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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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In the Matter of )

Docket No. 70-3070-ML

LOUISIANA ENERGY SERVICES, L.P. )

August 7, 1997

(Claiborne Enrichment Center) )

APPLICANT'S BRIEF IN SUPPORT  
OF ITS PETITION FOR REVIEW OF LBP-97-8

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APPLICANT'S BRIEF IN SUPPORT  
OF ITS PETITION FOR REVIEW OF LBP-97-8

Introduction

In its Final Initial Decision ("FID") on May 1, 1997, the Licensing Board found that the evidence "very strongly suggests that racial considerations played a part in the site selection process" for the Claiborne Energy Center ("CEC").<sup>1/</sup> FID at 48. Applicant Louisiana Energy Services, L.P. ("LES") categorically denies that racial considerations — an anathema to scientific objectivity as well as the moral principles of the LES partners, officers and employees — in any way contributed to site selection. The stigma of racial discrimination that permeates the FID, aside from any licensing issue, is outrageous and unacceptable, and LES and its site selection professionals categorically reject Board aspersions of racial discrimination. Although the Board couched its finding as an inference of discrimination requiring further investigation, the reputations of LES and its employees have, in the

<sup>1/</sup> The Board held that Section 2-2 of Executive Order 12898, which prohibits discrimination in federal assistance programs, requires the NRC to determine whether LES considered race in selecting the site. See 59 Fed. Reg. 7629 (1994). As a result, the NRC Staff was ordered to undertake "a complete and systematic examination of the entire [site selection] process" to investigate the site selection process for racial discrimination. FID at 47.

venue of public opinion, been tarnished with the stain of racism. Above all else, this calls for rectification by the Commission.

Not only has LES been unfairly tainted, but the interests of environmental justice in Executive Order 12898 could not have been more cruelly betrayed than in this case. Far from foisting the CEC upon a resistant minority populace, LES solicited Claiborne Parish leaders — including a black representative on the Claiborne Parish Police Jury from the predominantly black Forest Grove community — to recommend appropriate sites and had strong local support for the economic opportunities created by the CEC. Dorsey at 43-44 fol. Tr. 840; Tr. 926; Limited Appearance of Emma Hilliard (the aforementioned representative) at Tr. 17 (July 23, 1994). Not only will the CEC be a modern, efficient industrial facility with a proven track record for human safety and respect for the environment, but it will foster the goals of Louisiana's Enterprise Zone Act by bringing sorely needed jobs and tax revenues to two nearby economically depressed communities with high unemployment and a substandard quality of life.

More than unfairly demeaning LES and actually frustrating environmental justice, the Licensing Board's legal analysis of discrimination is significantly flawed because:

- The Licensing Board relied upon Section 2-2 of Executive Order 12898 to examine alleged race discrimination, but Section 2-2 applies to recipients of federal assistance, not regulatory actions such as licensing. Neither NRC guidance nor the practice of sister agencies supports the Licensing Board's interpretation.
- The Licensing Board ignored the explicit caveat of Executive Order 12898 that it does not "create any rights, . . . substantive or procedural, enforceable at law," and utilized the Executive Order to enforce a "right" against discriminatory site selection.
- By denying the license pending Staff investigation into possible discrimination, the Licensing Board illegally created a new licensing criterion in violation of 10 C.F.R. §70.23 as well as the Administrative Procedure Act ("APA").
- The Licensing Board admittedly thrust upon LES the burden of "proving a negative." FID at 46. While the applicant has the burden of proof in a licensing case, nowhere

in the American system of justice does one accused of racial discrimination bear the burden of persuading the trier of fact that no discrimination occurred.

- The Licensing Board lost track of what "discrimination" really means. Thus, the Board never pointed to any adverse treatment of the two nearby African-American communities simply by siting the CEC there, aside from speculative impacts upon local pedestrians and property values. Conversely, the Board arbitrarily dismissed significant economic benefits that will inure to these communities and the Parish, as recognized by Louisiana in enacting the Enterprise Zone Act.
- The Board relied on a faulty statistical theory that the concentration of blacks in candidate sites increased as the selection process progressed. But the Board wrongly ignored that Louisiana political and civic leaders, not LES, recommended host communities and sites. It is instructive that Dr. Bullard, upon whom the Board relied to infer discrimination, testified that some of these very Parish and town leaders were themselves racially biased. Tr. 867.
- In any event, the record is replete with evidence that neutral siting criteria, consistent with NRC guidance and industry site selection methodology, were fairly applied. This more than dispels any lingering suspicion that racial considerations contributed in any way to site selection.

The Board also erred in finding that the Final Environmental Impact Statement ("FEIS") inadequately considered "disproportionately high and adverse human health or environmental effects" on minority and low-income populations pursuant to Section 1-101 of Executive Order 12898 as to (1) the impact upon pedestrians of rerouting Parish Road 39, adding 0.38 mile to "the 1- or 2-mile walk" for those "who must regularly make the trip" between the African-American communities of Forest Grove and Center Springs (FID at 77); and (2) the impact of the CEC upon property values in those two communities:

- No evidence exists that old or infirm pedestrians walk to and from Forest Grove and Center Springs, "regularly" or otherwise. The CANT witness was there for a day and could not testify he saw *any* pedestrians. A church is the only non-residential structure in either community. Gross assumptions that many residents travel afoot back and forth between these two communities are therefore unfounded.
- The property values contention was properly rejected by the Board in 1991, but then reinserted under the guise of a different contention at the hearing. In any event, the postulated decrease in neighboring property values is based on a false comparison of



the CEC to waste processing and dump sites, and contradicts unrefuted testimony that values have *actually risen* in the vicinity of nuclear and industrial facilities.

- By no stretch of the imagination could either alleged impact — slightly increased distance for pedestrians or fluctuation in property values — be deemed a "disproportionately high and adverse" impact on human health or the environment.
- Whatever the minor impact of the CEC upon pedestrianism or property values, it has been adequately disclosed by the record of this hearing, which now supplements the FEIS. The "rule of reason" under the National Environmental Policy Act, 42 U.S.C. § 4321 ("NEPA"), does not require the NRC to quantify these speculative secondary (*i.e.*, socioeconomic) impacts with greater precision.

#### Argument

I. By exploring LES's purported racial motives for selecting the LeSage site for the CEC facility, the Licensing Board exceeded both the scope of the admitted NEPA contention as well as the Commission's commitment to implement Executive Order 12898.

