

May 18, 2005 (3:42pm)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE COMMISSION

Dated: May 18, 2005

In the Matter of

EXELON GENERATION COMPANY, LLC

(Early Site Permit for Clinton ESP Site)

Docket No. 52-007-ESP

In the Matter of

DOMINION NUCLEAR NORTH ANNA, LLC

(Early Site Permit for North Anna ESP Site)

Docket No. 52-008-ESP

In the Matter of

SYSTEM ENERGY RESOURCES, INC.

(Early Site Permit for Grand Gulf ESP Site)

Docket No. 52-009-ESP

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.

(National Enrichment Facility)

Docket No. 70-3103-ML

In the Matter of

USEC Inc.

(American Centrifuge Plant)

Docket No. 70-7004

SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE TO
COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. DISCUSSION.....	2
A. Scope of Review	3
B. Contested Proceeding v. Contested Matter	6
C. No <i>De Novo</i> Review	9
D. NEPA Requirements.....	12
1. Scope of Board Review Responsibility Regarding Three NEPA Baseline Findings.....	12
2. Scope of NEPA Baseline Finding Three	13
III. CONCLUSION.....	15

TABLE OF AUTHORITIES

FEDERAL COURT CASES

<i>Calvert Cliffs' Coordinating Comm., Inc. v. Atomic Energy Comm'n</i> , 449 F.2d 1109 (D.C. Cir. 1971)	12, 13
<i>Union of Concerned Scientists v. Atomic Energy Comm'n</i> , 499 F.2d 1069 (D.C. Cir. 1974)	9

ADMINISTRATIVE DECISIONS AND ORDERS

<i>Consumers Power Co.</i> (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331 (1973), <i>rev'd on other grounds</i> , <i>Aeschliman v. NRC</i> , 547 F.2d 622 (D.C. Cir. 1976), <i>rev'd</i> , <i>Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.</i> , 435 U.S. 519 (1978)	6, 11, 13
<i>Duke Power Co.</i> (Cherokee Nuclear Station, Units 1, 2 and 3), LBP-77-74, 6 NRC 1314 (1977), <i>aff'd by</i> , ALAB-482, 7 NRC 979 (1978)	5
<i>Exelon Generation Co., LLC et al.</i> , LBP-05-07, 61 NRC __, slip op. (Mar. 18, 2005)	passim
<i>Exelon Generation Co., LLC et al.</i> , CLI-05-09, 61 NRC __, slip op. (Apr. 20, 2005)	2
<i>Gulf States Util. Co.</i> (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977)	8
<i>Houston Lighting & Power Co.</i> (South Texas Project Nuclear Generating Station, Units 1 and 2), LBP-75-46, 2 NRC 271 (1975)	5
<i>System Energy Res., Inc.</i> (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10 (2005)	1
<i>System Energy Res., Inc.</i> (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277 (2004)	1

FEDERAL STATUTES

Atomic Energy Act § 105, 42 U.S.C. § 2135(c)(6)	4
Atomic Energy Act § 157, 42 U.S.C. § 2187(c)	4

FEDERAL REGULATIONS

10 C.F.R. 2.4	7
10 C.F.R. § 2.104(b)	11
10 C.F.R. § 2.104(b)(1).....	3, 4
10 C.F.R. § 2.104(b)(2).....	3, 4, 10
10 C.F.R. § 2.309(f)(1)(iii)	8
10 C.F.R. §§ 2.390(b)(3) and (4)	4
10 C.F.R. § 51.105(a)(1).....	12
10 C.F.R. § 51.105(a)(2).....	12
10 C.F.R. § 51.105(a)(3).....	12-15
10 C.F.R. § 52.17(a)(2).....	14
10 C.F.R. § 52.18	15
10 C.F.R. § 52.21	14

FEDERAL REGISTER NOTICES

Atomic Safety and Licensing Board; In the Matter of Exelon Generation Company, LLC (Early Site Permit for Clinton ESP Site); Notice of Hearing (Application for Early Site Permit), 69 Fed. Reg. 54,158 (Sept. 7, 2004).....	7
Changes to Adjudicatory Process; Final Rule, 69 Fed. Reg. 2182 (Jan. 14, 2004) ...	6, 8, 11
Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors, 54 Fed. Reg. 15,372 (Apr. 18, 1989)	11, 12
Policy on Conduct of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872 (Aug. 5, 1998).....	11
System Energy Resources, Inc.; Establishment of Atomic Safety and Licensing Board, 69 Fed. Reg. 15,911 (Mar. 26, 2004)	10
System Energy Resources, Inc.; Notice of Hearing and Opportunity to Petition for Leave to Intervene Early Site Permit for the Grand Gulf ESP Site, 69 Fed. Reg. 2636 (Jan. 16, 2004)	1, 7, 10

MISCELLANEOUS

BLACK'S LAW DICTIONARY (6th ed. 1990)9

SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE TO
COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

I. INTRODUCTION

On January 16, 2004, the Nuclear Regulatory Commission ("NRC") published a Notice of Hearing in the System Energy Resources, Inc. ("SERI") Early Site Permit ("ESP") proceeding.¹ In that Notice, the Commission echoed the mandatory hearing requirements of 10 C.F.R. § 2.104 for safety and environmental issues in both contested and uncontested hearings. In particular, with respect to uncontested proceedings, such as this, the Commission stated:²

