

May 2, 2006 (7:45am)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SYSTEM ENERGY RESOURCES, INC.	)	Docket No. 52-009-ESP
	)	
(Early Site Permit for Grand Gulf ESP Site)	)	ASLBP No. 04-823-03-ESP
	)	
	)	May 1, 2006

SYSTEM ENERGY RESOURCES INC.'S MOTION FOR CLARIFICATION

INTRODUCTION

On April 19, 2006, the Atomic Safety and Licensing Board ("Board") in this proceeding issued an Order requesting, among other things, documents and briefings to facilitate the Board's preparation for the mandatory hearing requirement for System Energy Resources, Inc.'s ("SERI's") application for an Early Site Permit ("ESP") for the Grand Gulf ESP site.<sup>1</sup> Pursuant to the Board's Order and 10 CFR § 2.323, SERI respectfully requests clarification of certain aspects of the Order including the order and timing of the submissions for the mandatory hearing, as well as the preliminary proposed findings of fact and conclusions of law.

BACKGROUND

The Board's Order in support of the mandatory hearing includes four key milestones. First, the Board directs the Nuclear Regulatory Commission ("NRC") Staff ("Staff") to submit by June 5, 2006, hard and electronic copies of certain NRC Staff and SERI documents regarding SERI's ESP application described in Items 1 through 7 of the Order, as well as a narrative summary identifying regulatory guidance documents that were used, or are being used, in the

<sup>1</sup> See Order (Request for Documents and Briefings), unpublished Order, dated April 19, 2006.

Staff's review of SERI's ESP application.<sup>2</sup> Second, within 30 days of the Staff's initial submission (approximately July 5, 2006), the Order permits SERI to file any exceptions, additions, or objections to the Staff's submission. Third, within 60 days of submission of the Staff's narrative summary (August 4, 2006), the Staff is to file preliminary proposed findings of fact and conclusions of law. Fourth, within 30 days of the Staff's filing of its preliminary proposed findings of fact and conclusions of law (September 3, 2006), the Order permits SERI to file any exceptions, additions, or objections to the Staff's preliminary proposed findings and conclusions.

### DISCUSSION

The NRC Staff has issued a proposed schedule for its review and approval of SERI's ESP application.<sup>3</sup> That schedule indicates that the Board will issue its initial decision on the application in September 2006. Thus, SERI anticipates that the mandatory hearing will be held prior to September 2006, to allow sufficient time for the Board to issue its initial decision in accordance with the NRC's published schedule, and respectfully requests clarification from the Board as to when and how it plans to conduct the mandatory hearing.<sup>4</sup>

In addition, based on SERI's review of past precedent and the Commission's July 28, 2005 Memorandum and Order regarding the conduct of uncontested mandatory hearings,<sup>5</sup> SERI anticipates that the mandatory hearing process will, in general, begin with the production of

---

<sup>2</sup> In discussing this Motion with the NRC Staff pursuant to 10 CFR § 2.323(b), SERI has agreed to provide copies of the Grand Gulf ESP application, as well as the Staff's Requests for Additional Information ("RAIs") and SERI's responses thereto.

<sup>3</sup> See <http://www.nrc.gov/reactors/new-licensing/esp/grand-gulf.html#review>.

<sup>4</sup> See *Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site) et al.*, CLI-05-17, 62 NRC 5 (2005), fn. 88 (noting that a sufficiency review of uncontested issues may prove suited to NRC staff summaries of key safety and environmental findings, along with Staff and Applicant witnesses prepared to answer Board inquiries. Or, if the uncontested issues prove relatively straightforward, a simple "paper" review may suffice.).

<sup>5</sup> *Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site) et al.*, CLI-05-17, 62 NRC 5 (2005).

certain documents relevant to the proceeding (*e.g.*, the license application, RAIs, Safety Evaluation Report, Environmental Impact Statement) and, after the Board's preliminary review of such documentation, a prehearing conference or Order identifying those areas for further inquiry and review. SERI anticipates that it (and the Staff) would then prepare prefiled testimony on those issues identified by the Board in the prehearing conference or Order and, if requested, prepare and present oral testimony on these and related issues.<sup>6</sup> SERI notes that the Board's Order does not include any provisions or schedules for prefiled or oral testimony.

