

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

Dated: May 17, 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

**EXELON BRIEF IN RESPONSE TO
COMMISSION MEMORANDUM AND ORDER (CLI-05-09)**

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**EXELON BRIEF IN RESPONSE TO
COMMISSION MEMORANDUM AND ORDER (CLI-05-09)**

I. INTRODUCTION

Exelon Generation Company (“Exelon”) hereby submits its brief in response to the Nuclear Regulatory Commission’s April 20, 2005 Memorandum and Order in the above-captioned proceedings.¹ Presented below are Exelon’s views on the questions certified to the Commission by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel (“ASLBP”) relating to the mandatory hearing requirements in NRC regulations and applicable case-specific Notices of Hearing.²

II. SUMMARY OF EXELON’S POSITION

The ASLBP Memorandum states that “three distinct” views were propounded by the applicants in the above-captioned proceedings (except for the USEC American Centrifuge Plant proceeding) on appropriate procedures to be used in conducting mandatory hearings, some in “stark contrast” with others.³ With all due respect, Exelon disagrees with the ASLBP that there are any material differences in the views of the applicants and NRC Staff regarding the conduct of mandatory hearings. In fact, Exelon believes there is broad consensus among the parties that the Licensing Board’s review of uncontested matters (in both contested and uncontested proceedings) should be based upon the following principles:

- The Licensing Board should not conduct a *de novo* review of the application and record of the proceeding, and should not duplicate the review of the NRC Staff.

¹ *Exelon Generation Co.*, CLI-05-09, 61 NRC __, slip op. (Apr. 20, 2005).

² *Exelon Generation Co.*, LBP-05-07, 61 NRC __, slip op. (Mar. 18, 2005) (“ASLBP Memorandum”).

³ *Id.* at 7–8.

- The Licensing Board should review the application and the record to ensure that they contain sufficient information to support the NRC Staff's findings, and should review the NRC Staff's safety evaluation report ("SER") and environmental impact statement ("EIS") to ensure that the Staff's review has been adequate.
- To the extent that the Licensing Board has questions regarding the sufficiency of the application or the adequacy of the Staff's review, it may ask questions. These questions may be answered by written submissions to the Board or testimony in the hearing.
- In making findings on uncontested matters, the Licensing Board should rely upon the testimony submitted by the NRC Staff and applicant; information in the application, SER, and EIS; and the conclusions of the Advisory Committee on Reactor Safeguards ("ACRS").⁴

Exelon also believes that the ASLBP misinterpreted Exelon's position in its response to the Licensing Board request regarding mandatory hearing procedures for the Clinton ESP. In that response, Exelon did not state that the Board's conclusions regarding safety and environmental matters must be based upon a "thorough review" of the application, the SER, the final EIS ("FEIS"), and the ACRS recommendations.⁵ Rather, Exelon stated that the Licensing Board "should review and become familiar with" the application, SER, FEIS, and ACRS report prior to the hearing.⁶ In particular, Exelon believes the Licensing Board can conduct its review using only a small fraction of the 1000 hours suggested by the ASLBP.⁷

⁴ The Joint Response of Exelon Generation Company and the NRC Staff to Licensing Board Request Regarding Mandatory Hearing Procedures for the Clinton Early Site Permit, Sept. 17, 2004 ("Clinton Joint Response"), at 5-9, identifies the standard findings that Licensing Boards typically made in construction permit ("CP") proceedings, modified to account for the more limited nature of Early Site Permit ("ESP") proceedings. These findings are very general, and we believe that these findings can be made without any extensive review of the record, based largely upon the written testimony to be supplied by the applicant and NRC Staff. It appears that the ASLBP was under the misimpression that it would need to conduct extensive reviews to make these findings.

⁵ Cf. ASLBP Memorandum at 8.

⁶ Clinton Joint Response at 4.

⁷ ASLBP Memorandum at 14, n. 15.

III. EXELON'S POSITION ON CERTIFIED QUESTIONS

Although the above-captioned proceedings will involve the first mandatory hearings held by a Licensing Board in approximately two decades, the questions raised by the ASLBP regarding hearing procedures are not new. An ESP is considered to be a partial Construction Permit under 10 C.F.R. § 52.21 and is subject to the applicable procedural requirements in Part 2 related to Construction Permits. Therefore, the many Commission and Licensing Board decisions governing the conduct of mandatory Construction Permit hearings provide relevant guidance on these questions.

Exelon's views on the specific certified questions are presented below.

