EXHIBIT GLE-015

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Mr. Michael Lesar
Chief, Rules Review and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
Louisiana Energy Services Gas Centrifuge Enrichment Facility
(67 Fed. Reg. 61,932)

Dear Mr. Lesar:

On October 2, 2002, the U.S. Nuclear Regulatory Commission ("NRC") published in the Federal Register a request for comments on a series of "white papers" presented to the NRC by Louisiana Energy Services ("LES") addressing licensing issues for a gas centrifuge uranium enrichment facility to be located in the area of Hartsville, Tennessee. 67 Fed. Reg. 61,932 (2002). The white papers address the following six subjects: (1) analysis of need for the facility and the no-action alternative under the National Environmental Policy Act ("NEPA"); (2) environmental justice; (3) financial qualifications; (4) anti-trust review; (5) foreign ownership; and (6) disposition of depleted uranium tails. Comments on these papers previously supplied by the U.S. Department of Energy ("DOE") and the United States Enrichment Corporation ("USEC") were also made available. On October 25, 2002, the NRC extended the opportunity to provide public comments to November 13, 2002. 67 Fed. Reg. 65,613 (2002).[1]

In response to the opportunity to comment, we are submitting these comments on behalf of Ameren Corporation, Dominion Resources, (and its operating companies Virginia Power and Dominion Nuclear Connecticut), Florida Power & Light Company, Nuclear Management Company, LLC (operating company on behalf of Alliant Energy, Wisconsin Public Service, Xcel Energy, and Wisconsin Electric Power Co.) as well as Progress Energy (and its operating companies Carolina Power & Light Company and Florida Power Corporation). The companies own and operate commercial nuclear power plants and purchase uranium enrichment services

[1] We also refer to certain comments submitted by USEC on November 4, 2002. www.usec.com/v2001_02/Content/News/NewsFiles/NRCLetter-11-04-02.pdf (visited Nov. 6, 2002).

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which could be affected by NRC action on the proposed application. These companies have no connection to the LES project.

In brief, we strongly support NRC action to license an additional uranium enrichment facility in the U.S. because such action is important to both security of nuclear fuel supply and competition in the nuclear fuel supply industry.

Security of nuclear fuel supply is critical to the stability and reliability of nuclear plants. It can be achieved, in part, by diverse and reliable suppliers to ensure that unexpected interruptions in fuel supply from a particular supplier do not result in unforced outages. Presently, USEC has a near monopoly position in the U.S. for supply of uranium enrichment. USEC's near monopoly position was further strengthened by the imposition of duties on the sales of enrichment services by USEC's European competitors in the United States.[2] The current situation places nuclear electricity generation at risk to supply interruptions from the single, near monopoly uranium enrichment supplier. Neither public health and safety derived from the reliable supply of electricity nor the public interest in a competitive market benefits from the dependence of nuclear utilities on the present single, near monopoly supplier.

A new uranium enrichment facility will assure that there are two separate uranium enrichment facilities in the United States without a common mode of failure. One plant or even two separate facilities owned by the same company may be shut down at the same time due to technical, regulatory or commercial reasons. It is far less likely that two separate enrichment facilities that rely on different technologies will be shut down at the same time.

Two facilities under separate management will also promote effective commercial competition for uranium enrichment services and reduce the price of nuclear-generated electricity to customers.

Some may raise a concern that competition could lead to cost savings that reduce safety. The experience in the nuclear industry has been to the contrary. This issue was widely discussed when the electric industry was restructured to promote competition. At that time the NRC determined that it did not need to impose restrictions that would have reduced competition.[3] Furthermore, a uranium enrichment facility in a competitive environment cannot assume that it will not be sanctioned for safety concerns because of the effect on national security. A uranium enrichment facility in a competitive market must show its customers that it is free of any conditions that could lead to production restrictions in the future.

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[2] *See, Notice Of Amended Final Determination Of Sales At Less Than Fair Value And Antidumping Duty Order: Low Enriched Uranium From France*, 67 Fed. Reg. 6,680 (2002); *Notice of Amended Final Determinations and Notice of Countervailing Duty Orders: Low Enriched Uranium From Germany, the Netherlands and the United Kingdom*, 67 Fed. Reg. 6,688 (2002); *Notice of Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium From France*, 67 Fed. Reg. 6,689 (2002).

