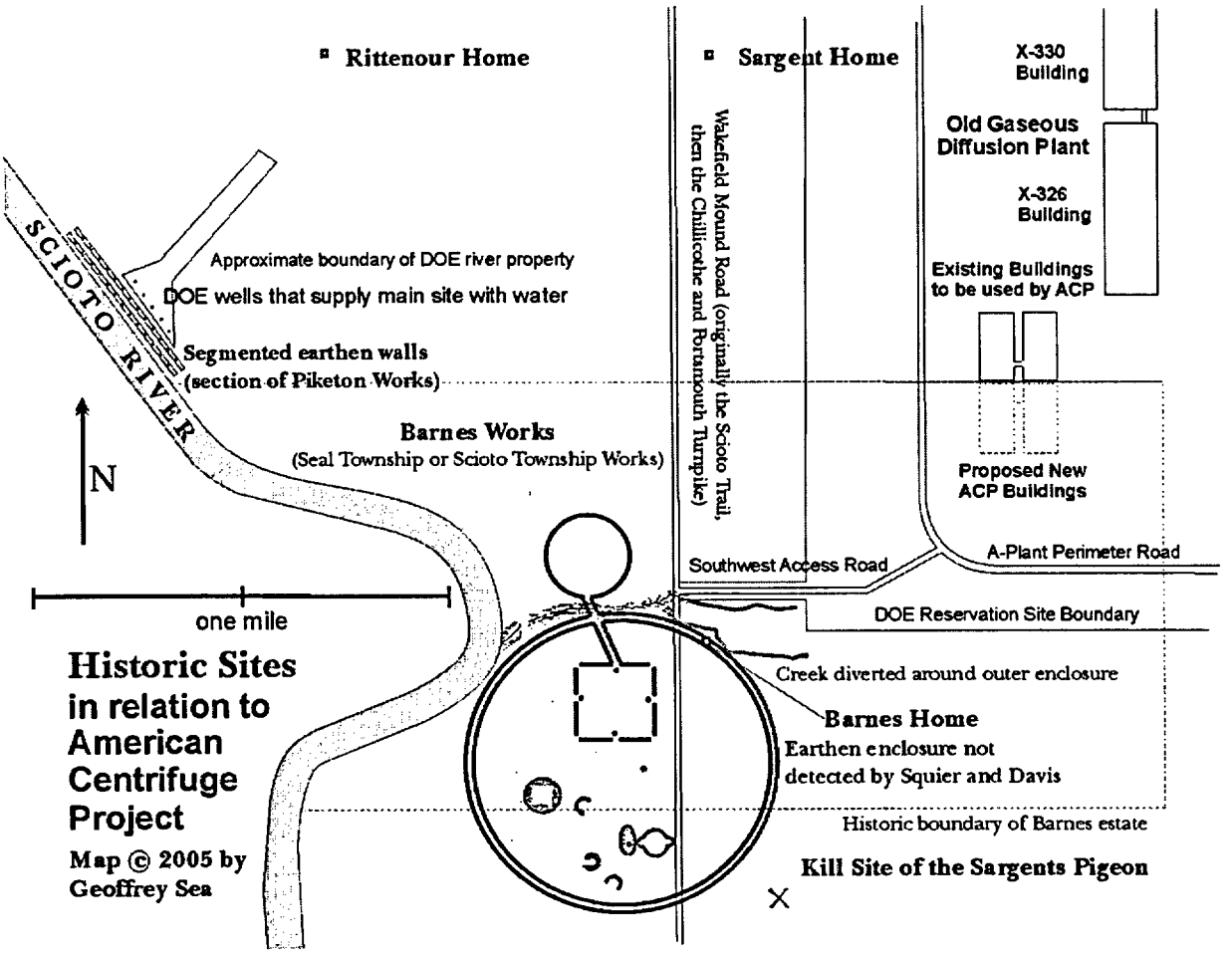