If the hearing is *not a contested proceeding* . . . , the presiding officer will determine: whether the application and the record of the proceeding contain *sufficient information*, and the review of the application by the Commission's staff *has been adequate* to support a negative finding on Safety Issue 1 [], and an affirmative finding on Safety Issue 2 [], as proposed to be made by the Director, Office of Nuclear Reactor Regulation; and whether the review conducted by the Commission pursuant to NEPA *has been adequate*.³

On August 6, 2004, the Licensing Board requested that SERI and the NRC Staff provide their views on how it should proceed relative to the mandatory hearing findings set forth in the January Notice.⁴ On September 7, 2004, SERI and the NRC Staff jointly submitted their views on the scope and nature of the Licensing Board findings in a mandatory hearing, as well as on

¹ System Energy Resources, Inc.; Notice of Hearing and Opportunity to Petition for Leave to Intervene Early Site Permit for the Grand Gulf ESP Site, 69 Fed. Reg. 2636 (Jan. 16, 2004).

² There are no admitted contentions in this proceeding. *System Energy Res., Inc.* (Early Site Permit for Grand Gulf ESP Site), LBP-04-19, 60 NRC 277 (2004); *System Energy Res., Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-05-4, 61 NRC 10 (2005).

³ 69 Fed. Reg. at 2636 (emphasis added).

⁴ LBP-04-19, 60 NRC at 298.

the conduct and timing of the hearing.⁵ In the interest of efficiency, SERI hereby incorporates by reference, the views set forth in that joint filing.

On March 18, 2005, in LBP-05-07, the Chief Administrative Judge of the Atomic Safety and Licensing Board (“ASLB”) Panel certified questions to the Commission regarding the mandatory hearing requirements in 10 C.F.R. § 2.104 and the Notices of Hearing for three ESP proceedings and one uranium enrichment facility proceeding.⁶ In general, the certified questions seek clarification on the scope of a Licensing Board’s review in mandatory hearings, and whether the standard for that review should be *de novo*. USEC Inc., an applicant for a separate license to construct and operate a uranium enrichment facility, petitioned the Commission for an opportunity to present its views.⁷ On April 20, 2005, the Commission granted USEC Inc.’s request and provided an opportunity for the applicants in the remaining proceedings, including SERI, to respond to both USEC Inc.’s response⁸ and the certified questions in LBP-05-07.²

SERI hereby submits its brief in response to the Commission’s April 20, 2005 Order.

II. DISCUSSION

LBP-05-07 asks four questions regarding the scope and standard of a Licensing Board’s review in a mandatory hearing. In pertinent part, it asks the Commission to clarify whether a Licensing Board is an “initial decisionmaker” or instead a “reviewer of the activities of the

⁵ Joint Filing of System Energy Resources, Inc. and the Nuclear Regulatory Commission Staff Regarding Mandatory Hearing, Docket No. 52-009 (Sept. 7, 2004).

⁶ *Exelon Generation Co., LLC et al.*, LBP-05-07, 61 NRC ___, slip op. (Mar. 18, 2005).

⁷ USEC Inc. Motion for Leave to Submit Views on 10 C.F.R. Part 2 Certified Questions (March 28, 2005).

⁸ USEC Inc. Brief in Response to Commission Memorandum and Order (CLI-05-09) (May 4, 2005).

² *Exelon Generation Co., LLC et al.*, CLI-05-09, 61 NRC ___, slip op. (Apr. 20, 2005).

applicant and staff,” whether an entire proceeding is contested or only specific “portions” thereof, and whether the standard of review is *de novo*.¹⁰

In summary, in any ESP proceeding – be it contested or uncontested – the initial decisionmaker is the NRC Staff. The NRC Staff’s independent review of the applicant’s submittals and commitments is the primary way that the NRC satisfies its statutory and regulatory responsibilities related to safety and environmental issues. In conducting its review of the Staff’s conclusions, a Licensing Board must be satisfied that the record supports the Staff’s safety and environmental findings. For contested issues, the Licensing Board has the additional responsibility to resolve the specific conflict, which it can do by entertaining testimony of experts and asking probing questions before or during the mandatory hearing. The Licensing Board, however, does not perform a *de novo* review of safety or environmental matters, regardless of whether the mandatory hearing is contested or uncontested.

SERI addresses each of the four specific questions posed by the Licensing Board below.

A. Scope of Review

The Panel first asks about the scope of its responsibility to make required findings concerning two Atomic Energy Act (“AEA”) safety issues and one National Environmental Policy Act (“NEPA”) issue, as specified in 10 C.F.R. §§ 2.104(b)(1)-(b)(2) and echoed in the ESP Notices of Hearing.¹¹ LBP-05-07 states that the Notices of Hearing in the various proceedings contain different provisions which “suggest there is a fundamental difference” between a Licensing Board’s responsibilities in contested versus uncontested proceedings.¹² The

¹⁰ LBP-05-07, slip op. at 10-12.

¹¹ *Id.*, slip op. at 9-10.

¹² *Id.*, slip op. at 9.

