

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman  
Dr. Kaye D. Lathrop  
Dr. Craig M. White

In the Matter of

AREVA ENRICHMENT SERVICES, LLC  
(Eagle Rock Enrichment Facility)

Docket No. 70-7015-ML

ASLBP No. 10-899-02-ML-BD01

June 2, 2011

MEMORANDUM AND ORDER

(Providing Presentation Topics, Additional Questions, and Administrative Directives Associated with Mandatory Hearing on Environmental Matters)

In this proceeding concerning the 10 C.F.R. Part 70 application of AREVA Enrichment Services, LLC, (AES) for authority to construct and operate the proposed Eagle Rock Enrichment Facility (EREF) in Bonneville County, Idaho, in accord with the Licensing Board's March 30, 2011 revised general schedule for this proceeding, see Licensing Board Memorandum and Order (Updated General Schedule) (Mar. 30, 2011) app. A, at 3 (unpublished), the Board will conduct a mandatory hearing on environmental matters as follows:

Dates: Tuesday through Thursday, July 12-14, 2011  
Time: Beginning at 9:30 a.m. Mountain Time (MT) (first day)<sup>1</sup>  
Location: Red Lion on the Falls Convention Center  
Targhee/Bonneville Rooms  
475 River Parkway  
Idaho Falls, Idaho

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<sup>1</sup> Although the Board contemplates finishing by approximately 5:00 p.m. MT each day, the schedule for convening and recessing each hearing session is subject to the progress made during the previous hearing sessions.

Also pursuant to that schedule, in this issuance the Board specifies the topics for evidentiary presentations by the NRC staff and AES. Further, the Board provides additional questions for the staff and/or AES as well as administrative directives relating to the July 2011 hearing.

A. Presentation Topics

1. Purpose and Need for the Proposed Action

As outlined in section 1.1 of environmental report (ER) of applicant AREVA Enrichment Services, LLC, (AES), several entities besides AES already have, or are seeking, licenses authorizing the construction and operation of uranium enrichment facilities in the United States. At the same time, termination of the Megatons to Megawatts program and the United States Enrichment Corporation's Paducah, Kentucky facility, which supplies a majority of current domestic low-enriched uranium, are being contemplated. Further, following the February 2011 issuance of the NRC staff's final environmental impact statement (FEIS) for the Eagle Rock Enrichment Facility (EREF), the 9.0 momentum magnitude earthquake off the eastern coast of Japan and the subsequent events at the Fukushima I nuclear facility have raised questions about the timing associated with estimates of new nuclear power plant generating capacity both in the United States (domestic) and internationally (non-domestic).

Please provide a presentation addressing how the need for the EREF fits into the larger picture of the need for future domestic and non-domestic uranium enrichment capacity, which should include a discussion/analysis based on:

- a. The current status of the existing and potential future sources of uranium enrichment services discussed in the AES ER and/or the staff's FEIS; and
- b. Forecasts of installed nuclear generating capacity (units added net of retirements) that employ estimates of domestic and non-domestic new nuclear power plant generating capacity based on assumptions about such capacity that,

relative to the capacity figures utilized in the AES ER for the reference and high growth forecasts of installed nuclear capacity by 2020 and 2030, are below the increases in installed capacity forecast in the AES ER by fifty percent for domestic capacity and twenty-five percent for non-domestic capacity.

2. "Preconstruction" Activities

Regarding the authorization afforded by the staff's March 17, 2010 approval of the AES June 17, 2009 request, as supplemented on October 15, 2009, asking for an exemption from specific requirements of 10 C.F.R. Parts 30, 40, and 70 to allow AES to begin certain construction activities associated with the proposed EREF before completion of the NRC's 10 C.F.R. Part 51 environmental review, please provide a presentation that describes:

- a. Any activities that have been undertaken by AES pursuant to the staff's March 2010 exemption approval; and
- b. Relative to each of the construction activities authorized by the March 2010 staff exemption, if those construction activities have been/were undertaken by AES, but AES subsequently was denied authorization to operate, or decided not to begin operation of, the EREF (i) what type of redress/restoration action would be mandated by any applicable federal, state, or local statutory and/or regulatory requirements; and (ii) what redress/restoration action AES would anticipate actually taking.