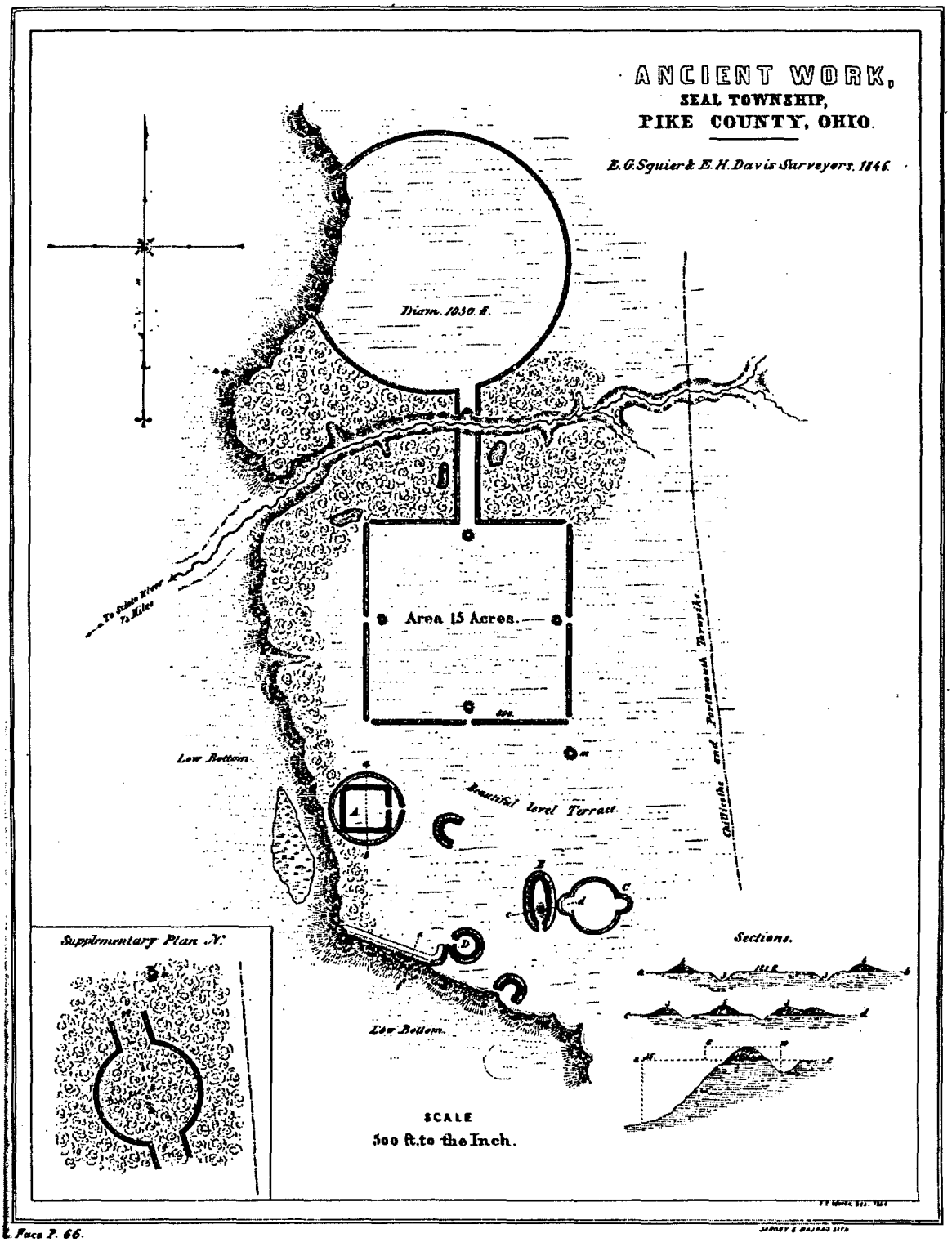