Panel also questions whether its role is modified or defined by use of the word “consider” in the context of a contested proceeding, and similarly by use of the word “determine” in the context of an uncontested proceeding.¹³ Building on this distinction, the Panel posits that the selection of different words (“determine” versus “consider”) could portend “the difference between a Board acting as an initial decisionmaker as opposed to being a reviewer of the activities of the applicant and staff.”¹⁴

As a threshold matter, use of the word “consider” versus “determine” is not dispositive regarding the nature and scope of a Licensing Board’s role in contested and uncontested proceedings.¹⁵ The use of these words in the AEA and NRC regulations suggests that consideration is an important prerequisite to making a determination. For example, in “determining” a reasonable royalty fee under Section 157 of the AEA, the Commission shall “take into consideration” certain factors.¹⁶ Similarly, the Commission “shall determine” whether to withhold information from public disclosure, upon consideration of certain factors.¹⁷

While informative, the terms by no means imply that a Licensing Board is the initial decisionmaker for safety or environmental issues in a mandatory hearing, be it contested or uncontested. Section 2.104(b)(2) defines the scope of review. The plain language of that section demonstrates that, in the Grand Gulf ESP proceeding, the NRC Staff is the initial decisionmaker, not the Licensing Board. Section 2.104(b)(2) expressly states that the Licensing Board shall

¹³ *Id.*

¹⁴ *Id.*, slip op. at 10.

¹⁵ Compare 10 C.F.R. § 2.104(b)(1) with 10 C.F.R. § 2.104(b)(2).

¹⁶ 42 U.S.C. § 2187(c). See also AEA § 105, 42 U.S.C. § 2135(c)(6) (“the Commission shall also *consider*, in *determining* whether the license should be issued or continued, such other factors . . .”) (emphasis added).

¹⁷ 10 C.F.R. §§ 2.390(b)(3) and (4).

determine, in an uncontested proceeding, whether "the application and the record of the proceeding contain *sufficient information*, and the review of the application by the *Commission's staff has been adequate* to support" certain safety and environmental findings.¹⁸ The record of the proceeding to be reviewed by the Licensing Board includes the *Federal Register* notices, Application, Environmental Report, Staff safety analysis and concluding Safety Evaluation Report ("SER"), Final Environmental Impact Statement ("FEIS"), as well as any applicable Orders and Decisions of the Board and Commission, pleadings, hearing transcripts, and exhibits received by the Board.¹⁹

It is the NRC Staff that initially decides whether an application for a partial or full construction permit is adequate, issuing requests for additional information to applicants in order to clarify issues, and reporting safety and environmental findings to the public and Commission. Such initial determinations are well beyond the scope of the Licensing Board's authority.²⁰ In the construction permit proceeding for the Midland Plant in 1973, intervenors argued to an Appeal Board that the Licensing Board should have performed an independent review of all

¹⁸ Emphasis added. This language is echoed in the Grand Gulf ESP Notice of Hearing.

¹⁹ See, e.g., *Duke Power Co.* (Cherokee Nuclear Station, Units 1, 2 and 3), LBP-77-74, 6 NRC 1314, 1317 (1977), *aff'd by*, ALAB-482, 7 NRC 979 (1978); *Houston Lighting & Power Co.* (South Texas Project Nuclear Generating Station, Units 1 and 2), LBP-75-46, 2 NRC 271, 273-4 (1975).

²⁰ In stating that the Licensing Board's conclusions "must rest upon a thorough review" of the application, SER, FEIS, and Advisory Committee on Reactor Safeguards ("ACRS") recommendation, SERI by no means meant to imply that such thoroughness should cast the Licensing Board with the role of initial decisionmaker. LBP-05-07, slip op. at 8. Although SERI did state that the "Board must be satisfied that the application and the record support the Staff's safety and environmental findings," it added that "[t]he Board is expected to rely on the testimony of the NRC Staff and applicant and *not* to duplicate the in-depth safety and environmental reviews performed by the Staff." Joint Filing of SERI and NRC Staff Regarding Mandatory Hearing at 3-4 (emphasis added).

safety and environmental issues, whether contested or uncontested.²¹ In fact, intervenors argued that the Licensing Board must “take the initiative and do its own analysis *even to the point of doing independent research.*”²² The Appeal Board rejected this argument stating that “for the Board to duplicate the role of the staff, or for it to perform independent basic research, is inconsistent with its adjudicatory role and *beyond the scope of its delegated authority.*”²³ Accordingly, a Licensing Board is not the initial decisionmaker in a mandatory hearing, regardless of whether the underlying proceeding is contested or not.

B. Contested Proceeding v. Contested Matter

The second certified question inquires whether the Licensing Boards should distinguish between “portions” of a contested proceeding; *i.e.*, should they bifurcate contested proceedings into contested and uncontested “portions” for purposes of review?²⁴ In this regard, the general question posed is whether the Licensing Boards’ duties, as set forth in the Notices of Hearing, should be defined by reference to the proceeding as a whole (be it contested or uncontested), or applied to “portions” of a proceeding, depending upon their contested or uncontested status.²⁵

²¹ *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 334 (1973), *rev’d on other grounds*, *Aeschliman v. NRC*, 547 F.2d 622 (D.C. Cir. 1976), *rev’d*, *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519 (1978).

²² *Id.* (emphasis in original).

²³ *Id.* at 335 (emphasis added). Although the Appeal Board partly based its ruling on Appendix A to 10 C.F.R. Part 2, which was removed during the most recent revision to Part 2, *see* 69 Fed. Reg. 2182, 2274 (Jan. 14, 2004), the underlying rationale remains the same.