3. Greenhouse Gas Impacts of Facility's Production Power Consumption

In its responses to Board environmental questions 11 and 20 (Prefiled Exhs. NRC000136 and NRC000176), the staff indicated that although the EREF's annual full production power consumption could be responsible for the release of 276,036 tons of greenhouse gas (GHG) emissions if all the required power were produced by coal-fired power

plants, the current Idaho electricity technology profile (i.e., dominant use of hydropower and greater reliance on natural gas), when combined with the comparatively small power demands of the EREF relative to a gaseous diffusion plant of equivalent capacity, suggests that electricity will not be a primary factor responsible for GHG emission relating to EREF operations. Relative to these responses, please provide a presentation that:

- a. Explains whether and why the significance level of SMALL assigned to the EREF GHG emission impacts (FEIS at 4-142) would or would not be affected if all the required power for the facility were produced by coal-fired power plants; and
- b. (i) Provides a best estimate of the annual GHG emissions that would be associated with EREF's annual full production power consumption if all the required power for the facility were produced consistent with the electricity technology profile for likely EREF power suppliers (i.e., those supplying power to the eastern Idaho region); and (ii) explains whether and why the significance level of SMALL assigned to the EREF GHG emission impacts (FEIS at 4-142) would or would not be affected if all the required power for the facility were produced consistent with the electricity technology profile for likely EREF power suppliers.

4. Construction Air Quality Impacts

Please provide a presentation regarding the staff's FEIS-related analysis of EREF construction air quality impacts, which should include a discussion of the following:

- a. The adequacy and capabilities of the selected air dispersion model;
- b. The determination of the surface data, meteorological data, terrain data, and modeling assumptions used; and
- c. The results obtained.

5. Radiological Effluent Monitoring Program (REMP)

Please provide a presentation regarding the staff's FEIS-related analysis of the AES Radiological Effluent Monitoring Program (REMP) that includes a detailed discussion of the following:

- a. A summary of the features of the REMP, including monitoring of any storage cylinders in the cylinder storage pad area;
- b. How the staff has determined that the types of effluents monitored and the number, type, detection limits, and locations of monitoring equipment are sufficient;
- c. How the staff ascertained that the REMP features are adequate for the EREF construction, operation, and decommissioning phases and for normal and off normal (accident, extreme weather, etc.) operation, including whether uranium tetrafluoride ( $\text{UF}_4$ ) hydrate plugs are likely to form to seal small leaks of uranium hexafluoride ( $\text{UF}_6$ ) or its reaction products in storage cylinders; and
- d. How the staff will ensure that the REMP will be properly implemented, adequately tested, and fully capable during the period from two years before the start of operations to the end of decommissioning.

6. Historic/Cultural Resources Memorandum of Agreement and Associated Mitigation Measures

Please provide a presentation that discusses the current status of the historic/cultural resources memorandum of agreement (MOA) that is being developed by means of consultation among the staff, the Idaho State Historic Preservation Office, the Shoshone-Bannock Tribes, and AES, including an overview of the draft MOA-referenced September 2009 monitoring and discovery plan that AES has proposed implementing to provide mitigation measures to address any additional historic or cultural resources that might be found during

preconstruction/construction, operation, and decommissioning of the EREF. In the event the MOA has been finalized by the time of the presentation, please include an overview of the MOA's terms and conditions.