[3] *Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry*, 62 Fed. Reg. 44,071 (1997).

Because competition is enhanced by the existence of one or more new market entrants, the NRC should avoid actions that unreasonably limit the benefits of competition, such as requiring thirty percent equity funding or five-year revenue-based contracts with customers to demonstrate financial assurance. These license conditions apparently have been proposed by LES simply because they were accepted by the NRC in *Louisiana Energy Services, L.P.* (Clairborne Enrichment Center) CLI-97-15, 46 NRC 294, 299 n.2, 308 (1997) (*hereinafter* "LES I") under a specific set of circumstances. The thirty percent equity funding may not be appropriate for every applicant and the requirement of five-year contracts is anti-competitive. The license conditions related to financial assurance that have been proposed by LES should not be accepted as a requirement without justification. One producer now dominates the industry. The NRC should not participate in establishing licensing conditions that limit the competition between LES and the current enricher.

In addition to comments on competition, this letter sets forth our comments in support of efforts to appropriately streamline any hearings on LES licensing. Efficiency in the licensing process will decrease costs to the consumer and will encourage competition, without impacting the ability of concerned parties to appropriately raise issues within the scope of the proceeding.

A. The Federal Action for Purposes of the National Environmental Policy Act is the Grant of a License and the Evaluation of the Need For the Facility Should Reflect the Policy Decision Made by the Executive Branch

An Environmental Impact Statement ("EIS") is required in connection with the issuance of a license for a uranium enrichment facility. 10 CFR § 51.20(b)(10). The scope of that EIS is determined early in the process to eliminate from detailed study issues that are peripheral, not significant, or covered elsewhere. 10 CFR § 51.29(a) and (a)(3). The scoping process should be used regarding the LES application to narrow the review of the proposed action, as appropriate, to avoid duplication and delay. 10 CFR § 51.29(a)(1) *referencing* 40 CFR § 1502.4(d); *see generally*, 66 Fed. Reg. 48,828-48,832 (2001).

The DOE comment letter supports a narrow scope for this EIS stating, "In interagency discussions, led by the National Security Council, concerning the domestic uranium enrichment industry, there was a clear determination that the United States should maintain a viable, competitive, domestic uranium enrichment industry for the foreseeable future." The DOE comments state that the decision to maintain a viable, competitive, domestic uranium enrichment industry has already been made at a level appropriately excluded from NEPA's jurisdiction.[4]

It would be inappropriate for the NRC to revisit this policy decision in the guise of a NEPA analysis. In accordance with NRC regulations (10 CFR § 51.29(a)(3)), the no action alternative can be evaluated with a brief discussion as to whether it meets the policy objectives

[4] *See generally, Public Citizen v. Office of U.S. Trade Representative*, 5 F.3d 549 (D.C. Cir. 1993) (stating that Presidential decisions are not subject to NEPA review).

without the complex balancing of price, benefit and environmental cost performed in the previous LES licensing proceeding.[5]

B. The Need for the Facility Should Not Be Based upon Speculation Concerning the DOE Nonproliferation Programs.

The danger in extending the scope review of the facility's need is exemplified by one of USEC's comments. USEC states that any need for the facility should consider the potential impacts on the U.S.-Russia nonproliferation program to down-blend weapons-grade uranium to make low-enriched uranium ("LEU") for use as commercial fuel (the Megatons-to-Megawatts Program). Any connection between licensing LES and a potential impact on the Megatons-to-Megawatts Program is hardly direct, if foreseeable at all.[6] USEC's role is limited to acting as the executive agent of DOE for this program. This role as a broker need not be performed by an enrichment facility because the material is already enriched in Russia and is delivered directly to the fuel fabricator. The DOE could terminate USEC's role as the executive agent and perform its duties directly. It could appoint an alternate executive agent or have LES share in the role of executive agent. It could expand the program, as suggested by the Russian Federation and name additional executive agents. The U.S. utilities may offer to buy the Russian uranium directly and to pay a higher price than USEC.[7] A new enrichment facility is unlikely to have a major affect on these decisions