Exhibit ~~N.~~O. Plate XXIV from Ephraim Squier and Edwin Davis, *Ancient Monuments of the Mississippi ~~Valley~~ (Plate XXIV).Valley*, 1848..

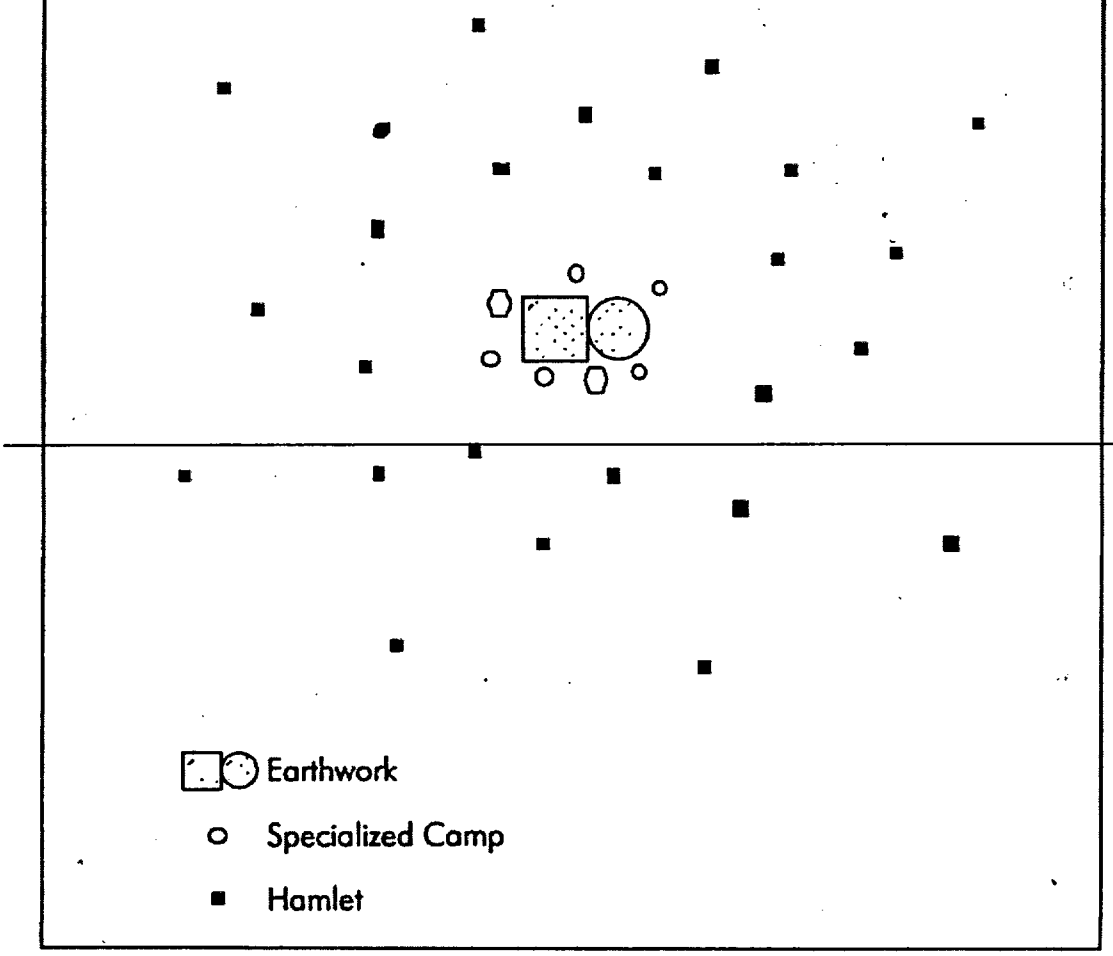
XXIV.



Face P. 66.