B. Additional Board Questions

Relative to several matters addressed in the parties' responses to the Board's third set of questions regarding environmental-related matters, rather than requesting a presentation on these subjects, the Board believes additional questions regarding several of those responses can most efficiently be addressed by a supplemental evidentiary submission by one or both of the parties that covers the following inquiries:

1. Regarding the AES response to environmental question 23 (Prefiled Exh. AES00095, at 1-2), is the AES treatment of National Natural Landmarks (NNLs) as part of its Phase I screening process consistent with (i) any existing staff regulatory guidance regarding the treatment afforded to NNLs; and/or (ii) the manner in which NNLs have been treated by other applicants involved in a site screening process? In answering this question, please provide specific examples, if possible.
2. Given the staff's answer to environmental question 24(b) (Prefiled Exh. NRC000176, at 6-8), reiterating that AES should consider implementing the mitigation measure of AES coordination with the Idaho Department of Fish and Game to determine corrective action or mitigation for offsite public lands lost to wildlife due to EREF project effects, what is AES's current planned implementation action during operation regarding wildlife protection for offsite lands?

The answers to these questions should be filed on or before Friday, June 17, 2011, in conformity with the established protocols for the parties' answers to the Board's prehearing questions, and supporting material.

C. Administrative Directives

The following directives are intended to provide AES and the staff with guidance on a variety of administrative matters associated with the July 2011 hearing on environmental-related matters:<sup>2</sup>

1. Time for Filing Evidentiary Materials Supporting Party Presentations

Because there are no interested governmental entities participating in this phase of the proceeding, the Board will provide the parties with additional time, i.e., up to and including Friday, July 1, 2011, within which to submit their presentation slides and other evidentiary materials relating to their presentations. See Licensing Board Memorandum and Order (Updated General Schedule) (June 2, 2011) app. A, at 3 (unpublished).

2. Lead/Non-Lead Parties for Presentations

Relative to each of the requested mandatory hearing presentations, the Board contemplates there will be a "lead" party that would make the initial presentation on the topic. This designation would not, however, preclude the non-lead party from making an additional, supplemental presentation on the topic or, in lieu of a supplemental presentation, making one or more witnesses available to answer any questions the Board might pose regarding the topic.

In this regard, after consultation with the other mandatory hearing party, on or before Friday, June 24, 2011, either applicant AES or the staff should provide a filing indicating (a) which party will be taking the lead on each of the presentation topics designated by the Board;

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<sup>2</sup> Although these procedural protocols generally are the same as those utilized for the January 2011 safety-related portion of this proceeding, for the sake of completeness they again are set forth below.

(b) whether there will be any supplemental presentation by the non-lead party as to each designated topic; (c) relative to each of the designated topics, a preliminary estimate as to how long each lead party and non-lead party presentation will take and how many witnesses will be involved in each lead party and non-lead party presentation; (d) in accord with section C.3 below, information regarding witness availability; and (e) whether any lead or supplemental presentation will involve the discussion of proprietary/sensitive information that would require any portion of the mandatory hearing to be closed to the public. Although section A above reflects the Board's current preference for the order of the presentation topics, once the Board has had a chance to review this information, it will provide a final schedule outlining the order of the presentations for the mandatory hearing on safety matters.

3. Designation and Availability of Lead/Non-Lead Party Witnesses for Presentations

Relative to any witness that is proffered by either a lead or a non-lead party in connection with a particular topic, the Board would anticipate relative to each presentation topic that at the time presentation materials are filed (i.e., on or before July 1, 2011), each party will provide a list of its witnesses for that topic as well as make available a resume/statement of professional qualifications for each witness that should be marked as a prefilled exhibit in accordance with paragraph C.6 below.

Because of the uncertainties inherent in attempting to predict the time required for litigation, the parties should be prepared to have their respective witnesses available for the entirety of the July 12-14, 2011 period, unless they advise the Board in the context of their responses to the items set forth in section C.2 above that there is some limitation on the availability of a planned witness relative to a particular presentation topic. In addition, the parties should plan for the possibility that one or more hearing sessions might extend into the evening if such an extension would facilitate completing any portion of the mandatory hearing.

Also for planning purposes, the parties should be aware that in an effort to provide the Board with access to the fullest range of views associated with a particular issue, as was done during the January 2011 safety-related hearing sessions, the Board likely will seat and swear in all the staff and AES witnesses for a particular topic prior to the lead party's presentation. This will provide the Board with the opportunity to seek the views of staff or AES witnesses regarding the responses to any Board questions directed to the other party's witnesses.