The Commission should be cautious in expanding its review to consider such speculative nonproliferation effects of its licensing actions. It is not certain that USEC will continue to be the sole executive agent. Whether LES or another entity will have a role as executive agent in lieu of or in addition to USEC is a discretionary decision of DOE. Such a decision would be very difficult to analyze due to the broad range of possible outcomes and the effect of the outcomes on national security.[8] USEC's argues that the Megatons-to-Megawatts program "requires a stable enrichment market in order to facilitate its $8 billion of ongoing purchases by USEC of LEU from Russia on sustainable commercial terms and that the building of the LES

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[5] DOE's position is far more reasonable that that suggested by USEC, which would unnecessarily require a complex analysis of the no action alternative.

[6] DOE comments emphasize the need to reverse the current trend where supply of domestic enrichment services has fallen to less than half the domestic demand. DOE states that Executive branch priorities for nuclear power as part of the Nation's energy future mandate implementing a policy objective of encouraging private sector investment in new uranium enrichment capacity. While half the uranium that is sold in the United States is enriched in Russia and sold by USEC under the Megatons-to-Megawatts Program, the supply of enriched uranium under that program will ultimately come to an end and new uranium enrichment capacity will need to be in place before then.

[7] *See e.g., Russia's MINATOM Said to Want Meeting With DOE in Light of Stalled SWU Talks*, PLATTS NUCLEAR FUEL, Jan. 21, 2002, at 1; *DOE Tells Utilities: Don't Try to Buy HEU SWU Now; USEC Says New Deal With TENEX Close*, PLATTS NUCLEAR FUEL, Feb. 18, 2002, at 1.

[8] *See e.g., Romer v. Carlucci*, 847 F.2d 445, 447 (8th Cir. 1988) (en banc) (identifying that an EIS is unsuited for grappling with complex issues of foreign relations and national security, especially where environmental factors are of limited decisional significance).

plant in the United States could destabilize industry pricing for [low enriched uranium]." This argument assumes as its unstated premise that an enrichment plant built by anyone except USEC would destabilize the market. There is no basis in fact for that assertion. Indeed, U.S. utility companies and other companies have expressed interest in serving as the executive agent or buying enriched uranium directly from the Russians. In any event, NRC reevaluation of broad policy decisions concerning national security is inappropriate since such an impact is not an environmental effect amendable to NEPA analysis.[9]

C. The Need For the Facility Should Reflect the Need for Competition in the Uranium Enrichment Market

Granting the license fosters competition in the domestic uranium enrichment market. The benefits of competition can be balanced against the environmental costs under NEPA without determining the economic benefits of operating the facility. At this point, no uranium enrichment facility has been licensed in the U.S. and the only commercial entity that tried was not successful after almost seven years of proceedings. The length and uncertainty of the NRC licensing process reduces competition by creating a barrier to entry into the market by new suppliers.[10] Granting a license to LES not only obviously reduces its barrier to market entry, but also to the extent the licensing process is efficient and predictable, will make the entry of others more credible. The increased likelihood that LES or others will enter the enrichment services market will have a moderating effect on current market participants' behavior. We believe that by lowering the barrier to market entry, granting a license to LES would immediately increase competition for enrichment services and produce other benefits, including better labor relations to stop the loss of highly-skilled employees, upgrades of facilities to increase efficiency and reliability, and a move toward more environmentally safe processes to limit the potential of future regulatory action.

D. Financial Qualifications License Conditions Should Be the Least Intrusive Necessary Considering the Relatively Limited Risks Involved

The NRC may, but is not required to, consider financial qualifications of applicants for a materials license "[w]here the nature of the proposed activities is such as to require consideration by the Commission, that the applicant appears to be financially qualified to engage in the

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[9] The Commission is currently evaluating whether this longstanding practice should be changed. *See, Private Fuel Storage LLC* (Independent Spent Fuel Storage Facility), CLI-02-3, 55 NRC 155 (2002); *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility) CLI-02-4, 55 NRC 158 (2002); *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Unit No. 3), CLI-02-5, 55 NRC 161 (2002); and *Duke Energy Corp* (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station Units 1 and 2), CLI-02-6, 55 NRC 164 (2002).