A. Scope of Licensing Board Review

The ASLBP notes that for uncontested proceedings, the ESP Hearing Notices require the Licensing Board to make "determinations" regarding the sufficiency of the information in the license application and record and the adequacy of the NRC Staff review, while in contested proceedings, those Notices call for the Licensing Board to "consider" the merits of the relevant safety and environmental issues.¹ The ASLBP characterizes this difference in language between contested and uncontested proceedings as "the difference between a Board acting as an initial decisionmaker as opposed to being a reviewer of the activities of the applicant and staff."²

¹ In actuality, the Clinton ESP Hearing Notice uses the word "consider" only with respect to "the final balance among the conflicting factors" in the environmental record. With respect to both safety and environmental issues in uncontested proceedings, the Clinton Hearing Notice states that the Licensing Board will determine whether the record contains sufficient information and the Staff's review has been adequate. 68 *Fed. Reg.* 69426, 69427 (Dec. 12, 2003). Although the Notice refers to "uncontested proceedings," there is no reason to believe that the Board's review should be different for uncontested matters in contested proceedings.

² ASLBP Memorandum at 10.

In summary, Exelon does not believe that there is any substantive distinction between the terms “determine” and “consider.” Past Licensing Board decisions in mandatory Construction Permit proceedings clearly demonstrate that, with respect to uncontested matters in both contested and uncontested proceedings, the Licensing Boards have consistently focused and relied heavily on Staff and applicant testimony and the fundamental licensing documents, and have been able to render all of the requisite Board findings without either a *de novo* review of the application materials or an extensive and time consuming hearing process.¹⁰ Exelon believes the same approach should apply to ESP and other mandatory proceedings.

Specifically, in any proceeding, the initial decision maker is the NRC Staff. The NRC Staff’s review of the application is the central mechanism for ensuring that the NRC has satisfied its statutory and regulatory responsibilities related to safety and environmental issues. The Licensing Board should consider the findings made by the NRC Staff, determine whether the application and record contain sufficient information, and determine whether the Staff’s review has been adequate. The Board should not act as an “initial decision maker” or conduct a full “merits” review of uncontested matters, whether part of a contested or uncontested proceeding.¹¹

¹⁰ *E.g., Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-72-26, 5 AEC 120 (1972); *Georgia Power Co.* (Edwin I. Hatch Nuclear Power Plant, Unit No. 2), LBP-72-36, 5 AEC 242 (1972); *Mississippi Power & Light Co.* (Grand Gulf Nuclear Station, Units 1 and 2), LBP-74-64, 8 AEC 339 (1974); *Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-78-4, 7 NRC 92 (1978); *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 334–35 (1973), rev’d on other grounds, *Aeschliman v. NRC*, 547 F.2d 622 (D.C. Cir. 1976), rev’d, *Vi. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519 (1978).

¹¹ Exelon’s specific recommendations on how to conduct such a review were included in the Clinton Joint Response. Exelon also concurs with the recommendations provided by USEC Inc. regarding the conduct of Licensing Board reviews in its Brief in Response to Commission Memorandum and Order (CLI-05-09), May 4, 2005, at 6.

This view is supported by the decision of the Court of Appeals for the District of Columbia Circuit in *Union of Concerned Scientists*.¹² In that decision, the court considered language that directed the Licensing Board to “determine” whether the application and the record of the proceeding contain sufficient information, and whether the review of the application by the Commission’s regulatory staff has been adequate, to support the findings proposed by the NRC Staff. The Court stated that, in both uncontested and contested proceedings, the Licensing Board is

not to make the findings itself, but to determine “whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission’s regulatory staff has been adequate to support the findings proposed to be made by the Director of [Nuclear Reactor] Regulation.”¹³

The court clarified further that the “role of the ASLB is not to compile a record; it is to review a record already compiled by the Staff and [Advisory Committee on Reactor Safeguards (ACRS)], who have responsibility for the sufficiency of that record.”¹⁴

This view is also supported by a decision of the Appeal Board in *Consumers Power Co.* with respect to uncontested matters in a contested proceeding. The Appeal Board held that a Licensing Board is expected

to assure itself that the regulatory staff’s review has been adequate, and to inquire further into areas where it may perceive problems or find a need for elaboration. If it finds itself not satisfied with the adequacy or completeness of the staff review, or the evidence presented in support of the license application, it may, for example, reject the application, or may require further development of the record to support such application. . . . *But for the Board to duplicate the role of the staff, or for it to perform independent basic*

¹² *Union of Concerned Scientists v. AEC*, 499 F.2d 1069, 1076 (D.C. Cir. 1974).