A. The Licensing Board departed from the plain text of Contention J.9, which addresses siting impacts, not motives.

The Licensing Board's finding of discriminatory site selection follows from Contention J.9, which was *admitted as a NEPA contention*, years before issuance of Executive Order 12898. *See* FID at 6-7; *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 352-53 (1991). The admission of Contention J subparts was captioned under "Inadequate Assessment of Costs Under NEPA." *Id.* at 349. As admitted, the contention focuses squarely on *its* costs, and is silent on any *motives* for the CEC site selection.<sup>2/</sup> Therefore, purely as a matter of

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<sup>2/</sup> The contention alleges "negative economic and sociological *impacts* on the [two] minority communities" (*id.* at 352; emphasis added), and its stated basis lies in NEPA's requirement to assess "impacts," asserting there is "little discussion" in the Environmental Report ("ER") of "potentially significant *impacts* and their environmental and social costs." FID at 6 (emphasis added). Contention J.9 alleges "negative and economic and sociological *impacts*" on minority communities as well as "*hardships* to families" and others who use Parish Road 39, and that LES has failed "to avoid or mitigate the disparate *impact*" of the CEC upon minorities. *Id.* at 6-7 (emphasis added).

pleading practice in sticking to the admitted contention, alleged "racial bias in the site selection was irrelevant to Contention J.9, which challenged adequate consideration of *impacts* under NEPA.

Yet, after quoting Contention J.9 in the FID, the Board found it "has the same general focus" as Executive Order 12898, namely, "disproportionate impacts on a minority population *and racial discrimination*." *Id.* at 24 (emphasis added). In reality, the Board artfully sculpted the pleaded contention on *impacts* of the CEC upon nearby minority communities into a *new* contention that the site selection itself was the product of "racial discrimination." This impermissibly departed from the admitted contention.<sup>37</sup> Worse yet, the Board overstepped into a completely new area admittedly of "first impression" in NRC licensing proceedings (FID at 5), "far afield" from past NRC activities and where the NRC "has little experience or expertise." *Id.* at 45.

**B. The Licensing Board had no authority under NEPA to search for an alleged racial motive or bias in the CEC site selection.**

In opposing Commission review, CANT has gamely tried to salvage the Licensing Board's discrimination findings by suggesting the Board was interpreting some pre-existing NEPA responsibility. *See* Answer of CANT in Opposition to Petitions for Review at 7-9 (June 5, 1997). The Board, however clearly saw Section 2-2 of Executive Order 12898, not NEPA, as the basis for litigating site selection. The Board discussed Executive Order 12898 at length (FID at 9-14), specifically referring to Section 2-2. *Id.* at 10. By contrast, nowhere does the Board rely upon any

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<sup>37</sup> Contention J.9 refers to a study that generally concerns "the location of commercial hazardous waste facilities" in areas of more heavily concentrated minority population, but nowhere does the contention allege that the CEC site was selected *on account of* race or low-income populations. Rather, it simply chastises LES for not attempting "to avoid or mitigate the *disparate impact*" of its proposed facility upon minorities. *Id.* at 7 (emphasis added).



pre-existing authority under NEPA to examine the CEC site selection process for racial discrimination.<sup>4</sup>

Even so, CANT is wrong about NEPA. First, had Executive Order 12898 merely restated an existing responsibility under NEPA, there would have been no need for the Executive Order. Second, NEPA calls for an objective, scientific evaluation of project impacts. While NEPA permits an agency to consider site demography from the perspective of *impacts* upon low-income populations, it does not authorize the agency to investigate alleged racial motive or bias in selecting the site of the licensed facility. This is crucial because, as noted, CANT has implicitly acknowledged in opposing Commission review that exploring LES's motive for selecting the CEC site cannot be justified by Executive Order 12898. Unashamedly abandoning the Board's rationale under Section 2-2 of Executive Order 12898, CANT has asserted but has offered no authority that NEPA requires such an inquiry.

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<sup>4</sup> Thus, the Board referred to Chairman Selin's commitment "to implement the President's environmental justice directive" and the NRC's obligation "to carry out the Executive Order in good faith," concluding that "the Executive Order is applicable to the licensing of the CEC." *Id.* at 14. The Licensing Board believed that its resolution of Contention J.9 would be determined by the manner "in which the agency carries out its commitment to the President to implement Executive Order 12898" (*id.* at 14), not some pre-existing obligation under NEPA. The Board determined that the "nondiscrimination component of Executive Order 12898 requires that the NRC conduct its licensing activities in a manner that 'ensures' those activities do not have the effect of subjecting any persons or populations to discrimination because of their race or color." FID at 43. The Board also referred to the "nondiscrimination component of the President's environmental justice directive to make sure the site selection process . . . was free from racial discrimination." *Id.*

**C. In response to Executive Order 12898, the Commission stated only that the NRC would conduct a traditional NEPA review of licensing impacts.**

Even if Contention J.9 had alleged discriminatory site selection, the Board's acceptance of this issue was unjustified. In advising the President that the NRC would carry out Executive Order 12898 and the accompanying Memorandum for the Heads of All Departments and Agencies, Chairman Selin acted without regulatory formality to accede to Executive Order 12898 (see Letter from NRC Chairman Ivan Selin to the President, dated March 31, 1994), stating that these responsibilities would be met in the context of the NRC's existing responsibilities under NEPA. The explicit references to NEPA and the informality of Chairman Selin's letter attest that the NRC meant only to consider impacts upon minorities and low-income populations — covered by Section 1-101 of Executive Order 12898 — in the same manner it has always considered environmental impacts under NEPA rather than launch into the entirely different area covered by Section 2-2.<sup>3/</sup>

In simple terms, Section 2-2 of Executive Order 12898 directs federal agencies not to discriminate against persons benefitting from federal assistance programs. See FID at 10-12. The President's memorandum accompanying Executive Order 12898 makes this crystal clear:

In accordance with Title VI of the Civil Rights Act of 1964, [42 U.S.C. §2000d,] each Federal agency shall ensure that all programs or activities *receiving Federal financial assistance* that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin. [Emphasis added.]

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<sup>3/</sup> The Chairman recited the NRC's traditional evaluation of "the social, economic, and health *effects* of our actions . . . Id. (emphasis added). This unmistakably corresponds with and refers to agency responsibilities under Section 1-101 to consider "disproportionately high and adverse human health or environmental *effects* of programs, policies, and activities on minority populations and low-income populations . . ." (Emphasis added.) The Chairman made no mention of discrimination in site selection or otherwise.