[10] Despite the privatization of the enricher and a market that could support as many as four three-million-SWU facilities, there is still only one antiquated, energy-intensive enricher in the U.S. The absence of modern, efficient competitors suggests either that privatization is a misguided policy or that there exist significant barriers to market entry.

proposed activities in accordance with the regulations." 10 CFR § 70.23(a)(5). We recommend that the financial qualifications determination be based on a general review of financial statements, business plans, and projected cash flows, similar to that performed in connection with a Part 50 license transfer.

LES however, asks that the Commission establish two license conditions: (1) construction of any capacity increment not commence unless funding is fully committed, including a minimum 30% contributed as equity; and (2) the project not proceed unless there are long-term enrichment contracts in place to cover all costs, including return on investment. We strongly believe that these proposed conditions are unnecessary and the second is against public policy. The first condition, if considered a precedent, may be viewed as a barrier to others who may want to enter the market. The second condition would effectively eliminate price competition in the enrichment market with no significant benefit to health or safety.

The Commission has never ruled on whether a uranium enrichment facility license is in the nature of an activity that requires consideration of financial qualifications. In the only proceeding on such a license, the Commission stated, "the hearing notice establishing this proceeding was silent as to whether LES must satisfy the financial qualification standards of Part 70, but the Staff required the applicant to do so. The Board found the Part 70 financial qualifications provisions applicable and no party contests this finding." LES I, 46 NRC at 299 n.2, 308.[11] With this background, we provide additional analysis of the two proposed conditions for financial assurance below.

1. Requiring a Specific Capital Structure Absent a Fully Developed Record Sets a Precedent that May Discourage Other Market Entrants

The LES proposed license conditions on funding, including requiring a minimum of 30% equity, are not well suited to the NRC's objectives and set an undesirable precedent. We note that such conditions are currently not imposed on new nuclear power plants. *See* 10 CFR § 50.33(f). The Commission has previously concluded that under-funding a uranium enrichment facility is extremely unlikely to present a health, safety, common defense or security risk. LES I, 46 NRC at 306. The nature of a uranium enrichment facility, the NRC's authority to shut down any licensed facility, and the NRC's separate requirements for the decommissioning funding assurance obviate the need for detailed Commission review of the applicant's financial structure. There are no health, safety, common defense or security implications if an increment of a uranium enrichment facility is not built. If the facility or an increment of the facility were not completed, no radioactive material would be processed in that section; therefore, there would be no health, safety, common defense or security implications. Recognizing the lower inherent risk of uranium enrichment facilities compared to a Part 50 production or utilization facility, the NRC

[11] The observation that no one objects to considering financial qualifications requirements is of little persuasiveness. The NRC adjudicatory standards deny standing to parties other than the applicant whose sole injury is economic.

regulations at Part 70 allow for flexible case-by-case determination of financial requirements for a uranium enrichment facility rather than the prescriptive requirements for Part 50 licensees. Since funding commitments including minimum equity contributions are not required for a new nuclear power plant under Part 50, *a fortiori*, such conditions are unnecessary for a uranium enrichment facility.

Furthermore, the proposed license conditions are onerous compared to the standard practice applicable to nuclear power plant license transfers. In license transfer cases for licensees other than electric utilities, the NRC staff has routinely concluded there is adequate assurance of public health and safety based on review of financial information. Where the specific circumstances warrant, transfer orders have required less intrusive requirements, such as requiring the licensee to be rated investment grade by standard rating agencies rather than specifying a specific capital structure or requiring a parent guarantee for a special purpose subsidiary that is thinly capitalized. *See* NUREG 1577. Because there is a lower risk associated with a uranium enrichment facility compared to a power plant, it would be an undesirable precedent for the Commission to impose the onerous financial qualifications conditions proposed by LES without a full record justifying their need.

