

May 16, 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))

NRC STAFF ANSWER TO SERI MOTION; STAFF MOTION
FOR LEAVE TO REPLY TO SERI ANSWER; STAFF REPLY

INTRODUCTION

On May 1, 2006, System Energy Resources, Inc. (SERI or Applicant) filed “[SERI’s] Motion for Clarification” (SERI Motion) of the Atomic Safety and Licensing Board’s (Board) Order in this proceeding requesting documents and briefings (Order).¹ Pursuant to 10 C.F.R. § 2.323(c), the NRC Staff (Staff) hereby answers SERI’s Motion with respect to the Staff’s schedule for the proceeding. In addition, on May 8, 2006, SERI filed “[SERI] Answer to NRC Staff Motion for Reconsideration and Clarification of Board Order Requesting Documents and Briefings” (SERI Answer)². Because the SERI Answer rests, in part, on an erroneous view of the Staff schedule, as explained further below, the Staff requests leave to file a reply to the SERI Answer.³ The Staff reply is set forth separately below.

¹ See Order (Request for Documents and Briefings), unpublished, dated April 19, 2006.

² See “NRC Staff Motion for Reconsideration and Clarification of Board Order (Requesting Documents and Briefings) dated April 19, 2006” (May 1, 2006) (Staff Motion for Reconsideration).

³ Pursuant to 10 C.F.R. § 2.323, Staff counsel has discussed this Motion with counsel for the Applicant.

STAFF ANSWER

As SERI states, the Staff has published, on the NRC website, a proposed schedule for an initial decision in this proceeding.⁴ SERI Motion at 2. On the basis of this schedule, which provides for an initial decision in September 2006, SERI anticipates that the Board will hold the mandatory hearing before then, so as to allow sufficient time for the Board to issue its decision in accordance with the Staff schedule. *Id.*

The Staff schedule, however, does not represent the Staff's position on how the Board should regulate the course of this proceeding. Rather, this "schedule" is a nominal one established in the interest of public disclosure, *i.e.*, to give members of the public some idea of when an agency decision on the application might be issued. The Staff schedule does not and cannot bind the Board in any way, nor does it limit the Board's discretion with respect to setting an appropriate schedule on which to conclude the proceeding. The Board has full authority to set the schedule for the proceeding. See 10 C.F.R. § 2.319(k) (2006). While the Staff fully agrees with SERI's request for clarification of the further course of this proceeding (SERI Motion at 2-4),⁵ the Staff submits that the Staff schedule posted on the NRC website is not an appropriate basis for the requested clarification.

STAFF MOTION FOR LEAVE TO REPLY

The Commission's Rules of Practice do not authorize the filing of a reply to an answer to a motion. See 10 C.F.R. § 2.323. In this instance, however, the Staff could not have anticipated an argument in the SERI Answer, and a reply may contribute to the Board's understanding of the issue. See *Long Island Lighting Co.* (Shoreham Nuclear Power Station,

⁴ See <http://www.nrc.gov/reactors/new-licensing/esp/grand-gulf.html#review>.

⁵ The Board may wish to seek the parties' views before setting a schedule for the remaining course of the proceeding.

Unit 1), CLI-91-8, 33 NRC 461, 469 (1991). Accordingly, the Staff requests leave to reply to the SERI Answer.

STAFF REPLY

In its Answer, SERI states that referring the Board's ruling or certifying a question to the Commission "could jeopardize meeting the NRC Staff's published schedule" for the proceeding. SERI Answer at 2. As explained above, however, the Staff schedule posted on the NRC website is not a Staff position on the further course of this proceeding, nor does it restrict the Board in any way. While the Staff has not set forth a detailed position in favor of certification of a question to the Commission in this proceeding under the standards set forth in 10 C.F.R. § 2.341(f), the Staff respectfully submits that the Staff schedule posted on the website is not relevant to that question or to resolving the matters raised in the Staff Motion for Reconsideration and the SERI Answer.

Respectfully submitted,

Robert M. Weisman
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of May, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO SERI MOTION; STAFF MOTION FOR LEAVE TO REPLY TO SERI ANSWER; STAFF REPLY" in the above-captioned proceeding have been served on the following by deposit in the U.S. Mail, as indicated by an asterisk (*), with copies by electronic mail, or by deposit in the Nuclear Regulatory Commission's internal mail system, with copies by electronic mail, as indicated by double asterisk (**), on this 16th day of May, 2006:

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