Like Section 2-2, the prohibition against discrimination under Title VI applies only to recipients of "Federal financial assistance."<sup>6</sup> This renders Section 2-2 irrelevant to Chairman Selin's declaration that the NRC would carry out Executive Order 12898 with its environmental review under NEPA.

But the Licensing Board did not attempt to justify its examination of LES's motive for selecting the CEC site as appropriate under Section 1-101 of Executive Order 12898 or NEPA. Indeed, the Board recognized that "disproportionate impacts on a minority population and racial discrimination" (which obviously correspond to Executive Order 12898, Sections 1-101 and 2-2, respectively) are distinct components of Executive Order 12898. FID at 24. In the second half of its FID, the Board did consider site impacts, but the first half considered LES's site selection process only from the vantage point of "the discrimination aspect of environmental justice." *Id.* Thus, the Board realized that Section 1-101 of Executive Order 12898 addresses impacts, not purposeful discrimination, but erred in applying Section 2-2 of Executive Order 12898 to NRC licensing.

As the Commission is aware, the NRC is part of a working group assisting the Council on Environmental Quality ("CEQ") in developing guidance for considering environmental justice under NEPA. Like the NRC guidance, the CEQ Draft Guidance (March 26, 1997) strictly refers to agency responsibility under Section 1-101 of Executive Order 12898 to address disproportionately high and

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<sup>6</sup> See Association Against Discrimination in Employment v. City of Bridgeport, 647 F.2d 256, 276 (2d Cir. 1981), cert. denied, 455 U.S. 988 (1982). Title VI defines "Federal financial assistance" in 42 U.S.C. §2000d-1 as a "grant, loan or contract." Moreover, a "program or activity" under Title VI is defined as an "instrumentality of a State or local government, a post-secondary educational institution, or a private entity engaged in education or other public service, or receiving Federal financial assistance." Under these definitions, the licensing of the CEC is not "Federal assistance" nor is the CEC a "program or activity" covered by Title VI. The NRC enforces Title VI in 10 C.F.R. Part 4. The licensing of nuclear facilities is clearly not covered. See 10 C.F.R. § 4.3 and Appendix A. The NRC has itself concurred that enforcement of Section 2-2 of Executive Order 12898 is limited to Title VI activities. See note 8, *infra*.



adverse human health and environmental effects upon minority and low-income populations.<sup>7/</sup> In commenting to CEQ, the NRC made clear that its implementation of Executive Order 12898 would "integrate [environmental justice] into agency decisionmaking under NEPA."<sup>8/</sup> Recent NRC guidance on implementing Executive Order 12898 confirms that the Staff is to evaluate environmental impacts, not investigate alleged discrimination in facility site selection.<sup>9/</sup> This is consistent with the interpretation and practice of other agencies implementing Executive Order 12898, as shown by the attached excerpts of sister agency EIS's for federally licensed projects. See Appendices. These

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<sup>7/</sup> The CEQ points out that the Executive Order identifies four ways to consider environmental justice under NEPA. All relate to impacts upon minority and low-income populations, not discrimination. Indeed, the guidance sharply distinguishes between populations for which the customary NEPA review is required and "populations protected by Title VI of the Civil Rights Act of 1964," and likewise distinguishes between NEPA review and "the appropriate standard of review imposed by Title VI." CEQ Draft Guidance at 7.

<sup>8/</sup> See Letter from Hugh L. Thompson, Jr., Deputy Executive Director for Regulatory Programs, NRC, to Bradley M. Campbell, Associate Director for Toxics and Environmental Protection, CEQ at p. 3 (April 25, 1997). The only exception was "review and monitoring of Title VI activities," which the NRC emphasized "are *limited to funding, training and travel*" under Section 274 of the Atomic Energy Act. Id. (emphasis added).

<sup>9/</sup> The Office of Nuclear Material Safety and Safeguards ("NMSS") describes NRC responsibility for implementing Executive Order 12898 by quoting Section 1-101. See NMSS Policy & Procedures Letter 1-50, Rev. 1 at p.1 (April 1995). Rather than directing the Staff to consider possible racial discrimination in site selection or otherwise, the guidance focuses on whether any "disproportionately high and adverse" impact to human health or the environment exists. The same is true of Nuclear Reactor Regulation interim guidance in NRR Office Letter 906 per Memorandum of Frank Miraglia (March 16, 1995).

Indeed, the Commission has endorsed Chairman Selin's understanding in its recent adoption of environmental review requirements for operating license renewals. The Commission defined implementation of Executive Order 12898 as "discussing impacts on minority and low-income populations when preparing NEPA documents . . ." 61 Fed. Reg. 28467, 28483 (1996). No mention is made of discrimination.

documents prove that agencies are complying with Executive Order 12898 by evaluating project impacts, not examining the applicant's mental processes for racial bias.<sup>10/</sup>

II. **As a matter of law and Commission policy, the Licensing Board's site selection analysis should be rejected.**

A. **The Board violated the Commission's regulations, the Administrative Procedure Act and Executive Order 12898 itself by inquiring into possible race discrimination in selecting the CEC site.**

Neither NEPA nor Executive Order 12898 authorizes an inquiry into an applicant's motives for site selection, and such an inquiry also violates (1) the Commission's regulations as well as the APA; (2) NEPA; (3) the Hearing Order governing this proceeding; (4) explicit limitations within Executive Order 12898 itself regarding its enforceability; and (5) the right to due process.

**1. Imposing a new requirement for facility site selection would violate Commission regulations and the APA.** Basic principles of federal licensing demand that the grant or denial of a license be governed by applicable statute and regulations.<sup>11/</sup> The Commission has provided in 10 C.F.R. § 70.23 that a license for the CEC may issue upon a determination "that an

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<sup>10/</sup> For example, the Department of Transportation has stated:

The Department *does not* intend that this Order be the first step in creating a new set of requirements. The objective of this Order is the development of a process that integrates the *existing* statutory and regulatory requirements in a manner that helps ensure that the interests and well being of minority populations and low-income populations are considered and addressed during transportation decision making.

62 Fed. Reg. 18377, 18378 (1997) (emphasis added).

<sup>11/</sup> "The criteria used to determine the fitness of a license applicant are based on those agency rules that have been promulgated in accordance with the agency's power to legislate. The determination of compliance with those established standards is the foundation of the agency decision to grant or deny a license." Jacob A. Stein, *et al.*, Administrative Law § 41.01 (1977) (footnote omitted).

application meets the requirements of the [Atomic Energy Act] and of the regulations of the Commission . . . ." Nothing in 10 C.F.R. Part 51 and Appendix A thereof or Part 70, or even NRC Reg. Guide 4.9 (Rev. 1, October 1975), requires the applicant's ER or the DEIS/FEIS to address the applicant's mental disposition so as to negate discrimination in siting a uranium enrichment facility.