¹³ *Id.*

¹⁴ *Id.* at 1078.

*research, is inconsistent with its adjudicatory role and beyond the scope of its delegated authority.*¹⁵

In summary, Licensing Boards should not conduct a *de novo* review of uncontested matters.

B. Contested Proceeding v. Contested Matter

The ASLBP asks whether a proceeding as a whole should be considered as “contested” or “uncontested,” or whether those categorizations instead should be applied to portions of a proceeding, depending on whether or not they encompass matters that were the subject of admitted party contentions.¹⁶ The ASLBP points out that the “plain language of the agency’s regulations does not . . . distinguish between the ‘portions’ of a contested proceeding.”¹⁷

It is common to categorize a proceeding as “contested” or “uncontested” depending on whether it involves admitted contentions.¹⁸ However, as discussed in III.A above, the categorization of a proceeding as contested or uncontested does not dictate how the entire proceeding shall be conducted or how all issues are to be considered. With respect to uncontested matters in both contested and uncontested proceedings, the Appeal Board has ruled that a Licensing Board should not duplicate the Staff’s review but instead should determine whether the Staff’s review has been adequate.¹⁹ A

¹⁵ *Consumers Power Co.*, 6 AEC at 335 (emphasis added).

¹⁶ ASLBP Memorandum at 11.

¹⁷ *Id.* at 10.

¹⁸ See 10 C.F.R. § 2.104. See e.g., *Washington Pub. Power Supply Sys.* (WPPSS Nuclear Project, Nos. 3 and 5), LBP-78-14, 7 NRC 599, 602 (1978) (noting that the proceeding is “not a contested proceeding” since no intervention petitions were granted).

¹⁹ *Gulf States Utils. Co.* (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 774 (1977).

Licensing Board should rely on Staff and applicant testimony and the fundamental licensing documents to determine whether the application has sufficient information and the Staff's review has been adequate, and render the requisite findings.

Furthermore, as a practical matter, there is no reason for a Licensing Board's review of uncontested matters to be different in contested proceedings than in uncontested proceedings. In both types of proceedings, the Licensing Board will have the same information available to support its findings. As a result, the nature of the board's review should be the same.

Finally, Licensing Boards are not equipped to perform a *de novo* review of the application and the Staff's licensing documents. A Licensing Board simply does not have sufficient resources or depth of experience to perform a *de novo* review. As stated in *Union of Concerned Scientists*, from a practical perspective, "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."²⁰ Thus, given its composition and nature, a Licensing Board must rely upon the technical information provided by the applicant and NRC Staff in the board's review of uncontested matters, and the board's review should be focused on ensuring that the application has sufficient information and that the Staff's review has been adequate.

This principle was discussed at length in *Union of Concerned Scientists*. As the court stated:

whether the proceeding is uncontested or contested, [the licensing board's] mandate is to review the sufficiency of the record and the adequacy of the analysis to support the necessary findings. Adding to that responsibility in a contested case the authority to resolve

²⁰ *Union of Concerned Scientists v. AEC*, 499 F.2d at 1077.

disputes in no way affects the ASLB's authority respecting uncontested matters.²¹

Therefore, in both uncontested and contested proceedings, the Licensing Board's review of uncontested matters should be identical—the Licensing Board should not conduct a *de novo* review of the record.

C. *De Novo* Licensing Board Review of Application

The ASLBP asks whether the Licensing Board should undertake a *de novo* review of certain matters in an uncontested ESP proceeding. The ASLBP notes that while the LES Hearing Notice clearly states that no *de novo* review is required, the ESP Hearing Notices are silent on this issue.²²

The ESP Hearing Notices do not explicitly prohibit *de novo* reviews of uncontested issues in either contested or uncontested proceedings. Nevertheless, there is no regulatory precedent or support for conducting such reviews in Construction Permit proceedings. As noted in *Consumers Power Co.*, “with respect to uncontroverted matters, the board is neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the testimony of the regulatory staff and the applicant, and the conclusions of the ACRS[.]”²³ In fact, Exelon is not aware of any proceedings where a Licensing Board conducted a *de novo* review of uncontested matters in Construction Permit proceeding.

²¹ *Id.*

²² ASLBP Memorandum at 11.

²³ *Consumers Power Co.*, 6 AEC at 335.