²⁴ LBP-05-07, slip op. at 10-11.

²⁵ *Id.*

The Grand Gulf ESP proceeding is not contested. Thus, the question is moot by virtue of the express language of the SERI Notice of Hearing in which the Commission expressly states that:

If the hearing is not a *contested proceeding* as defined by 10 CFR 2.4, the presiding officer will determine: whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support a negative finding on Safety Issue 1 above, and an affirmative finding on Safety Issue 2 above, as proposed to be made by the Director, Office of Nuclear Reactor Regulation; and whether the review conducted by the Commission pursuant to NEPA has been adequate.²⁶

Given its uncontested status, there is no opportunity for the Licensing Board to parse the SERI proceeding into "portions" for purposes of review, other than along the definitive lines drawn with respect to the AEA and NEPA, as set forth above.

If a proceeding is contested, however, then its scope must encompass not only the Licensing Board's consideration of the AEA and NEPA matters set forth in the Notices, but also any admitted contention(s).²⁷ With respect to the latter, the scope of review on contested

²⁶ 69 Fed. Reg. at 2636 (emphasis added). In addition, "[r]egardless of whether the proceeding is contested or uncontested, the presiding officer will: (1) Determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and Subpart A of 10 CFR Part 51 have been complied with in the proceeding; (2) independently consider the final balance among the conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and (3) determine, after considering reasonable alternatives, whether the ESP should be issued, denied, or appropriately conditioned to protect environmental values." *Id.*

²⁷ For example, as specified in the Exelon Notice of Hearing, the Board explained that the proceeding is contested and that the matters to be considered are (1) the specific admitted contention to be litigated in the contested hearing; (2) Safety Issue 1; (3) Safety Issue 2; and (4) the NEPA findings. *See* Atomic Safety and Licensing Board; In the Matter of Exelon Generation Company, LLC (Early Site Permit for Clinton ESP Site); Notice of Hearing (Application for Early Site Permit), 69 Fed. Reg. 54,158, 54,159 (Sept. 7, 2004).

“portions” of the proceeding is defined by the scope of the admitted contention(s).²⁸ This analysis of the issues posed by the Licensing Board in its second question finds support in prior Atomic Safety and Licensing Appeal Board precedent. Specifically, the Appeal Board addressed the issue as follows:

Although Section V(f)(2) of Appendix A to Part 2 is expressly directed to licensing board responsibilities in “an uncontested case,” the obligation to determine whether the staff safety review was “adequate” obviously is equally applicable to the uncontested portions of a case in which some matters have been placed in controversy. It would make no sense at all to construe the appendix otherwise; *e.g.*, to conclude that the licensing boards must make such a determination if no issues are contested but need not do so if an intervenor has entered the proceeding for the purpose of raising environmental matters. Rather, the only reasonable interpretation is that the intended distinction insofar as licensing board treatment in a construction permit proceeding is concerned is between *issues* in contest and *matters* which have not been placed in controversy. With respect to the former, the board must resolve the controversy and also decide whether the required safety and environmental findings can be made. Section V(f)(1). With respect to the latter, the board must decide whether the staff’s review has been adequate to support such findings.²⁹

The Appeal Board’s analysis in the *Gulf States* construction permit proceeding is instructive as to how a Licensing Board should treat contested proceedings; *i.e.*, resolve the controversy specific to the issue(s) raised in admitted contentions and also make required safety and environmental findings. The uncontested “portions” of contested proceedings should be treated in the same manner (with respect to the scope and standard of review) as their counterparts in an uncontested

²⁸ As a threshold matter, a petition for leave to intervene must necessarily “[d]emonstrate that the issue raised in the contention is within the scope of the proceeding.” 10 C.F.R. § 2.309(f)(1)(iii).

²⁹ *Gulf States Util. Co.* (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 774 n.26 (1977) (emphasis in original). Although the Appeal Board references Appendix A to 10 C.F.R. Part 2, which was removed during the most recent revision to Part 2, *see* 69 Fed. Reg. 2182, 2274 (Jan. 14, 2004), the underlying rationale remains the same.

proceeding. In any event, the standard of review applied to contested or uncontested proceedings, and/or portions thereof, is not *de novo*, for the reasons explained immediately below.

C. No De Novo Review

In posing question number three, the Panel defines another of its central concerns; *i.e.*, whether it is to conduct a *de novo* evaluation of the ESP applications.³⁰ The limited responsibilities of the Licensing Board in mandatory hearings color the legal standard of review and answer the Licensing Board's question in the negative. *De novo* review is neither required, nor appropriate, in any of the above-captioned proceedings. The D.C. Circuit recognized this over 30 years ago when it stated that the "role of the ASLB is not to compile a record; it is to review a record already compiled by the Staff and the ACRS, who have responsibility for the sufficiency of that record."³¹ Accordingly, "[a]s a practical matter...it would simply not be possible for the two technical members of the panel to evaluate in detail the totality of material relevant to safety matters that the Staff and ACRS have generated through many months of work."³² This court decision begins to explain why a *de novo* review is inappropriate.