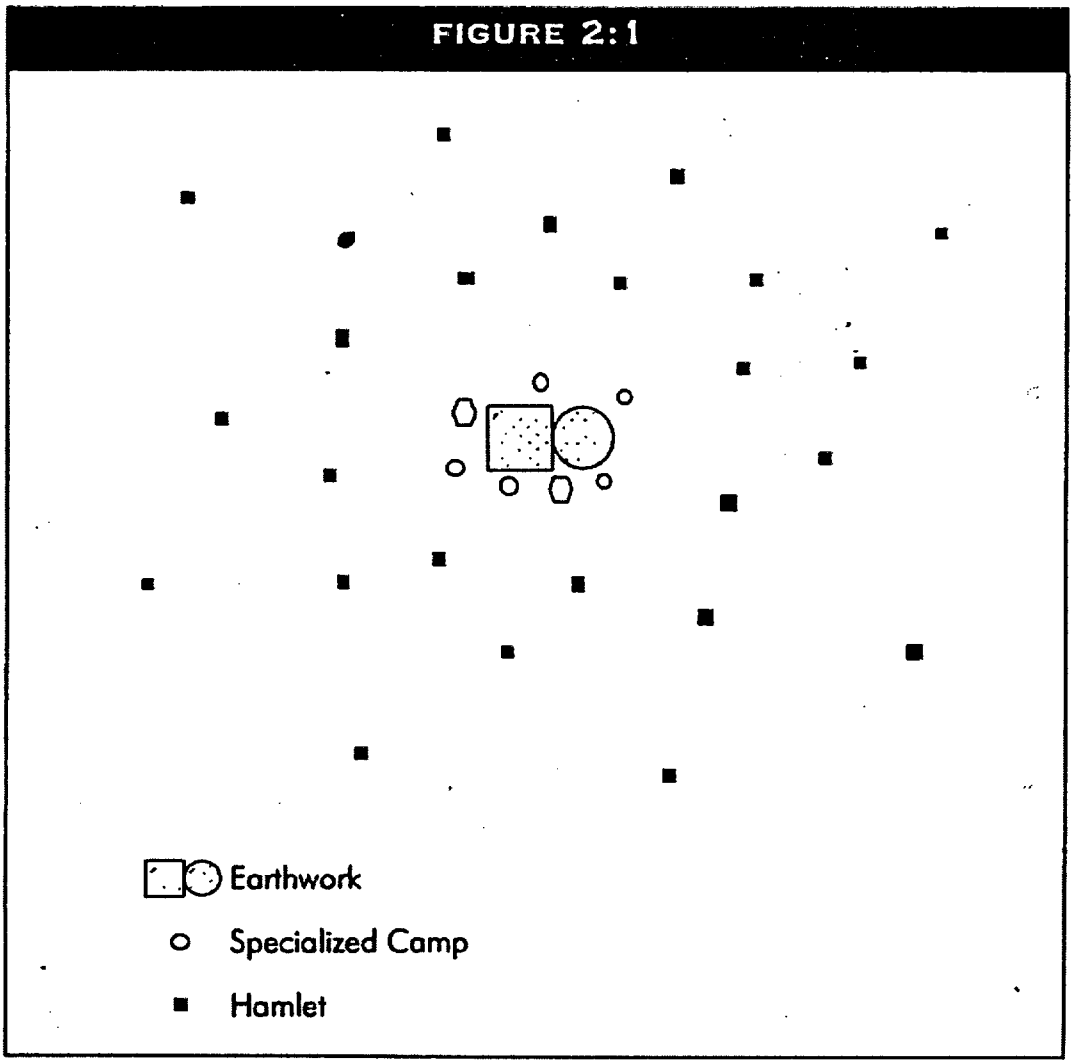
~~Exhibit N. H~~

FIGURE 2:1



Generalized model of an Ohio Hopewell Community.

Exhibit P. Generalized Model of an Ohio Hopewell Community, from Paul Pacheco, "Ohio Hopewell Regional Settlement Patterns," in *A View from the Core: A Synthesis of Ohio Hopewell Archaeology*, Ohio Archaeological Council, 1996, page 22.



Generalized model of an Ohio Hopewell Community.

Exhibit B
[hand-written original transmitted via facsimile]

Brookhill Farm
2163 Scottsville Rd.
Charlottesville, VA 22902
27 February 2005

Nuclear Regulatory Commission

To Whom it may concern

Re: Piketon, Ohio Centrifuge Operation

As a neighboring landowner, I raise the following concerns about the expansions of the centrifuge operation at the Piketon, Ohio Plant.

1. I own the Scioto Trail Farm on State Route 23. Presently the farm is approximately 370 acres. The major portion is on the west side of State Route 23 and goes to the Scioto River.

2. The farm has been in my wife's family for generations. The Rittenours, Seargents, and Barnes were influential in the history of the Scioto Valley. From the oral history of the indian culture of the Scioto Valley, stories are told of the indian foot races along the lower portion of the farm. The historic nature of the property should qualify it for the National Historic Registry.

3. During 1966, the NHPA legislation was passed which mandated that government agencies had a moral and legal obligation to weigh the impact that projects have on historic surroundings. The government took 31.421 acres for a permanent easement in 1982. This was for a well field along the Scioto and for pipe lines and a road. Never was the NHPA legislation addressed.