De novo reviews of uncontested matters also appear to be inconsistent with the Commission's 1998 Statement of Policy on Conduct of Adjudicatory Proceedings.²⁴ 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. If the Licensing Board was to conduct a *de novo* review of the ESP application and/or 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.²⁵

In summary, we do not believe that the Licensing Board's review of uncontested matters should be different in ESP proceedings than in Part 70 proceedings. In either type of proceeding, it would be inappropriate for the Licensing Board to conduct a *de novo* review of uncontested matters.

D. NEPA Requirements

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

The ASLBP asks whether it is appropriate for the Licensing Board to act as the "reviewer" of the NRC Staff and applicant conclusions on the baseline National Environmental Policy Act ("NEPA") findings that are not the subject of a contested issue, or whether in light of the *Calvert Cliffs* decision,²⁶ the Licensing Board must

²⁴ Statement of Policy on Conduct of Adjudicatory Proceedings, 63 Fed. Reg. 41872 (Aug. 5, 1998).

²⁵ Exelon believes that the ASLBP's estimate that a full review of the application followed by hearings on the issues will consume "not less than 1000 person hours (and perhaps double that for complicated applications)" may be understated. The NRC Staff review of the same documents has taken nearly two years and involved numerous members of the NRC technical staff.

²⁶ *Calvert Cliffs' Coordinating Comm., Inc. v. AEC*, 449 F.2d 1109 (D.C. Cir. 1971).

study the relevant parts of the record, such as the applicant's environmental report and the staff's FEIS, pose written or oral questions to the staff and applicant, request that they submit additional information, and conduct whatever hearings that may be deemed necessary to resolve any questions or concerns, so that the Board can make an independent initial decision on each "baseline" NEPA Issue.²⁷

Exelon believes that the ASLBP has taken certain statements from *Calvert Cliffs* regarding the scope of the Board's review out of context. In *Calvert Cliffs* the D.C. Circuit reviewed a newly adopted set of AEC regulations designed to comply with NEPA, which had been promulgated about two years earlier. While the AEC rules provided for the preparation of an Environmental Report ("ER") by an applicant and an EIS by the NRC Staff, the rules precluded the Licensing Board from reviewing the applicant and Staff conclusions in an uncontested proceeding. In particular, those rules provided that:

[w]hen no party to a proceeding . . . raises any [environmental] issue . . . such issues will not be considered by the atomic safety and licensing board. . . . [The ER and EIS] will not be received in evidence, and the Commission's responsibilities under [NEPA] will be carried out in toto outside the hearing process.²⁸

In contrast, the rules required the Licensing Board to conduct reviews and make findings on uncontested safety issues. Thus, the court considered "whether the Commission is correct in thinking that its NEPA responsibilities may 'be carried out in toto outside the hearing process.'"²⁹

In reviewing the Commission's interpretation of its NEPA responsibilities, the

²⁷ ASLBP Memorandum at 13.

²⁸ *Calvert Cliffs*, 449 F.2d at 1117 (quoting 10 CFR Part 50, Appendix D at 249) (emphasis added).

²⁹ *Id.*

court ruled that a regulation prohibiting any Licensing Board review of applicant and Staff NEPA conclusions in an uncontested proceeding was inconsistent with NEPA. The court held that the Licensing Board, while requiring a review of uncontested safety issues, must treat the baseline NEPA findings like the other safety findings it is required to make.³⁰ Furthermore, in describing what it viewed as the appropriate role of the Licensing Board in an uncontested proceeding, the court repeatedly made clear that the Board should act in a “reviewer” mode and should not duplicate the NRC Staff effort.³¹

In other words, *Calvert Cliffs* did not hold that the Board must conduct a *de novo* review, but only that the 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 the fundamental licensing documents to make an independent decision on the baseline NEPA issues. 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.”³²

In summary, the Licensing Board’s review of uncontested environmental issues should not differ from its review of uncontested safety issues. Neither type of issue should be subject to *de novo* review.

³⁰ *Id.* at 1118.

³¹ *Id.*

³² *Consumers Power Co.*, 6 AEC at 335.