2. License Conditions Should Be Directly and Effectively Related to Ensuring Health and Safety Not Indirectly and Ineffectively Related Through Revenue-Based Financial Qualifications

The license conditions proposed by LES have little connection to reducing health and safety risks. USEC notes that revenue based conditions are one way to show financial assurance, but not the only way and that those proposed by LES are excessively broad and prescriptive for a uranium enrichment facility. USEC states that an uranium enrichment facility can be financed and built incrementally and the resources available at each stage of activity that are dedicated to public and worker health and safety should be assessed without the pre-existence of long-term contracts. A determination by the NRC that long-term contracts are needed is inconsistent with the intent of the regulations that NRC review financial qualifications for health and safety implications, not commercial viability.

We strongly object to the NRC requiring five-year contracts with prices sufficient to ensure profitability as a condition for LES to proceed. Such conditions stifle competition. Most utilities prefer to have suppliers compete for contracts for enrichment services based on price, service duration, and financing terms. By only allowing the project to proceed if profitable five-year contracts are in place, the NRC is unnecessarily entering into market regulation. This license condition is particularly sensitive in an environment where the only current enricher in the US is reported to have adopted a similar policy.

For the particular conditions to be effective, there would be *de facto* market regulation. The proposed license conditions would eliminate a spot market for enrichment services and effectively create a floor price for LES. It is hard to justify such a condition for a materials licensee where, for example, the NRC has prudently not sought to require long-term power purchase agreements for Part 50 license transfers. Some companies acquiring operating nuclear

plants have relied on long-term power purchase agreements to demonstrate financial assurance and others have elected to operate as a merchant plant. Here LES may seek the license condition, but the condition would adversely impact competition in the market. LES may make a business decision to only enter into long-term contracts. Market conditions could later force LES to change that business decision. The NRC should not lock in any business decision by imposing a license condition that is not required to ensure public health and safety. The NRC should exercise prudence in avoiding such an externality to the nuclear fuel market.

3. The Potential For Health And Safety Impacts Should Be Determined Directly

If the NRC desires to augment assurance of health and safety beyond its existing inspection and enforcement powers, it should use its broad authority in sections 161(o) and (p) of the Atomic Energy Act (42 USC § 2201(o) and (p)) to issue a regulation providing explicitly for reporting of financial information related to the licensee's status as a going concern. Such a provision should provide a direct link to the protection of health and safety, without impairing the market's ability to contract for enrichment services in the most efficient and cost-effective manner. Such reporting would be consistent with the NRC practice in nuclear power plant license transfer cases. *See* NUREG 1577. Where appropriate based on the specific facts involved, the NRC has required the licensee to have access to a contingency fund adequate to cover expenses during an unplanned shutdown prior to a decision to decommission (six months). Such a requirement is directly related to health and safety compared to license conditions requiring profitability. Also, NRC practice with regard to nuclear power plants is instructive on appropriate review of capital structure. Where appropriate based on the specific facts involved, the NRC has required the licensee to maintain an investment grade rating. Such a rating is a better indication of the health of a licensee's capital structure than a condition fixing the minimum equity percentage.[12]

E. Environmental Justice Analysis Should Be Based on a Threshold Test of High and Adverse Environmental Impacts

LES identifies several recommendations for environmental justice reviews to ensure proceedings go forward expeditiously while providing for consideration of all pertinent concerns. These recommendations are: (1) not evaluating racial discrimination in siting absent direct evidence of same; (2) defining the relevant population based on numerical criteria from census data; (3) not subdividing the populations once established; (4) limiting the geographic radius from the facility where analysis is required; and (5) only evaluating incremental impacts over existing facilities. USEC agrees these recommendations have merit, but considering the broader implications, USEC recommends the NRC seek input from the public prior to adoption. We

[12] NRC guidelines currently call for review of financial information of enrichment facilities for reasonableness rather than establishing specific, restrictive criteria. *Staff Review Guidance for Gaseous Diffusion Plant Changes in Ownership or Control*, SECY-02-0122, Attachment 2, Encl. 2 (2002).

propose alternatives that are better fitted to achieving the LES objective of expediting the proceedings without significantly compromising any meaningful hearing opportunity.