4. At one time the farm was over five hundred acres. The DOE took a large portion of the farm during the early 1950s. There was a great projection on the financial benefits and jobs that would be gained with the nuclear energy project. The only thing that it did was ruin a once beautiful farming valley. There are few, if any, large landowner farmers remaining on their land. From my perspective, the plant has been a detriment and enlarging it will continue that degradation. In the process, it will destroy more Hopewell Indian relics and more of the early history of Ohio will be lost.

5. As an out of state land owner, I was not aware of the enlargement of the centrifuge plant. I would have objected earlier. This letter is written in support of Geoffrey Sea's intervention.

Sincerely,

Charles W. Beegle

Exhibit E. Statement of Jerome C. Tinianow, Executive Director of Audubon Ohio and Vice President of the National Audubon Society

Audubon Ohio
692 North High Street, Suite 303
Columbus, OH 43215-1585
Tel: 614-224-3303
Fax: 614-224-3305
www. Audubon.org

February 24, 2005

Dear Friends,

I am the Executive Director of Audubon Ohio, a conservation and wildlife advocacy organization with over 14,000 members throughout the state, some of whom live in and around Pike County, Ohio. We currently have 18 past and present donors living in Piketon itself.

Audubon Ohio is the Ohio office of the National Audubon Society, a 100-year-old conservation organization with over 400,000 members nationwide. Our mission is to conserve and restore ecosystems, focusing on birds, other wildlife and their habitats, for the benefit of mankind and the Earth's biological diversity. Geoffrey Sea is one of our members.

In pursuit of our mission, Audubon Ohio and the National Audubon Society believe it is important to protect, preserve and commemorate sites that have a special place in the history of conservation and ecology. Two such sites are in Pike County, where the last passenger pigeon ever sighted in the wild was shot by Press Clay Southworth on March 22, 1900. Over the years, investigators have tried to locate the precise scene of the shooting, without success until Geoffrey Sea did find the former residence of the Southworths and the nearby Sargents Grain Mill along Wakefield Mound Road, approximately one mile south of the A-Plant southwest access road. An affiliated site is the Barnes Home at 1832 Wakefield Mound Road, where the bird was mounted and displayed between 1900 and 1915, when it was donated to the Ohio Historical Society. The specimen is now prominently displayed at the OHS Museum in Columbus.

The extinction of the passenger pigeon, once the most populous bird in the world, over the course of a single century, is generally regarded as the most important and most instructive of all extinctions made by man. That is one reason that preservation and commemoration of the Pike County sites are so crucial. The other reason is that this is the only place on earth where the slaying of the last-seen wild survivor of a species has been located. The sites should be preserved so that they can be properly marked and made available for public education. At the scene of the last passenger pigeon shooting in Wisconsin, the great American ecologist Aldo Leopold erected a famous bronze statue. Pennsylvania also has its passenger pigeon memorial, erected by the Boy Scouts of America at Pigeon Hills. The proper place for a national memorial is in Pike County, Ohio, as proposed by Geoffrey Sea in his essay in *The American Scholar.*

John James Audubon himself was moved to conservation activism by his witness of pigeon hunts, and his description of them stands as one of the earliest and most compelling bits of ecological writing. Audubon described a raid on a nesting of passenger pigeons this way:

"The tyrant of the creation, man, interferes, disturbing the harmony of this peaceful scene. As the young birds grow up, their enemies, armed with axes, reach the spot, to seize and destroy all they can. The trees are felled, and made to fall in such a way that the cutting of one causes the overthrow of another, or shakes the neighbouring trees so much, that the young Pigeons, or squabs, as they are named, are violently hurried to the ground. In this manner also, immense quantities are destroyed." (John James Audubon, *Bird Biographies*, "The Passenger Pigeon.")

The proposed construction and operation of a uranium enrichment plant at the southwest corner of the Department of Energy reservation would impact these historic sites and potential future projects in a number of ways. The location of the new enrichment plant borders on the Barnes Home property, and some of the land was originally taken from the Barnes estate. Safety and environmental fears, along with the conspicuous security regime, if not crafted with sensitivity to the historic importance of the neighboring property, could certainly deter public visitation to and appreciation of the historic sites.

The National Historic Preservation Act provides mechanisms for averting and ameliorating such impact. Unfortunately, the Department of Energy has not complied with its obligation to implement the various provisions of the act, creating now a monumental challenge for how to bring the proposed project into accord with federal preservation law.