The Licensing Board standard of review in uncontested mandatory hearings is not *de novo*, as its responsibilities are to assure that the NRC Staff has done an adequate and sufficient review of safety and environmental matters consistent with the AEA and NEPA. For purposes of the mandatory hearing in the uncontested Grand Gulf ESP proceeding, 10 C.F.R. § 2.104(b)(2)

³⁰ LBP-05-07, slip op. at 11-12. Black's Law Dictionary defines *de novo* as "Anew; afresh; a second time." BLACK'S LAW DICTIONARY 435 (6th ed. 1990).

³¹ *Union of Concerned Scientists v. Atomic Energy Comm'n*, 499 F.2d 1069, 1078 (D.C. Cir. 1974).

³² *Id.* at 1077.

requires that the presiding officer make certain determinations “[w]ithout conducting a *de novo* evaluation of the application.” This plain language rejecting *de novo* review should end all inquiry about the standard of review. Unlike the Notice of Hearing in the Louisiana Energy Services (“LES”) proceeding, the Notices in the ESP proceedings do not contain this phrase, thus prompting the third certified question in LBP-05-07.

There is simply no indication in the Notices at issue that the Commission intended for the Licensing Board to conduct a *de novo* review, which would be contrary to the express provision in 10 C.F.R. § 2.104(b)(2). First, the *Federal Register* Notices issued to date in the Grand Gulf ESP proceeding do not expressly direct the Licensing Board to make its determinations through a *de novo* review, nor imply such a result. The Commission issued the January 2004 Notice of Hearing pursuant to, *inter alia*, 10 C.F.R. Part 2 and did not specify an alternate standard of review.³³ Second, 10 C.F.R. § 2.104, which prohibits *de novo* review, is specifically identified in the March 2004 Notice establishing a Licensing Board in the proceeding.³⁴ Thus, the references in the Notices to Part 2 and Section 2.104, in particular, undercut any suggestion that the Commission determined otherwise and deemed a *de novo* review an appropriate standard of review in the uncontested hearing.

³³ 69 Fed. Reg. at 2636.

³⁴ See System Energy Resources, Inc.; Establishment of Atomic Safety and Licensing Board, 69 Fed. Reg. 15,911 (Mar. 26, 2004).

The mandate of the Licensing Board for the Grand Gulf ESP proceeding, as directed by 10 C.F.R. § 2.104(b) and its Notice of Hearing, is to determine the sufficiency of the compiled record and the adequacy of the Staff's analysis of the two safety issues and one NEPA issue. To make its findings in accordance with these directions, the Licensing Board need not, nor is it directed to, conduct a *de novo* review. In fact, to conduct a *de novo* review would be *ultra vires*, extending beyond the bounds of authority of the Licensing Board, because the Commission neither directed nor authorized the Licensing Board to conduct a *de novo* review.³⁵

Finally, *de novo* reviews of uncontested matters also are inconsistent with the Commission's 1998 Statement of Policy on Conduct of Adjudicatory Proceedings.³⁶ In the Policy Statement, the Commission emphasized the need to avoid unnecessary delays in the hearing processes and to promote the prompt and fair resolution of proceedings.³⁷ If the Licensing Board were to conduct a *de novo* review of the ESP application and associated documents (or parts thereof), the hearing would undoubtedly be delayed extensively – especially given that the Licensing Board does not have the technical staff to assist in such a detailed review.³⁸

³⁵ See *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 334-35 (1973) (“As we understand it, the intervenors would have the Licensing Board perform a complete, *de novo* independent review of the license application – completely disregarding the review already undertaken by the regulatory staff...for the Board to duplicate the role of the staff, or for it to perform independent basic research, is inconsistent with its adjudicatory role and beyond the scope of its delegated authority.”).

³⁶ Policy on Conduct of Adjudicatory Proceedings; Policy Statement, 63 Fed. Reg. 41,872 (Aug. 5, 1998). In addition, the Commission recently amended its Rules of Practice to “make the NRC’s hearing process more effective and efficient.” Changes to Adjudicatory Process, 69 Fed. Reg. 2182 (Jan. 14, 2004).

³⁷ *Id.* at 41,873.

³⁸ In promulgating 10 C.F.R. Part 52, the Commission expressed its goals to make the licensing of a nuclear power plant “more efficient” and to “reduce the procedural burden
(footnote continued)

D. NEPA Requirements

1. Scope of Board Review Responsibility Regarding
Three NEPA Baseline Findings

LBP-05-07 also certified to the Commission the question of the appropriate scope of review in making the three “baseline” NEPA findings required by 10 C.F.R. § 51.105(a)(1)-(3).³⁹ In doing so, the Panel questions whether the Licensing Boards must study the relevant parts of the record (such as the applicant’s environmental report and the Staff’s final environmental impact statement) and pose written or oral questions to the Staff and applicant in order to make an independent initial decision.⁴⁰ LBP-05-07 also questions the impact of *Calvert Cliffs*⁴¹ on a Licensing Board’s obligation to conduct a review of environmental issues.⁴²

As with safety findings, the Licensing Board is expected to rely on the record as supplemented by testimony, and not duplicate the in-depth environmental reviews conducted by the Staff.⁴³ In *Calvert Cliffs*, the court stated that “NEPA requires at least as much automatic consideration of environmental factors” as that considered for non-environmental factors, but that “[i]n uncontested hearings, the board need not necessarily go over the same ground covered

on NRC licensees by improving the reactor licensing process.” Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors, 54 Fed. Reg. 15,372, 15,378 and 15,385 (Apr. 18, 1989).