**2. NEPA is a disclosure statute.** The Licensing Board not only made discrimination a licensing issue, but opined that its findings on impacts "would become moot" if the NRC "ultimately determined that racial considerations played a role in the site selection process," *i.e.* would require denial of the license. FID at 60. By adding possible racial discrimination in site selection as a new dimension to approving a license, the Licensing Board not only violated the APA, but also ignored the settled rule that NEPA is an environmental disclosure statute, which "itself does not mandate particular results." Claiborne Enrichment Center, LBP-96-25, 44 NRC 331, 341 (1996), citing Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989).

**3. The Commission did not authorize the Board to determine compliance with Executive Order 12898.** The Board disregarded the Hearing Order in this proceeding:

The matters of fact and law to be considered are whether the application satisfies the standards set forth in 10 CFR 30.33, 40.32, and 70.23, and the special standards and instructions set forth in section III of this Notice, and whether the requirements of 10 CFR part 51 have been satisfied.

56 Fed. Reg. 23310 (1991). The "special standards and instructions" derived from the requirements of new Section 193 of the Atomic Energy Act, 42 U.S.C. §2243. In all, the Commission listed nine such "special standards and instructions," none of which relates to Executive Order 12898 (issued years later) or environmental justice in general. Nor did the Commission update its Hearing Order sub silentio with Chairman Selin's letter to the President because, as shown in the following discussion, the Executive Order itself created no enforceable right to a hearing on compliance.

4. **Executive Order 12898 itself declares its provisions to be unenforceable by interested parties.** The Licensing Board also ignored the declaration in Section 6-609 of Executive Order 12898 that the Executive Order is intended only to improve internal management, does not create "any right . . . substantive or procedural, enforceable at law . . . by a party against the United States [or] its agencies," and "shall not be construed to create any right to judicial review" involving compliance. Yet, CANT was permitted to litigate compliance with Executive Order 12898, which would inevitably provide an opportunity for judicial review before a Court of Appeals under the Hobbs Act in contravention of Section 6-609. Where an agency treats part of the Executive Order 12898 as an aspect of compliance with its customary NEPA review, a party cannot use NEPA as a "hook" for avoiding the prohibition against new hearing rights, including judicial review.<sup>12/</sup>

LES recognizes that the NRC may wish to amend its regulations (as it is doing for reactor license extensions) to permit interested parties to litigate environmental justice issues, notwithstanding the strictures of Executive Order 12898. But absent amendment of Part 51, the Commission's consideration of environmental justice lies exclusively under Executive Order 12898 and, as in New River Valley Greens, CANT may not challenge compliance with the Executive Order "indirectly under NEPA."

5. **Applying the anti-discrimination provisions of Executive Order 12898 retrospectively would violate due process.** LES utilized racially neutral screening criteria, but it

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<sup>12/</sup> Such a bootstrap argument was rejected in New River Valley Greens v. Department of Transportation, 1996 U.S. Dist. LEXIS 16547 (W.D. Va. Oct. 1, 1996). Plaintiffs attacked the "conclusory statement" that the project would not disproportionately affect minority or low-income populations as insufficient under NEPA, but the Court ruled that "plaintiffs are attempting to do indirectly under NEPA what cannot be done directly under the Order . . . . Because the Order denies private rights of action, plaintiffs may not use the courts to force defendants to comply with the Order's commands." *Id.* at \*18-19.



would violate due process to apply Section 2.2 of Executive Order 12898 retrospectively to LES's site selection screening, which predated the Executive Order by years,<sup>13/</sup> especially because its siting specialists did not know then that their mental disposition would come under such harsh scrutiny and therefore had no reason to document their nondiscriminatory thinking.<sup>14/</sup>

**B. The Licensing Board's analysis of discrimination was badly flawed.**

As shown, the Licensing Board exceeded its authority under the APA, NEPA and NRC licensing regulations, and disregarded explicit prohibitions in Executive Order 12898 against creation of hearing rights. Having launched headlong into this thicket nonetheless, the Licensing Board badly botched its analysis. The Licensing Board overlooked the meaning of "discrimination," misapplied the burden of proof, misinterpreted population statistics supposedly leading to an inference of

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<sup>13/</sup> "[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." Landgraf v. USI Film Products, 511 U.S. 244, 265 (1994) (footnote omitted). Up to the Board's FID, an applicant's site selection had been treated as a given, and compared to alternative sites only to assure that they are not "obviously superior" environmentally. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 514 (1977). In adopting Part 51, the Commission expressly disclaimed involvement in or oversight of site selection, commenting that "the NRC does not select sites or designs or participate with the applicant in selecting proposed sites or designs." 49 Fed Reg. 9352, 9353 (1984). Likewise, the NRC's Draft Strategic Plan - Environmental Justice at p. 1 (Exh. I-RB-4) states that the NRC "neither sites, owns, nor manages facilities or properties."

<sup>14/</sup> For example, the Kepner-Tregoe ("K-T") site selection process utilized by LES places emphasis upon "making a decision, not on recording every move made." Dorsey at 37 fol. Tr. 840. Thus, the precise details of meetings between LES site selection consultants and community representatives were not kept because the information "was not pertinent to the site selection evaluations or siting decision." *Id.* Never before had siting professionals or the LES partners they represented been accused of a racially biased site selection. Dorsey at 49 fol. Tr. 840. Putting LES under a microscopic scrutiny of its thought processes years ago created an unfair and infeasible burden of proof, especially coupled with the anomalous burden (as the Licensing Board acknowledged) of "proving a negative." FID at 46.

discrimination, and improperly failed to credit LES's explanation of racially neutral reasons for selecting the CEC site, including its K-T methodology.

1. **The essence of "discrimination" is adverse treatment.** Following CANT's lead, the Board narrowly focused on demography and concluded that the heavy concentration of blacks in the two communities near the CEC led to an inference of racial discrimination. So immersed was the Board in its demographics that it lost sight of what "discrimination" really means. The essence of a class-based discrimination claim is "adverse effects upon an identifiable group." Personnel Administrator v. Feeney, 442 U.S. 256, 279 (1979). Accord, Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 275-76 (1993). Discernable injury has always been the *sine qua non* of discrimination claims, including residential discrimination.<sup>15/</sup> A discrimination case plaintiff *must* prove disproportionate impact, *i.e.*, that the defendant's action "bears more heavily on one race than another." Washington v. Davis, 426 U.S. 229, 242 (1976).