Audubon Ohio supports Geoffrey Sea's intervention in this case. There must be an advocate for preservation and ecological interests involved in the proceedings.

Sincerely,

Jerome C. Tinianow
Vice President and Ohio Executive Director

Exhibit F. Statement of Roger G. Kennedy, former director of the National Park Service and Director Emeritus of the National Museum of American History, author of *Hidden Cities: The Discovery and Loss of Ancient American Civilization*

Subject: Intervention support
Date: 2/24/2005 12:20:18 PM Eastern Standard Time
From: roger@rkennedy.net
To: GeoffreySeaNYC@aol.com

To the Commissioners, Secretary and Atomic Safety and Licensing Board of the US Nuclear Regulatory Commission and to Whom it May Concern.

I am traveling away from home and letterhead, lecturing at Stanford University and for a group of private foundations in San Francisco. However, I wish to use this electronic means to support the intervention of Geoffrey Sea in the USEC American Centrifuge Plant licensing action.

Mr. Sea is entirely correct as to the importance of the Barnes works to American history and to our living cultures. It is among the half-dozen most important pre-Columbian sites in the Ohio Valley, and when more work is done on it by competent archaeologists it may turn out to be among the half dozen most important in the United States. If the people of Louisiana can save Poverty Point, and the people of East St. Louis can save Cahokia, surely the more affluent people of Ohio can rally to protect their heritage from desecration. The balance is hardly even between a mere adjustment for convenience of an atomic energy plant which can go anywhere within a hundred mile radius, and a precious place with no equals, no counterparts, and no chance of replication. This generation would be disgraced if further damage were done to an inheritance from the ages. The Barnes site must be saved.

For that to happen, it might be well for the site ultimately to be placed in responsible public hands, such as the National Park Service or the Ohio State Park System, or within the jurisdiction of the United States Forest Service.

I would be happy to verify the authenticity of this commendation by responding to an email sent the sending address.

Roger G. Kennedy

Director Emeritus, National Museum of American History

Former Director, the United States National Park Service

Exhibit ~~G.~~H. Statement of John E. Hancock, Professor of Architecture and Associate Dean at the University of Cincinnati, Project Director of "EarthWorks: Virtual Explorations of the Ancient Ohio Valley"

University of Cincinnati
College of Design, Architecture, Art, and Planning
Office of the Dean
P.O. Box 210016
Cincinnati OH 45221-0016

Phone (513) 556-4933 / Fax (513) 556-3288
Web http://www.daap.uc.edu

February 21, 2005

To: The Commissioners, Secretary and Atomic Safety and Licensing Board of the US Nuclear Regulatory Commission, and Whomever it May Concern

From: John E. Hancock, Professor of Architecture and Associate Dean
Project Director "EarthWorks: Virtual Explorations of the Ancient Ohio Valley"

Re: Support of the Intervention of Geoffrey Sea in the USEC American Centrifuge Plant licensing action.

One of North America's richest prehistoric legacies lies mostly buried or destroyed, and nearly invisible, beneath the modern landscapes of southern Ohio. The first settlers in this region stood in awe, amidst the largest concentration of monumental earthen architecture in the world. These included effigies like the Great Serpent Mound, and hilltop enclosures like Fort Ancient; but the most spectacular were the many embankments and enclosures formed into huge, perfect, geometric figures. Two centuries of archaeological research have shown that these were created by ancient Native cultures dating back as far as about 2000 years.

Apart from three of these figures at Newark, Ohio (two circles and an octagon), no others exist in complete, visible form, though several survive in ways still useful to archaeological research. The circle-and-square at Piketon, also known as the Barnes Works or the Seal Earthworks, despite its scant remains, is significant for several reasons:

- it is among the least known or investigated to date by archaeologists;

- its double-figure shape links it to two of the most culturally-revealing earthworks that have been investigated (Newark and High Bank), suggesting similarly-precise astronomical functions akin to those at Stonehenge;

- it is at the center of the thickest concentration of these works, between Portsmouth and Chillicothe, undoubtedly part of a culturally important series, and possibly linked by an extension of "The Great Hopewell Road";

- through its connections with the Barnes family it holds special significance in the history of the State of Ohio, its early links to Virginia, and the early importance of its earthworks in the birth of American archaeology and national identity;

- it may include as part of its design a heretofore unrecorded earthen circle, of a size unknown anywhere else in the world.