³⁹ LBP-05-07, slip op. at 13.

⁴⁰ *Id.*

⁴¹ *Calvert Cliffs’ Coordinating Comm., Inc. v. Atomic Energy Comm’n*, 449 F.2d 1109 (D.C. Cir. 1971).

⁴² LBP-05-07, slip op. at 12-13.

⁴³ SERI agrees with the USEC brief regarding the level of environmental review.

in the [FEIS].”⁴⁴ Rather, similar to its safety review, the Licensing Board need only determine whether the Staff’s review has been “adequate.”⁴⁵

Calvert Cliffs did not hold that the Licensing Board must conduct a *de novo* review, but only that the Licensing Board must consider environmental issues at least to the same extent that it would consider safety issues; *i.e.*, by reviewing and relying upon Staff and applicant testimony and examining the FEIS and Staff recommendations to make an independent decision on the baseline NEPA issues.⁴⁶ In arriving at an independent decision on environmental matters, the Licensing Board may, but is not required to, pose questions to the applicant and Staff or request that they submit additional information. As noted by the Appeal Board in *Consumers Power Co.*, *Calvert Cliffs* requires “no independent research by the Board; moreover [it does] not require the Board to duplicate the analysis previously performed by the staff.”⁴⁷

2. Scope of NEPA Baseline Finding Three

Finally, LBP-05-07 certified to the Commission two questions related to the NEPA baseline three finding set forth in Section 51.105(a)(3).⁴⁸ First, the Panel questions whether the failure to include the phrase “after considering reasonable alternatives” in the LES Notice was intended to create a distinction between the responsibilities of the LES and the ESP Licensing

⁴⁴ 449 F.2d at 1118.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Consumers Power Co.*, ALAB-123, 6 AEC at 335.

⁴⁸ 10 C.F.R. § 51.105 provides direction to the presiding officer for public hearings on the issuance of construction permits or licenses to manufacture. Section 51.105(a)(3) requires the presiding officer to “[d]etermine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or license to manufacture should be issued, denied, or appropriately conditioned to protect environmental values.”

Boards with regard to their findings on NEPA “baseline” issue three.⁴⁹ Second, the Panel questions whether the failure to include the additional phrase – “after weighing the environmental, economic, technical, and other benefits against environmental and other costs” – in the both the ESP and LES Notices was intended to further narrow the scope of NEPA review.⁵⁰

SERI takes no position, in response to the first question, regarding the scope of the Licensing Board’s review in the LES or USEC proceedings. As for the second question, SERI believes that the failure to include language from Section 51.105(a)(3) in the ESP Notices was intentional, and in full accord with ESP hearing requirements. Section 52.21 specifies the procedural requirements for a hearing on an ESP. That section specifies that an ESP is a partial construction permit which is subject to the procedural requirements in 10 C.F.R. Part 2 applicable to construction permits, “provided that the designated sections [of Part 2] may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of the proposed action.” Section 52.21, therefore, specifically limits the applicability of 10 C.F.R. § 51.105(a)(3), recognizing that an ESP need not address the benefits of the proposed action.

The regulation governing the content of the applicant’s environmental report complements Section 52.21. Specifically, 10 C.F.R. § 52.17(a)(2) requires a complete environmental report, except that:

[T]he report need not include an assessment of the benefits (for example, need for power) of the proposed action, but must include

⁴⁹ LBP-05-07, slip op. at 14.

⁵⁰ *Id.*

an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.⁵¹

The plain language of these provisions demonstrates that: (1) the scope of the Licensing Board's review in an ESP proceeding includes a review of certain alternatives; (2) the failure to include the additional wording of Section 51.105(a)(3) was specifically intended to narrow the scope of the environmental review; and (3) the Licensing Board need not weigh the benefits of the proposed action against environmental and other costs.⁵² This position is consistent with that set forth in the previous joint filings on the mandatory hearing process in the Dominion and Exelon ESP proceedings.⁵³

III. CONCLUSION

The Commission should address the questions certified in LBP-05-07 in a manner that recognizes the distinct roles of the NRC Staff and Licensing Boards in the licensing process, consistent with statutory and regulatory requirements, past agency practice, and NRC policy considerations underscoring the importance of a thorough, yet efficient, review of ESP applications. There is no requirement or need – and indeed no precedent – for a Licensing Board to duplicate detailed NRC Staff technical reviews or to adopt a hearing process that results in a dramatic impact on Licensing Board schedules, staffing, and resources. This conclusion applies

⁵¹ LBP-05-07 acknowledges this provision. *Id.*, slip op. at 13 n.14. *See also* 10 C.F.R. § 52.18.

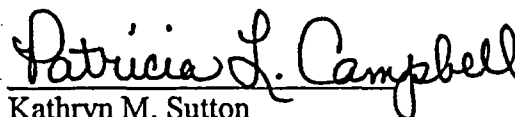
⁵² The appropriate weighing of costs and benefits would be conducted at the Combined License stage.

⁵³ Joint Memorandum on the Mandatory Hearing Process, Docket No. 52-008 (Oct. 8, 2004) (Dominion Nuclear North Anna, LLC); Joint Response of Exelon Generation Company and the NRC Staff to Licensing Board Request Regarding Mandatory Hearing Procedures for the Clinton Early Site Permit, Docket No. 52-007 (Sept. 17, 2004).

equally to Licensing Board review of uncontested matters in both contested and uncontested proceedings.