In this instance, the Board examined racial discrimination in isolation from any alleged adverse effect. In fact, the *only* adverse effects of siting the CEC determined by the Board — albeit in the second and unrelated part of the FID — were an incremental increase of 0.38 mile in walking distance from one community to another, and some possible fluctuation in property values. Even in the Board's view, each supposed impact was so uncertain that further Staff investigation was ordered.

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<sup>15/</sup> For example, in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), a nonprofit developer wishing to build racially integrated low-income housing challenged a rezoning denial that thwarted the project. The Court held that both the developer and a representative minority had adequately alleged injury by citing the scarcity of low-income housing and the likelihood that a housing opportunity would be denied the representative plaintiff. 429 U.S. at 262-64. However phrased, a plaintiff claiming discrimination must prove "unfair treatment or denial of normal privileges" as in Zamlen v. City of Cleveland, 686 F. Supp. 639, 652 (N. D. Ohio 1988), or some "adverse impact," as in Cherry v. Thermo Electron Corp., 800 F. Supp. 508, 511 (E.D. Mich. 1992).

On the other hand, the benefits arising from the Louisiana Enterprise Zone Act program are well known. See LeRoy at 22-25 fol. Tr. 840. Weighed against the hundreds of jobs created by CEC construction and operation as well as the millions in tax revenues benefiting *all* Claiborne parish residents, the two very uncertain impacts found by the Board are minuscule and cannot possibly constitute "adverse treatment" of these residents on account of their race.<sup>16/</sup>

**2. The Licensing Board improperly imposed upon LES the burden of "proving a negative."** The Board incongruously placed upon LES the ultimate burden of persuading the Board that no racial discrimination had occurred, *i.e.*, "proving a negative." FID at 46. In a discrimination case, however, an agency must respect the Supreme Court's "repeated admonition that [the party asserting discrimination] at all times bears the 'ultimate burden of persuasion.'" St. Mary's Honor Center v. Hicks, 509 U.S. 502, 509 (1993). This is so even though the party accused of discrimination must sustain its burden of "producing *evidence* (whether ultimately persuasive or not) of nondiscriminatory reasons" for its actions. Id. (emphasis in original). The Court took pains to point out that the accusing party's burden of persuasion is *not* carried simply by the fact finder's disbelief of the accused party's explanation for its actions. Rather, the appropriate fact finder must determine, "according to proper procedures, that the *[accused party] has unlawfully discriminated.*" Id. at 514 (emphasis in original).<sup>17/</sup>

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<sup>16/</sup> A peak of 400 construction jobs would result. FEIS at p.4-10. Of the 180 CEC operations personnel, LES would employ up to three-quarters from Claiborne Parish and the surrounding area, some now receiving public assistance or otherwise unemployable. LeRoy at 23 fol. Tr. 840. Further, LES will pay millions of dollars in "school tax" to the Claiborne Parish School Board over the construction period, and approximately \$170 million in other tax revenues for the Parish over the CEC's thirty-year operating license period. Id. at 22.

<sup>17/</sup> The Board wrongly concluded that inverting the burden of persuasion is required by "the adjudicatory process" in a licensing case. FID at 46. The applicant bears the burden of proof (continued...)



3. **LES employed industry-wide and racially neutral siting criteria.** The Board's finding of discrimination boils down to three points: (1) "as the site selection process progressed . . . , the level of minority representation in the population rose dramatically," culminating "in a chosen site with a black population of 97.1% within a 1-mile radius of the LeSage site, which is the site with the highest percent black population of all 78 examined sites" (FID at 47); (2) "racial and economic-based quality of life considerations" favoring white, middle-class homeowners on Lake Claiborne influenced LES's site consultant's "low population" scoring of the runner-up Emerson site (FID at 52); and (3) coupled with the two preceding factors, the "fine screening" criterion of siting the facility five miles from institutions "indirectly [indicates] that racial considerations played a part in the site selection process." FID at 57. The Board's reasoning is untenable and should be rejected.

LES's site selection professionals testified without contradiction that "the racial mix or racial makeup of the local population was not considered as a site selection criterion," and in no instance was race or color considered a siting factor. FID at 33. The site selection screening process employed only technical, safety, economic and environmental factors. This structured, analytical approach considered numerous criteria refined at each screening phase. Criteria examples include

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<sup>17/</sup>(...continued)

in a licensing case on all elements of the application, but absence of discrimination in site selection is not a health and safety or environmental issue within NRC regulations. Even if the Commission were to afford intervenors the opportunity to show that a license should be denied because of discrimination, that burden of persuasion belongs to the intervenor.

Thus, the Board's reversal of this obligatory burden of proof is not some academic debate. The Board admitted that "the record is simply inadequate, objectively viewed, to reach any conclusion with the requisite degree of confidence," and found itself unable to "make specific findings on the current record that racial discrimination did or did not influence the site selection process." FID at 46. Given the inconclusive record, the Board should have determined that CANT had failed to carry its ultimate burden of persuasion in proving discrimination.

feed and product transportation distances, plant sponsorship, seismic stability, low probability of storm damage, favorable climate, favorable political atmosphere, favorable labor climate, soil stability, flood risk, receptiveness to new industry, location in the Louisiana Power & Light ("LP & L") service area, good transportation, no heavy development, no operating oil or gas wells, compatible surrounding land uses, distance to other nuclear facilities, quality of life, distance to major metropolitan areas, land cost, local support, and opinion leader unity. ER at p. 7.1-1 to 10; Dorsey at 16, 22-23 fol. Tr. 840. Two particularly important criteria in the latter phases, as discussed below, were "low adjacent population" and lack of "institutions within 5 miles." *Id.* at 23-24. LES applied these traditional siting criteria to coarse, intermediate and fine screening phases that narrowed the search to the selected site — exactly the screening process used throughout the nuclear industry and accepted by the NRC. Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), LPB-80-9, 4 NRC 310, 314-316 (1980).

Northern Louisiana was selected from throughout the contiguous United States as the candidate region because of LP&L's service area there, favorable "right-to-work" laws low seismicity and other factors having nothing to do with demographics. ER at pp. 7.1-2 to 5. Thereafter, LES met with Mr. Wilton of the Louisiana Department of Economic Development, who solicited interest from the parishes of northern Louisiana, and afterwards LES "met or spoke with representatives of the communities that responded to *solicitations from Mr. Wilton*," not LES. Dorsey at 24 and 28 fol. Tr. 840 (emphasis added); Tr. 934-38. After field review of the sites *proposed by these communities, not LES*, nine were considered as the potential host. Dorsey at 25 fol. Tr. 840.

