

May 8, 2006 (4:43pm)

**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 8, 2006

**SYSTEM ENERGY RESOURCES, INC. ANSWER TO NRC STAFF
MOTION FOR RECONSIDERATION AND CLARIFICATION OF
BOARD ORDER REQUESTING DOCUMENTS AND BRIEFINGS**

INTRODUCTION

System Energy Resources, Inc. ("SERI") hereby files its Answer to the Nuclear Regulatory Commission ("NRC") Staff's May 1, 2006, "Motion for Reconsideration and Clarification of Board Order (Request for Documents and Briefings)" ("Staff Motion"). 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 its preparation for the mandatory hearing required in connection with SERI's application for an Early Site Permit ("ESP") for the Grand Gulf ESP site.¹ On May 1, the Staff sought reconsideration and clarification of that Order.²

As discussed further below, SERI does not concur with the Staff's suggestion that the Board refer its ruling or certify a question to the Commission,³ and files its Answer only with

¹ See Order (Request for Documents and Briefings), unpublished Order, dated April 19, 2006.

² Also on May 1, SERI sought clarification of certain aspects of the Board's 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. See System Energy Resources, Inc.'s Motion For Clarification, May 1, 2006.

³ See Staff Motion at 10, n. 9.

regard to this specific aspect of the Staff's Motion. SERI believes that the Board can and should promptly rule on the Staff Motion itself. Certification of the procedural matters raised by the Staff for resolution by the Commission may needlessly delay the hearing and is not appropriate under Commission rules.

DISCUSSION

In a footnote, the Staff Motion suggests that "in light of the common issues raised [in other recent mandatory hearings], the Board may wish to refer its ruling on this Motion to the Commission in accordance with 10 C.F.R. § 2.323(f), or certify questions to the Commission with respect to matters addressed in the orders." Staff Motion at 10, n.9. SERI does not concur with this suggestion for several reasons. Most fundamentally, the matters discussed in the Staff's Motion are essentially procedural in nature and well within the Board's authority and expertise to resolve, pursuant to 10 C.F.R. § 2.319.⁴ Furthermore, referring the Board's ruling or certifying a question to the Commission at this critical time in the proceeding could jeopardize meeting the NRC Staff's published schedule, including issuance of the Board's initial decision in September 2006 and final Commission decision in January 2007.⁵

In addition, the issues presented by the Staff are not the type of "significant and novel legal or policy issues," contemplated by 10 C.F.R. § 2.341(f) for interlocutory review. This latter rationale finds support in the following observations: (a) the Commission already has

⁴ The Commission, in amending Part 2, emphasized the Board's authority to address procedural issues, such as these, stating "[s]trong case management is an integral part of an efficient and effective hearing process. The Commission expects presiding officers/boards to manage all adjudications carefully and attentively. Tools to be used to this end are reflected in the final rule." "Changes to Adjudicatory Process, Final Rule," 69 Fed. Reg. 2,182, 2,188 (Jan. 14, 2004). The Commission in its "Policy on Conduct of Adjudicatory Proceedings; Policy Statement," 63 Fed. Reg. 41,872 (Aug. 5, 1998) similarly states that the "Commission expects licensing boards to establish schedules for promptly deciding the issues before them The Commission's regulations . . . provide licensing boards all powers necessary to regulate the course of proceedings"

⁵ See <http://www.nrc.gov/reactors/new-licensing/esp/grand-gulf.html#review>.

addressed mandatory hearing requirements in *Exelon Generation Co.* (Early Site Permit for Clinton ESP Site) *et al.*, CLI-05-17, 62 NRC 5 (2005) and thereby provided substantive direction that should guide formulation of hearing process directives; (b) other Boards already have conducted mandatory hearings and therefore have resolved similar issues;⁶ and (c) the procedural issues raised relate solely to case management which are clearly within the purview of the Board.⁷

Accordingly, SERI encourages the Board to promptly decide these issues itself, and not refer its ruling or certify a question to the Commission. Contrary to Section 2.341(f), certification of the issues to the Commission for resolution would not materially advance the orderly disposition of this proceeding – but rather would introduce further and unnecessary delay.

⁶ See *Louisiana Energy Servs. L.P.*, (National Enrichment Facility), Docket 70-3103. See also *Tennessee Valley Authority* (Watts Bar Units 1 & 2), Dockets 50-390, 50-391 (1972); *Washington Public Power Supply* (Projects 3 & 5) Dockets 50-508, 50-509 (1975); *Duke Power* (Cherokee Nuclear Station, Units 1, 2, & 3) Dockets 50-390, 50-391 (1975).

⁷ See *Philadelphia Electric Co.* (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 727 (1985) (noting that a Licensing Board has considerable flexibility in regulating the course of a hearing); *Georgia Power Co.* (Vogtle Electric Generating Plant Units 1 and 2), LBP-93-8, 37 NRC 292, 299-301 (1993) (noting that the Board has broad authority to regulate the course of a proceeding).

CONCLUSION

For the reasons set forth above, SERI encourages the Board not to certify the issues raised in the Staff's Motion to the Commission. Rather, SERI respectfully requests that the Board rule expeditiously on both the Staff's Motion and SERI's Motion for Clarification.

Respectfully submitted,



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Dated at Washington, District of Columbia,
this 8th day of May, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of "System Energy Resources Inc. Answer to NRC Staff Motion for Reconsideration and Clarification of Board Order Requesting Documents and Briefing" in the captioned proceeding have been served as shown below by deposit in the United States Mail, first class, this 8th day of May, 2006. Additional service has also been made this same day by electronic mail as shown below.

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