#### 4. Marking Presentation Evidentiary Materials

For this mandatory hearing session, the Board again intends to utilize the Digital Data Management System (DDMS) for the purpose of marking and displaying exhibits for the evidentiary record.<sup>3</sup> As such, assuming that the exhibits they submit are properly prefilled using the agency's E-Filing system, see infra section C.5, it should not be necessary for the parties to provide the Board or counsel for the other party with any paper copies of their prefilled evidentiary materials.

Additionally, while the format for this mandatory hearing does not generally contemplate the provision of additional "rebuttal" material during the evidentiary hearing, if any of the parties has documentary material that it does not wish to provide in support of its direct presentation but nonetheless contemplates might become relevant in the context of Board questioning of any of the witnesses, it should ensure that it has that material available in the hearing room and appropriately marked both electronically (in a PDF format that complies with the agency's E-Filing guidance) and via hard copy with enough paper copies to provide to counsel for the other party, the three Board members, and the Board's law clerk. The same would be true for

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<sup>3</sup> By using the DDMS, the Board will be able to mark each prefilled exhibit electronically to indicate whether the exhibit was identified and admitted/rejected. Likewise, shortly after the hearing is concluded, the parties should be able to verify the status of an exhibit utilized in the mandatory hearing via the information available on the agency's electronic hearing docket.

any exhibit that a party finds it needs to revise (see infra section C.6.d) during a hearing session.

##### 5. Filing and Admitting Presentation Evidentiary Materials

All exhibits that the parties wish to have in the record to support their presentations must be prefiled via the agency's E-Filing system in accordance with 10 C.F.R. § 2.304(g), which states that each individual exhibit shall be submitted as an individual file. Any prefilled exhibit that contains confidential or sensitive information should be filed separately in the agency's E-Filing system using the "protective order" filing option and should include appropriate page markings.<sup>4</sup>

In the context of the evidentiary hearings for this proceeding, with the exception of the prehearing answer materials, the Board generally does not anticipate accepting into evidence any documentary material that is not cited or discussed in support of a party's lead or supplemental presentation. Moreover, the citation or discussion in a presentation of documentary material (other than citations to legal authorities, including statutes, regulations, and judicial or NRC Issuances decisions) should be accompanied by an evidentiary exhibit that includes the relevant portions of the supporting material cited and should provide the exhibit number of the documentary material being referenced.<sup>5</sup>

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<sup>4</sup> The parties should be aware that all protective order material in this proceeding is available to those with access to protective order filings in this proceeding via the "Access Authorized Protected Documents" link on the E-Filing portal page.

<sup>5</sup> Relative to the exhibits supporting the testimony of each witness/panel that is making a presentation, when a witness/panel is first seated for a presentation, AES and staff counsel should be prepared to identify for the record (with a brief description of each document) all the exhibits counsel anticipates will be used for the first time in the mandatory proceeding during that presentation that have not previously been identified. The Board will then entertain a request to admit the proffered slide presentations regarding the presentation topic, any evidentiary material referenced in the slide presentations not previously admitted, and any resume(s)/professional qualifications statement(s) for the witness/panel not previously admitted.

(continued...)

6. Protocols Associated with Prefiled Presentation Exhibits

a. Duplicate Exhibits. Only one copy of each item of documentary material should be offered as evidence in this proceeding. For example, if the staff offers (and has admitted) a certain portion of a staff report regarding the EREF, AES should not then offer into evidence the same portion of the report. Instead, AES would rely on the document already proffered by the staff.

To this end, the parties should consult with one another and determine whether any of the prefiled exhibits a party intends to offer into evidence in support of its presentation would otherwise be duplicated by the other party in the proceeding.<sup>6</sup> In each instance this is found to be the case, the parties should determine, based on the order of party presentations, which party will first offer the exhibit into evidence. The other party intending to use that material as an exhibit should revise its evidentiary submissions to reference the initial submitting party's exhibit number.<sup>7</sup> Additionally, the parties should follow this practice relative to any exhibits utilized for evidentiary material introduced in the first instance during the evidentiary hearing itself.