Respectfully submitted,

SYSTEM ENERGY RESOURCES, INC.

A handwritten signature in cursive script that reads "Patricia L. Campbell". The signature is written in dark ink and is positioned above the typed name and address.

Kathryn M. Sutton

Patricia L. Campbell

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Telephone: (202) 739-5738

Facsimile: (202) 739-3001

Dated at Washington, District of Columbia
this 18th day of May 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)

EXELON GENERATION COMPANY, LLC)

Docket No. 52-007-ESP

(Early Site Permit for Clinton ESP Site))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" in the captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 18th day of May 2005. Additional service has also been made this same day by electronic mail as shown below.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hrb@nrc.gov

Administrative Judge
Dr. Paul B. Abramson, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pba@nrc.gov

Administrative Judge
Dr. David L. Hetrick
8740 E. Dexter Dr.
Tucson, AZ 85715
E-mail: dlimwh@dakotacom.net

Administrative Judge
Dr. Anthony J. Baratta
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ajb5@nrc.gov

Ann P. Hodgdon, Esq.
Mauri T. Lemoncelli, Esq.
Darani M. Reddick, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: aph@nrc.gov; mtl1@nrc.gov;
dmr1@nrc.gov

Dave Kraft, Executive Director
Nuclear Energy Information Service
P.O. Box 1637
Evanston, IL 60204-1637
E-mail: neis@neis.org

Docket No. 52-007-ESP
SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE
TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service
1424 16th St., NW, Suite 404
Washington, DC 20036
E-mail: pgunter@nirs.org


Howard A. Learner, Esq.
Ann Alexander, Esq.
Shannon Fisk, Esq.
Environmental Law and Policy Center
35 E. Wacker Dr., Suite 1300
Chicago, IL 60601
E-mail: hlearner@elpc.org; aalexander@elpc.org;
sfisk@elpc.org

Steven P. Frantz, Esq.
Paul M. Bessette, Esq.
Alex S. Polonsky, Esq.
Annette M. Simon, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
E-mail: sfrantz@morganlewis.com;
pbessette@morganlewis.com;
apolonsky@morganlewis.com;
asimon@morganlewis.com

Michele Boyd
Public Citizen
215 Pennsylvania Ave., SE
Washington, DC 20003
E-mail: mboyd@citizen.org

Thomas S. O'Neill, Esq.
Associate General Counsel
Exelon Nuclear
4300 Winfield Rd.
Warrenville, IL 60555
E-mail: thomas.oneill@exeloncorp.com

Diane Curran, Esq.
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036
E-mail: dcurran@harmoncurran.com


Patricia L. Campbell
Counsel for System Energy Resources, Inc.

Dated: May 18, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)

DOMINION NUCLEAR)
NORTH ANNA, LLC)

(Early Site Permit for North Anna ESP Site))

Docket No. 52-008-ESP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" in the captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 18th day of May 2005. Additional service has also been made this same day by electronic mail as shown below.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hrb@nrc.gov

Thomas S. Elleman
Administrative Judge, ASLBP
5207 Creedmoor Rd.
Raleigh, NC 27612-6303
E-mail: elleman@eos.ncsu.edu

Robert M. Weisman, Esq.
Brooke D. Poole, Esq.
Michael A. Woods, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rmw@nrc.gov; bdp@nrc.gov;
maw2@nrc.gov

Administrative Judge
Alex S. Karlin, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ask2@nrc.gov

Administrative Judge
Richard F. Cole
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: rfl1@nrc.gov

Diane Curran, Esq.
Harmon, Curran, Spielberg,
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

Docket No. 52-008 ESP
SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE
TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

David R. Lewis, Esq.
Robert B. Haemer, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037
E-mail: david.lewis@pillsburylaw.com;
robert.haemer@pillsburylaw.com

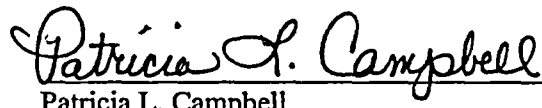
Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service
1424 16th St., NW, Suite 404
Washington, DC 20036
E-mail: pgunter@nirs.org

Richard A. Parrish, Esq.
Morgan W. Butler, Esq.
Southern Environmental Law Center
201 West Main Street
Charlottesville, VA 22902
E-mail: rparrish@selcva.org; mbutler@selcva.org

Lillian M. Cuoco, Esq.
Senior Counsel
Dominion Resources Services, Inc.
Rope Ferry Road
Waterford, CT 06385
E-mail: lillian_cuoco@dom.com

Michele Boyd
Public Citizen
215 Pennsylvania Ave., SE
Washington, DC 20003
E-mail: mboyd@citizen.org

Jonathan M. Rund, Esq.
Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: jmr3@nrc.gov


Patricia L. Campbell
Counsel for System Energy Resources, Inc.

Dated: May 18, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

SYSTEM ENERGY RESOURCES, INC.

