

RAS 10001

May 18, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

May 18, 2005 (12:09pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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LOUISIANA ENERGY SERVICES, L.P. BRIEF IN RESPONSE
TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)

I. BACKGROUND

Louisiana Energy Services, L.P. ("LES") hereby submits its response in accordance with the Commission's April 20, 2005 Memorandum and Order (CLI-05-09).¹ In CLI-05-09, the Commission granted review of certain questions certified by the Atomic Safety and Licensing Board Panel regarding the "mandatory hearing" requirements in NRC enabling legislation, regulations, and applicable case-specific Notices of Hearing.² The Commission also granted a motion filed by USEC, Inc. ("USEC"), thereby allowing USEC to present its views on the certified questions.³ In doing so, the Commission granted LES, along with other parties to the above-captioned proceedings, an opportunity to file response briefs that "may address both USEC's brief and the points the Chief Judge raised in LBP-05-07."⁴ The Commission advised the responding parties that they "need not repeat arguments already raised in the records before the various Boards in these proceedings."⁵ With these directives in mind, LES responds as follows.

II. DISCUSSION

First, LES notes that its views regarding the proper scope of the Licensing Board's "mandatory hearing" review, and the procedures to be used in conducting that review,

¹ *Exelon Generation Co. LLC et al.*, CLI-05-09, 61 NRC ___, slip. (Apr. 20, 2005).

² *See Exelon Generation Co. LLC et al.*, LBP-05-07, 61 NRC ___, slip op. (Mar. 18, 2005).

³ *See* "Motion for Leave to Submit Views on 10 C.F.R. Part 2 Certified Questions" (Mar. 28, 2005).

⁴ CLI-05-09, 61 NRC ___, slip op. at 3.

⁵ *Id.*

were generally set forth in a July 29, 2004 joint status report filed by LES and the NRC Staff.⁶ LES respectfully requests that the Commission review the views of LES as set forth in that report.

Second, LES has reviewed the prior submittals of the Early Site Permit ("ESP") applicants. LES agrees with USEC that these submittals, when read in conjunction with LES's own submittal of July 29, 2004, reflect a "broad consensus" on the fundamental procedures to be utilized in conducting mandatory hearings.

Third, LES believes that USEC has correctly identified the fundamental principles governing the conduct of a mandatory hearing. For the most part, the principles delineated by USEC largely echo those identified by LES in its July 2004 submittal. Those principles warrant recapitulation here. In sum, the Licensing Board need not, and should not, conduct a *de novo* review of the relevant license applications and licensing records, nor should it engage in an expensive and time-intensive review process that duplicates the NRC Staff's in-depth technical and environmental reviews. Rather, the Licensing Board should confirm that the license application and overall record are sufficient to support the NRC Staff's licensing determination, and that the Staff's review has been adequate. The Board can, and should, meet this obligation by relying primarily on summary-level testimony submitted by the applicants and NRC Staff.

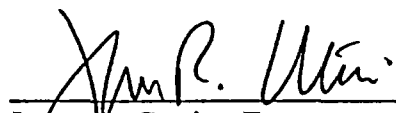
Finally, LES has reviewed USEC's detailed response to the Board's certified questions. LES concurs fully with the views expressed by USEC in its brief, particularly insofar as they amplify and/or clarify the overarching principles discussed above. Accordingly, LES does not find it is necessary to provide any separate or additional responses to the Board's certified questions.

⁶ See "Joint Status Report Regarding the Parties' Proposed Discovery Plan and Other Adjudicatory Process Issues" (July 29, 2004).

III. CONCLUSION

For the foregoing reasons, LES believes that the existing records in the above-captioned proceedings contain sufficient information to address the Board's certified questions on the conduct of "mandatory hearings." Moreover, LES is in full agreement with the specific responses proffered by USEC in response to the Board's questions.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

EXELON GENERATION COMPANY, LLC

(Early Site Permit for Clinton ESP Site)

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Docket No. 52-007-ESP

CERTIFICATE OF SERVICE

I hereby certify that copies of the "LOUISIANA ENERGY SERVICES, L.P. BRIEF IN RESPONSE TO COMMISSION MEMORANDUM AND ORDER (CLI-05-09)" in the captioned proceeding have been served on the following by e-mail service, designated by **, on May 18 2005 as shown below. Additional service has been made by deposit in the United States mail, first class, this 18th day of May 2005.

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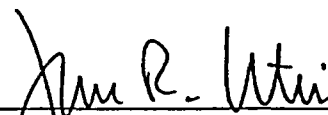
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

DOMINION NUCLEAR NORTH ANNA, LLC

(Early Site Permit for North Anna ESP Site)

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Docket No. 52-008-ESP

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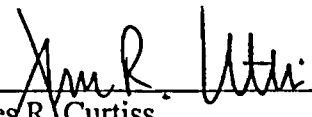
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	Docket No. 52-009-ESP
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SYSTEM ENERGY RESOURCES, INC.)	
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(Early Site Permit for Grand Gulf ESP Site))	

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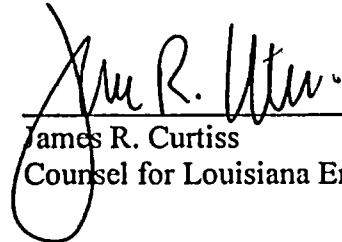
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(National Enrichment Facility))	

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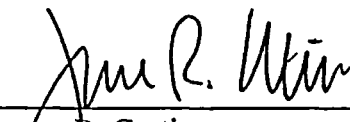
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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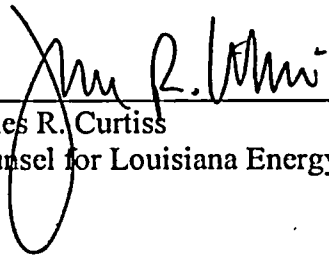
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