The executive order on environmental justice encourages Federal agencies to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low income populations in the United States." E.O. 12898, 3 CFR 859 (1995). "The executive order, by its own terms, established no new rights or remedies. Its purpose was merely to underscore certain provision[s] of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment." *Louisiana Energy Services, L.P.* (Clairborne Enrichment Center) CLI-98-3, 47 NRC 77, 102 (1998) (*hereinafter* "LES II") (internal quotes and citations omitted). The NRC considers environmental justice in conducting its NEPA reviews by determining relevant communities, by evaluating which of those communities are minority or low-income, and by analyzing whether the impacts on such communities are disproportionately high and adverse. Such disparate impact analysis is the NRC's principal tool for advancing environmental justice. LES II, 47 NRC at 100; *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Facility), CLI-02-20, 56 NRC __ (2002).

The LES recommendations strive to expedite the proceedings while ensuring consideration of all pertinent concerns by reducing the effort to determine the relevant community. Determining the relevant community is the most significant incremental analytical requirement of environmental justice analysis. In materials licensing cases, the NRC evaluates the relevant radius of impacts on a case-by-case basis rather than establishing a presumption of effects based on geographic distance, and normally expects intervenors to show a plausible connection between the project and the alleged impact. LES's proposed 4 mile and 0.6 mile thresholds may simplify preparing the application, but the proposal should not sacrifice this worthwhile NRC longstanding practice of insisting on such a logical connection. Requiring a logical connection between alleged impacts and the project has the additional benefit of promoting expeditious proceedings by preventing adjudication of non-meritorious contentions.

Where there are no significant environmental impacts, detailed analysis has not been required. *See PFS*, CLI-02-20. Similarly, the NRC could consider requiring a showing of environmental impacts above the small and moderate thresholds prior to requiring an analysis-intensive determination of relevant communities. Since the generally applicable environmental effects need to be determined under NEPA anyway, the efforts by the licensee on the environmental report and the staff on the draft EIS to evaluate whether the action meets the threshold test would not be significant. Furthermore, a threshold test of whether the facility presents any high and adverse environmental effects would obviate, in most cases, the need for any effort to determine what is a relevant community and whether that community is minority or low-income. Most material licensing decisions do not involve high and adverse environmental impacts; therefore, such a threshold test would help ensure in-depth environmental justice inquiries are limited to those projects with a real potential for a disproportionate impact. Also, in most material licensing cases, such a threshold test would assist in promoting hearing efficiency

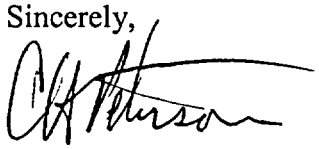
by reducing the litigation of non-meritorious environmental justice contentions through summary disposition, if not sooner in determination of admissibility.

Even if not choosing to adopt a threshold test for environmental justice evaluations, it would be helpful if the Commission would limit the environmental impacts pertinent to environmental justice analysis to those traditional impacts fairly considered to be "environmental" under NEPA jurisprudence, i.e., impacts on the ecology or natural resources that directly impact human health or the environment.[13] Environmental justice intervenors often raise concerns only remotely related to the environment, such as socioeconomic, religious, cultural and psychological impacts. While NEPA case law and Executive guidance provides that agencies may consider secondary effects and socioeconomic impacts of a project under NEPA, such evaluation is not mandated.[14] As past Commission decision have stated, the NRC lacks the resources, statutory mandate, and expertise to engage in a far-ranging environmental justice review, outside of the direct impacts on human health and the environment. To the extent that the decision in LES II[15] is inconsistent with that in *PFS*[16] and implies that NRC environmental justice analysis must consider impacts that are clearly remote from the environment, the LES II decision should be explicitly overruled.

CONCLUSION

Nuclear utilities support the continuing efforts to provide additional competition to the domestic market for uranium enrichment services. We appreciate the opportunity to submit these comments. If you have any questions or need further information, please contact me at 202-663-8148.

Sincerely,



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[13] Such focus is not without precedent. *See generally, Environmental Effects Abroad of Major Federal Actions*, Executive Order 12114, § 3-4.

[14] *See e.g., Hanly v. Kleindienst*, 471 F.2d 823, 833 (2d Cir. 1972); *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983).

[15] In the context of environmental justice analysis, LES II discusses the impact on sports-related community events and church services due to relocating a road and the impact on property values.

[16] *PFS*, CLI-02-20, 56 NRC __ (2002) (intertribal grievances are not an environmental impact).