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<sup>5</sup>(...continued)

The Board would not, however, admit any other prefiled evidentiary material identified as potentially relevant to that presentation until it is referenced or discussed by a witness during the presentation.

<sup>6</sup> As part of this consultation, the Board also contemplates that each party will identify to the other party any exhibit already admitted into evidence as part of the safety-related portion of this proceeding that it intends to cite/discuss in support of any of its environmental-related presentations. If the other party has an objection to the additional use of an exhibit admitted in the proceeding's safety-related segment in the environmental-related portion of this hearing (or an objection to any of the not-yet-admitted exhibits identified during this consultation process) it should file a motion in limine on or before Friday, July 1, 2010, with any motion response due on or before Wednesday, July 6, 2011.

<sup>7</sup> When duplicate prefiled party exhibits have been identified, the party that is recognized as the one that initially will offer the document must, if it subsequently decides not to offer the item, provide timely notice of its intent to the other party who identified the item as a duplicate document.

b. Exhibit Numbering and Sequencing. To expedite electronic processing, for the environmental-related portion of this mandatory hearing each party should continue to number their prefilled exhibits in a format that consists of a three-character party designation, followed by a six-character zero-filled number. The three-character designation to be used by each of the parties is as follows: AREVA Enrichment Services, LLC - AES, NRC staff - NRC. Consequently, a typical number sequence for the staff's exhibits would be as follows:

NRC000001

NRC000002

\* \* \* \* \*

NRC000100

Numbers should be assigned beginning where a party left off in numbering its exhibits for the safety-related portion of this proceeding and, to the extent possible, the parties should order and number their prefilled exhibits in the sequence the parties plan to identify, and present testimony referring to, each exhibit.

c. Exhibit Number Location. The exhibit number should be placed in the upper right hand corner of the first page of the exhibit. A separate cover sheet should be used for an exhibit only if there is no space on the first page of the exhibit into which the number can be legibly placed.

d. Revised Exhibits. If a party needs to provide a revised version of a previously prefilled exhibit, the exhibit should be refiled with a letter "R" in place of the first zero in the exhibit number (i.e., the fourth exhibit number character position), such that, for example, a revised version of staff exhibit NRC000001 would be designated NRCR00001. If a second or subsequent revision is necessary, the exhibit should be refiled with a sequential number in the place of the next zero in the exhibit number, e.g., NRCR20001.

e. Large File-Size Exhibits. If a party finds that it needs to break a document into several segments to ensure it does not exceed the agency's guidance on recommended file sizes for submissions, see NRC, Guidance for Electronic Submissions to the NRC 14-15 (rev. 6 May 17, 2010) available at <http://www.nrc.gov/site-help/e-submittals/guide-electronic-sub-r6.pdf>, each of the segments should be labeled by placing an alpha designation next to the number of the exhibit (i.e., in the ninth exhibit number character position) in a way that will reflect the relationship of that part to the other parts of the document. For example, if a staff exhibit that would otherwise have the number NRC000001 were submitted in three parts because of file size, each portion would have a different exhibit number in the following sequence: NRC00001A, NRC00001B, and NRC00001C.

#### 7. Exhibit List

At the time they submit the exhibits associated with their presentations, utilizing the exhibit list template previously provided in conjunction with the safety portion of this proceeding, each party should provide Board law clerk Jonathan Eser (e-mail address: [jonathan.eser@nrc.gov](mailto:jonathan.eser@nrc.gov)) with an electronic copy (preferably in Word format) of their prefilled exhibit list. In addition, concurrent with the filing of any revised evidentiary materials, each party should provide the Board's law clerk with an updated exhibit list.<sup>8</sup>

As was the case in the safety-related portion of this proceeding, the parties should complete for each exhibit listing the party exhibit number, witness/panel, and description fields, including an ADAMS accession number to the extent it is available for the document (or portion

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<sup>8</sup> Because the parties, having previously consulted regarding exhibit duplication, see supra section C.6.a, should be aware of the exhibits each is utilizing, the Board is not requiring that these exhibit lists be provided to the other party. The parties nonetheless are free to make such an exchange if they wish.

of the document) that will be proffered. Also, for any exhibit having a confidential/sensitive status that would preclude public disclosure, the listing information should be set forth in **bold** type.