Docket No. 52-009-ESP

(Early Site Permit for Grand Gulf ESP Site)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" in the captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 18th day of May 2005. Additional service has also been made this same day by electronic mail as shown below.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hrb@nrc.gov

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gpb@nrc.gov

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pba@nrc.gov

Administrative Judge
Anthony J. Baratta
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ajb5@nrc.gov

Docket No. 52-009-ESP
SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE
TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

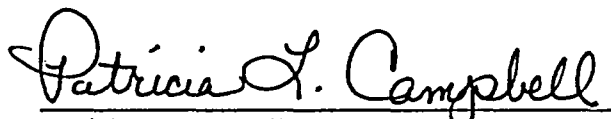
Antonio Fernández, Esq.
Robert M. Weisman, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: axf2@nrc.gov; rmw@nrc.gov

Diane Curran, Esq.
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

*Original and 2 copies

Secretary of the Commission*
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738
(E-mail: HEARINGDOCKET@nrc.gov)

Kathryn M. Sutton, Esq.
Patricia L. Campbell, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
E-mail: ksutton@morganlewis.com;
pcampbell@morganlewis.com


Patricia L. Campbell
Counsel for System Energy Resources, Inc.

Dated: May 18, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)

LOUISIANA ENERGY SERVICES, L.P.)

(National Enrichment Facility))

Docket No. 70-3103-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" in the captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 18th day of May 2005. Additional service has also been made this same day by electronic mail as shown below.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hrb@nrc.gov

Administrative Judge
G. Paul Bollwerk, III, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gpb@nrc.gov

Administrative Judge
Paul B. Abramson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: pba@nrc.gov

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: cnk@nrc.gov

Lisa B. Clark, Esq.
John T. Hull, Esq.
Darani M. Reddick, Esq.
David A. Cummings, Esq.
Kathleen A. Kannler, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: lbc@nrc.gov; jth@nrc.gov;
dmr1@nrc.gov; dac3@nrc.gov; kak1@nrc.gov

Tannis L. Fox, Esq.
Deputy General Counsel
Office of General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, NM 87502-6110
E-mail: tannis_fox@nmenv.state.nm.us

Docket No. 70-3103-ML
SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE
TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

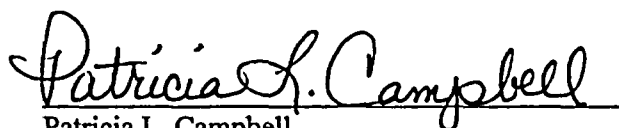
James R. Curtiss, Esq.
David A. Repka, Esq.
Martin J. O'Neill, Esq.
Winston & Strawn LLP
1700 K Street, NW
Washington, DC 20006
E-mail: jcurtiss@winston.com;
drepka@winston.com; moneill@winston.com

Lindsay A. Lovejoy, Jr.
618 Paseo de Peralta, Unit B
Santa Fe, NM 87501
E-mail: lindsay@lindsaylovejoy.com

John W. Lawrence, Esq.
Louisiana Energy Services, L.P.
2600 Virginia Ave., NW, Suite 610
Washington, DC 20037
E-mail: jlawrence@nefnm.com

David M. Pato, Esq.
Stephen R. Farris, Esq.
Christopher D. Coppin, Esq.
Assistant Attorneys General
Glenn R. Smith, Esq.
Deputy Attorney General
Office of the New Mexico Attorney General
P.O. Box Drawer 1508
Santa Fe, NM 87504-1508
E-mail: dpato@ago.state.nm.us;
sfarris@ago.state.nm.us; gsmith@ago.state.nm.us;
ccoppin@ago.state.nm.us

Lisa A. Campagna, Esq.
Assistant General Counsel
Westinghouse Electric Company LLC
P.O. Box 355
Pittsburgh, PA 15230-0355
E-mail: campagla@westinghouse.com


Patricia L. Campbell
Counsel for System Energy Resources, Inc.

Dated: May 18, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of

USEC Inc.

(American Centrifuge Plant)

)

)

)

)

)

Docket No. 70-7004

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" in the captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 18th day of May 2005. Additional service has also been made this same day by electronic mail as shown below.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: hrb@nrg.gov

Marian L. Zobler, Esq.
Sara E. Brock, Esq.
Melissa L. Duffy, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: mlz@nrc.gov; seb2@nrc.gov;
mld5@nrc.gov

Dennis J. Scott, Esq.
USEC Inc.
6903 Rockledge Drive
Bethesda, MD 20817
E-mail: scottd@usec.com

Chief Administrative Judge
G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gpb@nrc.gov

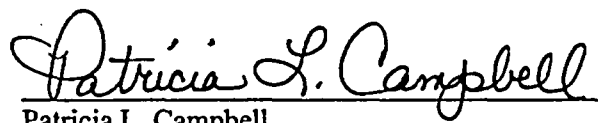
Donald J. Silverman, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20005
E-mail: dsilverman@morganlewis.com

Geoffrey Sea
340 Haven Avenue, Apt. 3C
New York, NY 10033
E-mail: geoffreyseanyc@aol.com

Docket No. 70-7004
SYSTEM ENERGY RESOURCES, INC. BRIEF IN RESPONSE
TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

Vina K. Colley
Portsmouth/Piketon Residents for Environmental
Safety and Security (PRESS)
3706 McDermott Pond Creek
McDermott, OH 45652
E-mail: vcolley@earthlink.net

Ewan Todd
403 E. Oakland Avenue
Columbus, OH 43202
Email: ewan@mathcode.net


Patricia L. Campbell
Counsel for System Energy Resources, Inc.

Dated: May 18, 2005