Finally, the Board has requested preliminary proposed findings of fact and conclusions of law from the Staff. SERI respectfully requests clarification regarding the timing and record against which such preliminary proposed findings of fact and conclusions of law are to be provided, as it appears they will be due prior to the conduct of the mandatory hearing. Further, SERI respectfully submits that pursuant to 10 CFR §§ 2.324, 2.325, it has the burden of proof in this proceeding and, accordingly, SERI proposes to submit the initial preliminary proposed findings of fact and conclusions of law. SERI further proposes that such preliminary proposed findings and conclusions be submitted after the record is complete *i.e.*, after the submission of all Staff and SERI testimony and exhibits.

Accordingly, SERI respectfully requests clarification on the following issues pertaining to the scheduling and conduct of the mandatory hearing:

1. The order and timing of the submissions for the mandatory hearing, as well as the preliminary proposed findings of fact and conclusions of law. In this regard, SERI

---

<sup>6</sup> The identification and definition of such issues shall be informed by Commission Policy, which leaves to the Staff the "prime responsibility for technical fact-finding on uncontested matters." *Exelon*, 62 NRC at 35. With respect to environmental matters, however, Boards must reach independent determinations on NEPA "baseline" questions, *i.e.*, (1) whether the NEPA process has been complied with, (2) what is the appropriate balance among conflicting factors, and (3) whether the construction permit should be issued, denied, or appropriately conditioned. *Id.* at 45; 10 CFR §§ 2.104(b)(3); 51.105(a)(1)-(3).

respectfully requests that the Board issue a draft schedule for the conduct of the hearing, including the prehearing conference(s), filing of prefiled testimony, presentation of oral testimony, if any, and submission of preliminary proposed findings of fact and conclusions of law. Given the time necessary to adequately prepare testimony and witnesses for the hearing, SERI suggests that the prehearing conference(s) be scheduled at least 60 days prior to the proposed date of any oral hearing.

2. The expected timing, scope and content of the preliminary proposed findings of fact and conclusions of law. As the applicant and pursuant to 10 CFR §§ 2.324, 2.325, SERI proposes that it first file the preliminary proposed findings of fact and conclusions of law, after the record is complete *i.e.*, after the submission of all Staff and SERI testimony and exhibits.<sup>7</sup>

---

<sup>7</sup> If the Board concludes that the Staff, rather than SERI, should first file the preliminary proposed findings of fact and conclusions of law, SERI respectfully requests clarification regarding the expected scope and content of SERI's "exceptions, additions, or objections to the NRC Staff's submission." Order, at 4.

**CONCLUSION**

For the reasons set forth herein, SERI respectfully requests clarification on issues 1 and 2 listed above.

Respectfully submitted,



Kathryn M. Sutton  
Patricia L. Campbell  
Paul M. Bessette  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Ave., NW  
Washington, DC 20004  
Telephone: (202) 739-5738  
Facsimile: (202) 739-3001

COUNSEL FOR SYSTEM  
ENERGY RESOURCES, INC.

Dated at Washington, District of Columbia,  
this 1st day of May, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of )  
 )  
SYSTEM ENERGY RESOURCES, INC. ) Docket No. 52-009-ESP  
 )  
(Early Site Permit for Grand Gulf ESP Site ) ASLBP No. 04-823-03-ESP

CERTIFICATE OF SERVICE

I hereby certify that copies of the "System Energy Resources Inc.'s Motion for Clarification" in the captioned proceeding have been served as shown below by deposit in the United States Mail, first class, this 1st day of May, 2006. Additional service has also been made this same day by electronic mail as shown below.

Lawrence G. McDade, Chair  
Atomic Safety and Licensing Board  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(Email: LGM1@nrc.gov)

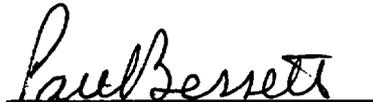
Office of the Commission Appellate  
Adjudication  
Mail Stop 0-16C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: ELJ@nrc.gov)

Dr. Nicholas G. Trikouros  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: NGT@nrc.gov)

Office of the Secretary  
ATTN: Docketing and Service  
Mail Stop: 0-16C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(E-mail: HEARINGDOCKET@nrc.gov)

Dr. Richard E. Wardwell  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: REW@nrc.gov)

Robert M. Weisman, Esq.  
Office of the General Counsel  
Mail Stop 0-15D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
(E-mail: RMW@nrc.gov)

  
Paul M. Bessette  
Counsel for System Energy  
Resources, Inc.