The preservation of this site has at least two major benefits:

- it will enable the continuing study of a unique asset from this ancient Ohio Valley culture, now beginning to make its way back into the public consciousness in our region and beyond.

- it will strengthen the resource base for the increasingly-lucrative cultural heritage tourism industry and its associated high-quality, non-intrusive economic development in southern Ohio.

The goal of our multimedia "EarthWorks Project" is make these hidden or vanished sites visible again, and offer them in new ways, to new audiences, in new electronic media such as museum exhibits, computer discs, and a Website. Three times funded in this work by the National Endowment for the Humanities, we have confirmed the national cultural and historical significance of this ancient culture and their spectacular architectural monuments. Numerous inquiries from Europe attest to the international significance of this unique Ohio heritage, and public awareness and interest here at home is also clearly increasing.

The opportunity to preserve a unique resource that sheds light on our predecessors in this valley should not be missed.

Yours sincerely,

John E. Hancock

Exhibit N. Statement of Karen Kaniatobe, Tribal Historic Preservation Officer of the Absentee Shawnee Tribe of Oklahoma

Absentee Shawnee Tribe of Oklahoma
Cultural/Historic Preservation Department
2025 S. Gordon Cooper
Shawnee, Oklahoma 74801-9381
(405) 275-4030 Fax: 405-878-4533

February 24, 2005

RE: Support of Geoffrey Sea's intervention in the USEC American Centrifuge Plant Licensing Action

To the Commissioners, Secretary and Atomic Safety and Licensing Board of the US Nuclear Regulatory Commission and to Whom it May Concern:

I am writing in support of the intervention of Geoffrey Sea in the USEC American Centrifuge Plant licensing action. I am the Tribal Historic Preservation Officer for the Absentee Shawnee Tribe. Our interest in supporting Mr. Sea is based on the fact that Ohio is part of our ancestral homelands. Through historical research we have identified a number of village sites in the Ohio Valley. In fact, quite a few are located along the Scioto River. Furthermore, if you look at a map, you will notice that the names of towns, cities and counties reflect the Shawnee's historical presence within the state of Ohio.

We are part of the Algonquian family of Native American peoples, and the Algonquian tribes of the Ohio/Great Lakes region are collectively believed to be descended from the culture called Ft Ancient. In turn the Ft Ancient are considered descendants of the Hopewell culture. The people of the Hopewell Culture built the many astounding geometric earthworks, including those called the Barnes Works in Scioto Township.

All of the historic and prehistoric sites in the region of Scioto Township have great meaning and significance. The Barnes Works, being one of the largest and most beautiful prehistoric architectural works in North America, is a site that has already suffered desecration and destruction--but what remains can be saved.

Many more historic sites may exist in the area, remaining to be found for lack of extensive survey. Surveys to find such sites should be conducted as part of any 106 review for the ACP.

The American Centrifuge Project may impact all these sites in many ways that have not been studied or considered. Physical destruction caused by new buildings is only one concern. We also need to consider potential destruction of earthworks along the river caused by additional water pumping, the impacts of herbicides used to defoliate a security

zone around the DOE site perimeter, the impacts of keeping the area under national-security restriction, rather than opening the area to study and tourism, and the aesthetic impacts of marring a sacred area with security fences, more roads, and shipments of radioactive fuel and waste.

Our tribe has not been contacted by DOE about the American Centrifuge Project for consultation. We first learned about the American Centrifuge Project from Geoffrey Sea. Please note that we count on being included as a consulting party in future 106 and 110 reviews at the Piketon site.

We understand that the NRC has initiated a section 106 review as part of its licensing process. That is good. However this is an important test for preservation law. If a major federal nuclear project involving two different federal agencies can proceed without any consideration of one of the largest sacred sites in North America next door, then it means that the provisions of the National Historic Preservation Act have become meaningless.

Many alternatives to the proposed action deserve full study and consideration. USEC's environmental report mentions the possible alternatives of moving ACP to the north side of the Piketon site or moving it from Piketon to Paducah, Kentucky. Since the current site at the southwest corner of the DOE reservation involves many potential impacts, those alternatives among others need careful review.