From these nine, the host community was selected using the K-T decisionmaking methodology, a widely accepted technique for comparing alternatives based on multiple criteria and

frequently used for site comparison.<sup>18/</sup> ER at p. 7.1-6. Ratings ("must" or "want") and weights for "want" items were assigned for fourteen criteria, none of which related to site demographics. ER at pp. 7.1-6 to 8. Based on the K-T analysis, Homer was selected as the host. ER at p. 7.1-8. "Community leaders," i.e., the Claiborne Parish Economic Development Board (a political/civic citizen association), *not* LES, identified six candidate sites, including LeSage, which were compared by fine screening. Dorsey at 39 fol. Tr. 840. At this stage LES established a "want" criterion of low population density within two miles of the facility. ER at p. 7.1-9. During the second phase of fine screening, the three top rated sites (LeSage, Emerson and Prison) were reevaluated, adding environmental and technical factors. Of these three, LeSage was top-rated.

Because other organizations, *not* LES, identified candidate sites, the Board unreasonably attributed a discriminatory motive to LES. LES simply did not pick the potential hosts or the sites even if, "as the site selection process progressed and the focus of the search narrowed, the level of minority representation in the population rose dramatically." FID at 47. Not only does the role of these civic organizations in site selection emasculate the Board's inference of discrimination, but it also shows how the Board lost sight of the strong influence of Louisiana law and policy under the Enterprise Zone Act, which encouraged LES to site the CEC in a host community such as Homer in

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<sup>18/</sup> The Board erroneously assumed that any deviation from the K-T parameters is evidence of discrimination. FID at 59 n. 21. The K-T criteria were developed as a guide that structures the inquiry, but does not dictate the result. Tr. 930. Nor does it preclude business judgment that would favor a location with a lower score, but with economic, or other features that make it more attractive. The Board's unfair criticism of purported inconsistencies elevates the K-T methodology to an immutable formula rather than a screening tool. Reg. Guide at p. 49-21, for example, recognizes that some criteria are necessary for regulatory compliance, while other, optional criteria invite judgment calls, *i.e.*, are "the result of management decisions."

Claiborne Parish and at a site such as LeSage. Further, as discussed next, the Board had no basis to suggest that LES manipulated specific selection criteria to prejudice minorities.

a. **Low population.** The Board's critique of LES's "low population" criterion is grossly unwarranted. First and foremost, Reg. Guide 4.9 actually *instructs* applicants to favor low-population areas. See Item 10 at p. 4.9-21 and Item 3.2 at p. 4.9-24. Second, it is mathematically impossible for this factor to have resulted in LES's selecting LeSage.<sup>19/</sup> Third, each of the six "fine screening" sites near Homer had a substantial minority population.<sup>20/</sup> It is just not credible that LES chose LeSage among six sites with a substantial black populace just to site the facility near the heaviest concentration of minorities.

Most significantly, census data produced by CANT conclusively show that LeSage actually *is* less densely populated than Emerson. According to the very 1990 U.S. Census data relied upon by the Board, the total populations within one mile of the LeSage and Emerson sites are 138 and 393,

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<sup>19/</sup> The weighted scores in the final phase were LeSage, 742; Emerson, 671; and Prison, 629. The difference in weighted scores for "low population" between LeSage and the runner-up Emerson site was 18 — far less than the difference of 71 in their total scores. Also, the differential between Emerson and LeSage on "low population" was the same, for example, as their differential on "property contamination migration." See ER Fig.7.1-9 to 10. Moreover, the second runner-up Prison site scored even higher than LeSage on "low population."

<sup>20/</sup> The Baptist site was 83% black, but did not reach final screening over Emerson (49% black) and Prison (74% black), the two other finalists, even accepting the Board's substitution of a "one-mile" population radius for the "two-mile" radius LES actually used to factor in population. Thus, the process did *not* progressively narrow to sites with an increasing percentage of black residents. Also, the Board's substitution of a one-mile screening radius skewed its analysis. The adjacent site populations overlap using a two-mile radius, which would place a portion of Forest Grove in the vicinity of both the Emerson and LeSage sites. See FID at 52 n.20. This alters conclusions regarding the concentration of minorities near the respective sites.



respectively.<sup>21/</sup> See Exh. I-RB-68 at 5. Hence, notwithstanding witness credibility attacks,<sup>22/</sup> the Census data *show that LES was right* about "low population."<sup>23/</sup>

b. **Proximity of Lake Claiborne.** The Board erroneously accepted the accusation by Dr. Bullard that LES discriminatorily applied its "low population" criterion during fine screening "to protect the white, middle class lifestyles on Lake Claiborne next to the Emerson site." FID at 52. First, the Board blindly accepted Dr. Bullard's assessment that the lakeside community is "white" because "it is very simple to tell who lives where." FID at 55 n.19. The Board's reliance

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<sup>21/</sup> Exh. I-RB-68 also proves that no correlation exists between population density and racial make-up around the candidate sites in Claiborne Parish. The least densely populated area surrounding the Gladney site, for example, also has the lowest concentration of minorities.

<sup>22/</sup> While purporting not to "impugn the integrity of the Applicant's witnesses" (FID at 49), the Board rejected testimony by Mr. Engwall, LES's fine screening consultant, because he forgot during his deposition that, in addition to an "eyeball" assessment, he had also relied upon an aerial view to estimate site population levels. FID at 53-54. Mr. Engwall's deposition was taken more than four years after his CEC site selection activities, and his inability to recall the aerial reconnaissance until preparing for the hearing does not warrant the Board's credibility conclusions. It is instructive that the Board scoffs at Mr. Engwall's "eyeball" technique for estimating population, but embraces Dr. Bullard's conclusion that "it is fairly simple to look at the numbers in the charts and tell who lives where." FID at 55 n.19.

<sup>23/</sup> The Board unfairly applied the U.S. Census data. On one hand, it found the Census "very strongly suggests" a racially discriminatory site selection (FID at 48) because "the level of minority representation in the population rose dramatically" as site selection progressed. *Id.* at 47. LES pointed out that the *same Census data* proved that its "low population" criterion had been properly applied, *i.e.*, Exh. I-RB-68 at p. 5 shows total population of 138 within one mile of LeSage and 393 for Emerson. The Board dismissed this observation as irrelevant because LES used a two-mile rather than a one-mile screen for its "low population" criterion.