8. Copies of Transcripts

Given the likelihood that none of the presentations will require more than a single day, the Board does not anticipate using overnight transcript service. The Board will, however, request that each hearing session be transcribed within two business days.

9. Opening Statements by Counsel

To the extent the parties wish to do so, at the outset of the mandatory hearing the Board will afford one counsel for each of the parties a total of fifteen minutes to present a summary of that party's anticipated evidentiary presentations/proof relative to the matters being considered during the July 2011 portion of the mandatory hearing, as well as the ultimate environmental findings the Board must make regarding the application, see Licensing Board Initial Scheduling Order (May 19, 2010) app. A. The order of party opening statements will be specified in a subsequent issuance.

10. Audio/Visual Needs

If either of the parties making a mandatory hearing evidentiary presentation has a special audio/visual display equipment requirement, it should advise the Board in the June 24 filing discussed in section C.2 above.

11. Use of the DDMS

If the parties wish to do so, they can continue to utilize the DDMS before, during, and after the hearing, which will provide them electronic access to all the filings in the proceeding as well as post-hearing access to video of the July 2011 evidentiary hearing session. Access to the DDMS generally requires (1) for access via the internet, an NRC digital certificate (such as

the one utilized for E-Filing transactions); and (2) a username and password. Access to the DDMS from the hearing facility in Idaho Falls will require that the party employ a computer with a functioning internet connection and related services.

Usernames and passwords affording DDMS access previously were provided to several individuals associated with each party. If those individuals are having any difficulty accessing the system, please contact DDMS Project Manager Andrew Welkie at ddmswebmaster@nrc.gov or 301-415-6541.

12. Transcript Corrections

Because the parties should have post-hearing access via the DDMS to video of the proceeding, the Board anticipates that any transcript corrections requested by the parties will be informed by what is reflected in the video. The Board currently anticipates that video of the July 2011 mandatory hearing sessions will be available in the DDMS by close of business on Monday, July 18, 2011, with a searchable, transcript-linked video available approximately seven days after the environmental hearing is completed. Accordingly, proposed transcript corrections will be due on or before Monday, July 25, 2011, and should, to the maximum extent possible, reflect agreement among the parties. The Board again urges the parties to limit the corrections to matters that are material to the substance of the testimony or statements involved. Moreover, any corrections that are not reflected in the video will not be entertained by the Board.

13. Information Updates to Schedule

If any updates or revisions to the environmental-related mandatory hearing schedule are necessary, the Board will provide that information to the parties via e-mail and recorded phone message. To that end, on or before Friday, June 24, 2011, each of the parties should provide Board law clerk Jonathan Eser with the e-mail address(es) of one party representative to whom a schedule revision e-mail can be directed for distribution to any others representing or

testifying for that party. Additionally, schedule change information will be available by calling (800) 368-5642, extension 5036 (available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday through Friday, except federal holidays), or by calling (301) 415-5036 (available seven days a week, twenty-four hours a day).

14. Party Comments Regarding this Issuance

Any mandatory hearing party comments regarding any aspect of this memorandum and order should be filed on or before Tuesday, June 7, 2011.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III  
CHAIRMAN

Rockville, Maryland

June 2, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
AREVA ENRICHMENT SERVICES, LLC ) DOCKET NO. 70-7015-ML  
(Eagle Rock Enrichment Facility) )  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board **MEMORANDUM AND ORDER (Providing Presentation Topics, Additional Questions, and Administrative Directives Associated with Mandatory Hearing on Environmental Matters)**, dated June 2, 2011, have been served upon the following persons by Electronic Information Exchange.

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AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility) – 70-7015-ML  
**MEMORANDUM AND ORDER (Providing Presentation Topics, Additional Questions, and Administrative Directives Associated with Mandatory Hearing on Environmental Matters)**

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[Original signed by Linda D. Lewis]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of June 2011