

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 70-7015-ML
)	
AREVA ENRICHMENT SERVICES, LLC)	ASLBP No. 10-899-02-ML-BD01
)	
(Eagle Rock Enrichment Facility))	July 7, 2011

NRC STAFF RESPONSE TO ATOMIC SAFETY AND LICENSING BOARD
MEMORANDUM AND ORDER DATED JULY 7, 2011

The Atomic Safety and Licensing Board (“Licensing Board”) issued a Memorandum and Order (“Order”) on July 7, 2011¹ asking the NRC staff and Snake River Alliance (“SRA”) to provide the Licensing Board with their views regarding whether the Commission’s decision in *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 49-50 (2005) bars the Licensing Board from granting the SRA’s request to attend the planned July 11, 2011 visit by the Licensing Board, the applicant AREVA Enrichment Services, LLC (“AES”), and the staff, as the parties to this mandatory hearing, to the site of the proposed Eagle Rock Enrichment Facility (“EREF”) and its environs. The staff herein responds to that request.

In its May 23, 2011 Memorandum, the Licensing Board outlined the purpose of the EREF site visit.² Specifically, the purpose “is to permit the Board to become familiar with the EREF site and its environs prior to the evidentiary hearing on environmental matters that is to begin on Tuesday, July 12.”³ The tour is expected to include a viewing of the MW004 archaeology site, the proposed locations for the separations building module and cylinder pad

¹ Memorandum and Order (Request for Additional Views Regarding Site Visit Request) (July 7, 2011) (“Order”).

² Memorandum (Site Visit Information) (May 23, 2011).

³ *Id.* at 1-2.

storage areas, and a visit to the Hell's Half Acre Wilderness Study Area.⁴

As summarized by the Licensing Board, AES asserts that Commission precedent, specifically language in *Clinton ESP*, essentially bars the Licensing Board from granting the SRA request to attend the site visit.⁵ In *Clinton ESP*, the Commission addressed intervenor participation in adjudications *sua sponte*, without requesting briefing:

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.⁶

Contrary to AES's argument, it is unlikely that, within the confines of its discussion of intervenor participation in mandatory hearings, the Commission specifically contemplated public (i.e., non-intervenor) attendance at site visits. Further, the staff maintains that there is a distinction between *participation* in the mandatory hearing and *attendance* at a site visit.⁷ Thus, it is the staff's position that the Commission's language in *Clinton ESP* does not bar the Licensing Board from allowing members of the public to attend a site visit.

⁴ *Id.* at 2.

⁵ Order at 1. See also AES, Comments on Request to Attend Site Visit (July 6, 2011).

⁶ *Clinton ESP* at 49-50 (emphasis in original).

⁷ See e.g., 10 C.F.R. § 2.315(a) (allowing, at the discretion of the presiding officer, a person who is not a party to make a limited appearance statement; however, that the person may not otherwise "participate in the proceeding").

Respectfully submitted,

Signed (electronically) by

Mauri T. Lemoncelli
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O15-D21
Washington, DC 20555-0001
(301) 415-1338
Mauri.Lemoncelli@nrc.gov

Dated at Rockville, Maryland
this 7th day of July, 2011.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 70-7015-ML
)	
AREVA ENRICHMENT SERVICES, LLC)	ASLBP No. 10-899-02-ML-BD01
)	
(Eagle Rock Enrichment Facility))	July 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF RESPONSE TO ATOMIC SAFETY AND LICENSING BOARD MEMORANDUM AND ORDER DATED JULY 7, 2011" in the above-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 copies to those on the EIE Service List for the above-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.

Signed (electronically) by
Mauri T. Lemoncelli
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O15-D21
Washington, DC 20555-0001
(301) 415-1338
Mauri.Lemoncelli@nrc.gov