

July 7, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
AREVA ENRICHMENT SERVICES, LLC) Docket No. 70-7015-ML
)
(Eagle Rock Enrichment Facility))

COMMENTS ON REQUEST TO ATTEND SITE VISIT

On July 6, 2011, the Atomic Safety and Licensing Board (“Licensing Board”) issued a Memorandum and Order (Schedule for Comments on Request to Attend Site Visit). In the Order, the Licensing Board stated that it was in receipt of an e-mail dated July 5, 2011, from Liz Woodruff, Snake River Alliance (“SRA”) Executive Director, requesting that SRA be given the opportunity to attend the planned July 11, 2011 visit to the site of the proposed Eagle Rock Enrichment Facility (“EREF”). The Licensing Board requested that AREVA Enrichment Services, LLC, (“AES”) and the NRC Staff, as the parties to the mandatory hearing proceeding, provide the Board with their views regarding this request, including any proposals for establishing reasonable parameters for SRA attendance at the site visit. As discussed below, SRA has no right to participate in the mandatory hearing, including the associated site visit.

The purpose of the EREF site visit, which has been scheduled for the morning of Monday, July 11, 2011, is to permit the Board to become familiar with the EREF site and its environs prior to the evidentiary hearing on uncontested environmental matters that is to begin on July 12. *See* Memorandum (Site Visit Information), dated May 23, 2011. The site visit is not part of any contested proceeding relating to the EREF license. In CLI-05-17, the Commission addressed *sua sponte* the issue of whether intervenors have any right to participate in the

uncontested mandatory hearing. The Commission's resolution of this issue in CLI-05-17 left no doubt. The Commission held:

The scope of the intervenors' participation in adjudications is limited to their admitted contentions, *i.e.*, they are barred from participating in the uncontested portion of the hearing. Any other result would contravene the objectives of our "contention" requirements. . . . Similarly, our 1989 amendments to the Subpart G procedural rules limited both an intervenor's proposed findings and its appeals to *only* those *contentions* that the intervenor had itself placed in controversy. Our purpose there was "to ensure that the parties and adjudicatory tribunals focus their interests and adjudicatory resources on the contested issues as presented and argued by the party with the primary interest in, and concerns over the issues." This same purpose likewise justifies our limiting the scope of intervenor participation in mandatory hearings.

Exelon Generation Co., LLC (Early Site Permit for Clinton ESP Site), *et al.*, 62 NRC 5, 49-50 (2005) (emphasis added). SRA is no exception to this rule. SRA has no right to participate in the mandatory portion of the EREF proceeding. SRA's participation in a hearing would be limited to the resolution of any admitted contentions. However, SRA has not exercised their right to request a hearing or file proposed contentions on the EREF application. The Commission's decision should be applied consistent with its plain meaning. *See also, Louisiana Energy Services* (National Enrichment Facility), Memorandum and Order (Regarding NIRS/PC Motion for Leave to Participate in Mandatory Hearing), dated February 24, 2006 (denying a request by an intervenor in a contested proceeding to participate in the uncontested hearing).

SRA has other opportunities to participate in the EREF licensing process and has availed themselves of those opportunities in the past. SRA submitted comments during the NRC's scoping process for the National Environmental Policy Act ("NEPA") review. SRA also spoke at NRC-sponsored meetings on the Draft Environmental Impact Statement ("DEIS") and submitted comments on the DEIS. Finally, SRA has the opportunity to submit comments to the Licensing Board at either or both of the upcoming limited appearance sessions. As these

examples make clear, SRA has demonstrated its ability to file substantive comments as part of the licensing process for the EREF. But, as explained above, that process does not include the right to participate in uncontested proceedings.¹

For the above reasons, the Licensing Board should deny SRA's request to attend the site visit. The Commission has explicitly held that non-parties are barred from participating in the uncontested portion of the hearing.

/s/ signed electronically by
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SERVICES, LLC

Dated at San Francisco, California
this 7th day of July 2011

¹ Allowing SRA to join the site visit might also prompt other interested parties to seek to join the site tour. But, there is no process and no criteria for allowing one interested party to participate but not another. Rather, participation in the NRC's contested hearing process is governed by 10 C.F.R. § 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 C.F.R. § 2.315(c) (for interested States, local governments, and Indian Tribes seeking to participate with respect to contentions filed by others). Interested persons are simply not allowed to participate in uncontested hearings.

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CERTIFICATE OF SERVICE

I hereby certify that copies of “COMMENTS ON REQUEST TO ATTEND SITE VISIT” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 7th day of July 2011, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding. In addition, a copy has been sent via e-mail to Snake River Alliance at the address provided in the July 5, 2011 e-mail from Liz Woodruff attached to the Licensing Board’s July 6, 2011 Memorandum and Order.

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