2. Scope of NEPA “Baseline” Finding Three

In mandatory hearings, the Licensing Board must make determinations regarding the three 10 C.F.R. § 51.105(a)(1)-(3) “baseline” NEPA findings. The ASLBP asks two questions pertaining to the Licensing Board’s determination of whether the license should be issued, denied, or appropriately conditioned to protect environmental values (baseline finding three). First, the ASLBP asks whether the failure to include the phrase “after considering reasonable alternatives” in the LES Notice of Hearing was intended to create a distinction between responsibilities of the LES and ESP Licensing Boards with regard to their findings on NEPA baseline issue three.³³ Second, the ASLBP asks whether the failure to include the additional wording in section 51.105(a)(3) in both the ESP and LES Hearing Notices is intended to narrow the scope of the Licensing Boards’ review of NEPA baseline finding three.³⁴

Exelon takes no position on the scope of the Licensing Board’s review in the LES (or USEC) proceedings. Exelon believes, however, that it was appropriate to exclude the additional wording of section 51.105(a)(3), which requires the Board to weigh “the environmental, economic, technical, and other benefits against environmental and other costs,” from the ESP Notices of Hearing. As the ASLBP recognizes, 10 C.F.R. § 52.18 states that the environmental review for an ESP does not require an assessment of the benefits (*e.g.*, need for power) of the proposed action. Without a benefits analysis prepared by either the applicant or NRC Staff, a Licensing Board would be unable to appropriately weigh the benefits of the project against environmental and other costs (*i.e.*,

³³ ASLBP Memorandum at 14.

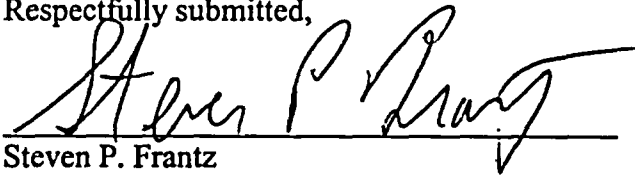
³⁴ *Id.*

perform a cost-benefits analysis). The cost-benefits analysis will, however, be conducted as part of the combined operating license application as required by 10 C.F.R. § 52.79.

IV. CONCLUSION

In its Memorandum, the ASLBP has focused on minor differences in wording in the Hearing Notices for the ESP and LES proceedings and in applicable regulations. Exelon does not believe that these minor differences were intended to affect the substance of the Licensing Board's review of uncontested matters in either contested or uncontested proceedings. Further, Exelon believes there is broad consensus among the parties that the Licensing Board's review of uncontested matters should be identical in both uncontested and contested proceedings—the Licensing Board should not conduct a *de novo* review of uncontested matters.

Respectfully submitted,



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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)

Docket No. 52-007

EXELON GENERATION COMPANY, LLC)

ASLBP No. 04-821-01-ESP

(Early Site Permit for the Clinton ESP Site))
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "EXELON BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" have been served as shown below by deposit in the United States mail, first class, this 17th day of May, 2005. Additional service has also been made this same day by electronic mail as shown below.

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Docket No. 52-007
EXELON BRIEF IN RESPONSE TO COMMISSION
MEMORANDUM AND ORDER (CLI-05-09)

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**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 "EXELON BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" have been served as shown below by deposit in the United States mail, first class, this 17th day of May, 2005. Additional service has also been made this same day by electronic mail as shown below.

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Docket No. 52-008-ESP
EXELON BRIEF IN RESPONSE TO COMMISSION
MEMORANDUM AND ORDER (CLI-05-09)

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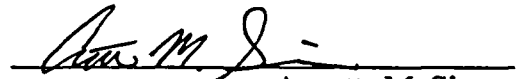
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)

SYSTEM ENERGY RESOURCES, INC.)
)

(Early Site Permit for Grand Gulf ESP Site))
)

Docket No. 52-009-ESP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "EXELON BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" have been served as shown below by deposit in the United States mail, first class, this 17th day of May, 2005. Additional service has also been made this same day by electronic mail as shown below.

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Docket No. 52-009-ESP
EXELON BRIEF IN RESPONSE TO COMMISSION
MEMORANDUM AND ORDER (CLI-05-09)

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**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 "EXELON BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" have been served as shown below by deposit in the United States mail, first class, this 17th day of May, 2005. Additional service has also been made this same day by electronic mail as shown below.

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Docket No. 70-7004
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**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 "EXELON BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" have been served as shown below by deposit in the United States mail, first class, this 17th day of May, 2005. Additional service has also been made this same day by electronic mail as shown below.

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Docket No. 70-3103-ML
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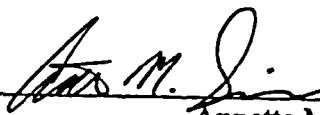
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Docket No. 70-3103-ML
EXELON BRIEF IN RESPONSE TO COMMISSION
MEMORANDUM AND ORDER (CLI-05-09)

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