This was unreasonable. The Board cannot have it both ways: if the Census data can be cited to *support* an inference of discrimination because of minority concentrations, the same data *rebut*s the inference by proving LeSage's lower population. Conversely, if the one-mile Census data are irrelevant to *supporting* LES's conclusions because it used a two-mile screen for low population, then LES's conclusions cannot be *challenged* with one-mile Census data which, as the Board admits, provides no "accurate or reliable figure of the population within 2 miles of the Emerson and LeSage sites." FID at 56 n.20.

upon Dr. Bullard's conclusion that "it is very simple to tell who lives where" is feeble, and its frailty compounded by the Board's consistent error of requiring LES to disprove discrimination, *i.e.*, that LES presented "no evidence" that the Lake Claiborne residential area "was not a white, middle class area." FID at 55 n.19.

Second, in considering the demographics of the alternative sites, LES validly considered the proximity of Lake Claiborne to the Emerson site. FID at 37. LES's site selection consultant thought that siting an industrial facility close to Lake Claiborne would be out of character with its recreational use (FID at 38), but the Board spun Dr. Bullard's unproven supposition into a "strong inference that race and economic status played a role in the scoring of the two sites." FID at 52-53. Not only was considering the lake appropriate under Reg. Guide 4.9 at p. 4.9-21, Item 11 (recreational land use considered) and p. 4.9-24, Items 3.1 and 3.3 (preemption of scenic land uses, changes in aesthetic appeal), but it was amply supported by NEPA precedent.<sup>24</sup>

c. **Distance from institutions.** Far from discriminatory, the "distance from institutions" factor avoids competition for utility requirements, labor pools, and other operating factors that could affect the LES facility and its operations. Tr. 929-30. The NRC Staff recognized mutual benefits to the facility and the surrounding community from this factor. Tr. 1011-12. Item 3.2 of Reg. Guide 4.9 at p. 4.9-24 instructs the applicant to consider this factor, *i.e.*, "number of

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<sup>24</sup> Sierra Club v. Morton, 405 U.S. 727, 735 (1972), ("recreational values of the area" are appropriate NEPA concerns); Roosevelt Campobello Int'l Park Comm'n v. EPA, 684 F.2d 1041, 1048 (1st Cir. 1982)(excluding site based on heavy tourism); Rochester Gas & Electric Corp., (Sterling Power Project, Nuclear Unit No. 1), CLI-80-23, 11 NRC 731, 733 (1980) (endorsing concern over "unnecessarily committing a partially forested, partially cultivated lake-front site"); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 67 (1977) (NEPA includes recreational factors); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 & 2), LPB 77-52, 6 NRC 294, 331 (1977) (visual impacts mitigated by routing transmission lines "away from recreation and conservation areas").

residences, schools, hospitals and population that will be affected and the duration of the effect for both construction and operational phases," and implicitly encourages an applicant to site its facility in an "economically depressed" region, such as a rural-poor area distant from institutions. *Id.* at p. 4.9-21 (Item 11).

Avoidance of sites with "institutions within five miles" was a criterion applied only during the "fine screening" phase when the six sites around Homer were evaluated. ER at p. 7.1-9. Nowhere did the Board or CANT show how this factor was inherently biased or applied discriminatorily. To the contrary, comparing this factor to minority populations for the six respective sites proves that no correlation exists between a high score for "institutions within five miles" and high minority population.<sup>25/</sup>

**III. The FEIS adequately evaluates that the CEC will not cause "disproportionately high and adverse" effects upon human health or the environment.**

**A. The Board impermissibly recast Contention J.9 to include the only two impacts for which the Board found inadequate discussion in the FEIS.**

The Licensing Board correctly rejected most of CANT's contentions regarding the adequacy of the FEIS (FID at 88), but found that the FEIS inadequately discussed (1) the impact on pedestrians of relocating Parish Road 39 so as to add 0.38 mile to the one or two mile distance between Forest

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<sup>25/</sup> Exh. I-RB-68 at p. 5 and ER Fig. 7.1-8 show the relationship between scoring for "institutions within 5 miles" and minority population:

<u>Site</u>	<u>ER Score</u>	<u>Minority Population Within One Mile (%)</u>
Baptist	10	82.99%
Gladney	9	32.43%
LeSage	9	97.10%
Emerson	8	49.11%
King	7	46.50%
Prison	5	73.86%

Grove and Center Springs; and (2) the impact on local property values of siting the CEC near those two communities. FID at 89-90.

Contention J.9, as admitted, argues that if Parish Road 39 (which connects Forest Grove and Center Springs) "is closed off," the *closure* "will cause hardships to families who use the road, residents who car-pool to work, school transportation, sports-related activities that involve children living in both communities, and church services that are divided between the two communities." FID at 6. Noting that Parish Road 39 would *not be closed*, LES committed to reroute the road around the site if the Parish did not.<sup>26/</sup> FID at 75. That should have ended the matter, but the Board permitted CANT to stray from the admitted contention to litigate impacts of *rerouting upon pedestrians*. The rerouting never came up until the filing of Dr. Bullard's 66-page testimony, asserting in one sentence and without evidence of personal knowledge: "Had LES consulted [Center Springs] residents, it would have found that this road is a vital and frequently used link between the two communities, with regular pedestrian traffic." Bullard at 34 fol. Tr. 853. In a licensing proceeding spanning years and costing millions, it is intolerable that a single sentence of testimony irrelevant to the admitted contention becomes a linchpin of the Licensing Board's remand order.<sup>27/</sup>

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<sup>26/</sup> The Board had no right to infer from LES's commitment "a concession by the Applicant that the impacts of closing the road are sufficiently detrimental to the communities of Forest Grove and Center Springs that those impacts must be addressed by road relocation." FID at 75. LES was merely laying a licensing issue to rest.

<sup>27/</sup> Pedestrian traffic was not mentioned in either Contention J.9 or any oral/written argument about its admission; pretrial discovery (including Dr. Bullard's deposition); comments on the Draft EIS by CANT, Dr. Bullard and Forest Grove/Center Springs residents; or Limited Appearance statements by residents. Yet, the Board amazingly criticizes LES and the Staff for not having "presented any evidence" on this issue. FID at 76. If the impact of rerouting Parish Road 39 were so substantial, one might ask why the many commenters to the draft EIS from the minority communities failed to mention it.