Respectfully,

Karen Kaniatobe
Tribal Historic Preservation Officer

~~P.~~Exhibit Q. Thomas F. King, preservation consultant, author of four books on federal preservation including *Federal Planning and Historic Places: the 106 Process*

Thomas F. King, PhD.
P.O. Box 14515 Silver Spring MD 20911, USA
Telephone (240) 475-0595 Facsimile (240) 465-1179 E-mail tfking106@aol,com

Cultural Resource Impact Assessment and Negotiation, Writing, Training

February 24, 2005

To: The Commissioners, Secretary and Atomic Safety and Licensing Board of the US Nuclear Regulatory Commission, and Whom it May Concern.

I am writing in support of the intervention of Geoffrey Sea in the USEC American Centrifuge Plant licensing action. As a professional practitioner of archaeology and historic preservation in the United States, I am deeply concerned about the potential impacts of the proposed action on historic properties, and about the adequacy of NRC's and the Department of Energy's (DOE's) compliance with Section 106 and 110 of the National Historic Preservation Act and other federal environmental and cultural resource legal requirements.

A copy of my professional resume is attached. I hold a PhD in Anthropology from the University of California, Riverside, and have been practicing in historic preservation and environmental impact review for almost forty years, both within and outside the Federal government. I have some twenty years experience as a government official with the Advisory Council on Historic Preservation, the National Park Service, and the General Services Administration, and am currently self-employed as a consultant, writer, mediator, and trainer in historic preservation, tribal consultation, and environmental review. I am the author of four textbooks and numerous journal articles on these subjects, as well as a number of federal regulations and guidelines. My particular specialty lies in working with Section 106 of the National Historic Preservation Act, which requires Federal agencies to take into account the effects of their actions on places included in and eligible for the National Register of Historic Places.

It is because of my concern for the proper application of Section 106 and related authorities, and for the proper management of historic places, that I support Mr. Sea's intervention. Mr. Sea has, I believe, uncovered significant problems with NRC's and DOE's compliance with the historic preservation and environmental laws, and identified significant potential impacts on places eligible for inclusion in the National Register. His intervention should be given your very close attention.

Respectfully,

Thomas F. King

ATTACHMENT 2

Track Shipments
Detailed Results

Printable Version | Quick Help

Tracking number	847962454221	**Delivered to**	Shipping/Receiving
Signed for by	B.ROBINSON	**Weight**	1.0 lbs.
Ship date	Mar 1, 2005		
Delivery date	Mar 3, 2005 10:21 AM		
Status	Delivered		

You can also track:
- By TCN
- FedEx Trade Networks shipments
- By Email Track
- By FedEx Wireless Solutions

Date/Time		Activity	Location	Details
Mar 3, 2005	10:21 AM	**Delivered**		
	9:14 AM	On FedEx vehicle for delivery	WASHINGTON, DC	
	7:10 AM	At dest sort facility	DULLES, VA	
	7:00 AM	At local FedEx facility	WASHINGTON, DC	
	2:21 AM	Package data transmitted to FedEx		
Mar 2, 2005	7:23 PM	At dest sort facility	DULLES, VA	
	5:41 PM	Departed FedEx location	MEMPHIS, TN	
	1:19 PM	Departed FedEx location	MEMPHIS, TN	
Mar 1, 2005	9:01 PM	Left origin	NEW YORK, NY	
	8:25 PM	Picked up	NEW YORK, NY	

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Enter your email, submit up to three email addresses (separated by commas), add your message (optional), and click **Send email.**

From

To

Add a message to this email.

Send email

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of USEC Inc. (American Centrifuge Plant)	)	Docket No. 70-7004 March 23, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of the "USEC Inc. Answer to Petition to Intervene by Geoffrey Sea" were served upon the persons listed below by U.S. mail, first class, postage prepaid, and where indicated by asterisks also by electronic mail, on this 23rd day of March, 2005.

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Secretary of the Commission**
Attn: Rulemakings and Adjudication Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: hearingdocket@nrc.gov)

Vina K. Colley*
PRESS
3706 McDermott Pond Creek
McDermott, Ohio 45652
(E-mail: vcolley@earthlink.net)

** e-mail, original, and two copies

Stephen H. Lewis*
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
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Ewan Todd*
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(E-mail: GeoffreySeaNYC@aol.com)

Donald J. Silverman
Counsel for USEC Inc.