The Board's finding that the FEIS inadequately considers impacts upon local property values springs from the same "trial by ambush" tactics. In proposed Contention J.8, CANT asserted that "property values in the area would decline due to the perception of pollution and danger from the plant." 34 NRC at 352. Finding that CANT had provided "no facts or expert opinion" to support such "pure speculation," the Board denied the contention. Id. Nonetheless, CANT's prefiled testimony resurrected this claim. See Bullard at 35-37 fol. Tr. 853. Dr. Bullard's testimony contains the same utter speculation initially rejected by the Board as an inadequate basis for admitting the contention. Yet, the Board summarily denied LES's motion to strike this extraneous testimony at the hearing. See Applicant's Motion to Strike Portions of Intervenor's Prefiled Testimony on Contention J.9 at 17-18 & n.27 (March 3, 1995); Tr. 379. Here again, LES was blindsided, which is particularly egregious in light of the Board's insistence that Dr. Bullard's so-called evidence was "undisputed" (FID at 76-77) and "reasonable and persuasive." Id. at 84.

**B. The FEIS as supplemented adequately considers the impact of the CEC upon pedestrian traffic and property values in Forest Grove and Center Springs.**

With only Dr. Bullard's bald assertion that Parish Road 39 "is a vital and frequently used link between the communities with regular pedestrian traffic" (FID at 76), the Board assumed that "a significant number of the residents of these communities" often walk between Forest Grove and Center Springs. FID at 77. But Dr. Bullard visited the site only once, and did not claim to have personally observed any pedestrian traffic. Tr. 855, 870. Moreover, that thirty percent of black households in Claiborne Parish have no motor vehicles (FID at 77) does not prove these residents often walk from one community to another.

First, almost seventy percent of black households in the Parish *do* own a car, and would presumably share a ride with neighborhood friends, *especially* the "old, ill or otherwise infirm." FID

at 77. Second, the Board offers no reason why there would be heavy pedestrian traffic between the two communities. The only structure (other than houses) in either community is a church. FID at 71. Obviously, community residents will mostly attend the local church. Third, the record is barren of *any* evidence of "regular pedestrian traffic" (FID at 76), much less evidence of "old, ill or otherwise infirm" pedestrians "who must regularly make the trip on foot." FID at 77. Fourth, there are no stores or services in Forest Grove or Center Springs, so any old or infirm residents must travel by car or carpool to Homer, which is five miles from the site, for food and other necessities. See FEIS Fig. 3.25. Those residents would use the same arrangements to visit Forest Grove or Center Springs. In any event, the addition of 0.38 mile to a one or two-mile walk between the communities cannot possibly constitute a significant impact upon the environment or a disproportionately high and adverse impact upon minorities, so as to require further Staff investigation and supplementing the FEIS. It is unreasonable to postulate individuals able to walk one or two miles (and return the same distance) who are unable to walk an additional 0.38 mile each way.

As for property values, Dr. Bullard asserted that minorities "are less likely to be able to absorb the diminution in property values" than others, but never explained his assumption that property values would decrease.<sup>28/</sup> In reality, Dr. Bullard appears to be complaining that minorities are unlikely

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<sup>28/</sup> Dr. Bullard's supposed "evidence" included nothing more than an assertion that minorities would receive a disproportionately low share of employment and tax benefits created by the CEC, and that the influx of workers would be unlikely to seek housing in Forest Grove and Center Springs. Dr. Bullard offered no evidence that "benefit streams" to Parish residents from the increased tax base created by the CEC would not equally benefit minority communities through better schools, roads and other public facilities as well as improved Parish services such as police, fire and rescue. There is absolutely no warrant in the record for the Board's conclusion that the two nearby minority communities "currently receive almost no parish services." FID at 84. Further, none of this was relevant to alleged diminution of property values.

to share equally in *increased* property values, which the FEIS predicted on the basis of historical evidence of rising property values in counties with large industrial taxpayers. FID at 81.

The Board discounted very positive FEIS forecasts of improved property values and increased housing demand (FID at 81; FEIS § 4.5.2) and instead seized upon an isolated, parenthetical summary statement that changes in property values will include "some positive, some negative." (FEIS § 4.5.8) Despite this isolated FEIS statement, no evidence exists that the CEC is likely to effect any decrease in current property values. At most, there appears to be uncertainty as to the positive impact of rising property values (and increased housing demand) throughout the region.

In stark contrast to Dr. Bullard's irrelevant comparison of the CEC to dump sites and his utter speculation as to property values surrounding the CEC,<sup>29</sup> LES's panel of site selection consultants (who were experienced and credentialed in siting nuclear and other industrial facilities) unanimously testified that property values actually *increase* after construction of a nuclear or other industrial facility.<sup>30</sup> One expert cited a "dramatic increase in property values" around Duke Power's nuclear

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<sup>29</sup> Dr. Bullard is a sociology professor, not a certified real property appraiser. He visited the site area for a single day, and did not inspect (much less appraise) a single home. Tr. 855, 870. Moreover, Dr. Bullard's conclusions are based upon research concerning the impact of municipal landfills and incinerators, abandoned toxic waste dumps, Superfund sites and other "risky" technologies Dr. Bullard characterized as "poisons of the rich." Bullard at 8-9 fol. Tr. 853. These undesirable facilities are simply not comparable to the safe and environmentally benign CEC (Tr. 915-26), and any comparison conflicts with the Board's earlier findings in the First PID that the facility is safe. See also FID at 63. For the Board to accept Dr. Bullard's research on dump sites as involving "analogous circumstances" to the CEC (FID at 86) is not merely unsubstantiated, but downright bizarre, especially given the NRC's strict oversight of licensed facilities for health and safety compliance.

<sup>30</sup> The Board simply missed the point that lakefront homes in the vicinity of nuclear power plants had increased in value. If in fact a nuclear facility deflates local property values, "expensive homes and homesites" and "prestigious resort/retirement communities" (FID at 87-88) already there would be affected most dramatically by a *decrease* in property value, and new homes would not be built. That values actually *increase* and new homes *are built* shows  
(continued...)



power plants; another witness added from his 25 to 30 years of experience in a wide range of industries that "in the majority of cases of significant projects, . . . property values have increased in the immediate vicinity" of the site; and a third opined that "new development quite often creates an increase in property values." Tr. 919; FID at 82-83.

The Board dismissed this crucial testimony that nuclear and other industrial facilities cause property values in the immediate area to increase as "far too general to draw any reasonable conclusions" about the CEC (FID at 87), yet accepted Dr. Bullard's prediction of negative impacts on property values based upon the supposedly "analogous circumstances" of landfills and toxic waste sites. FID at 86. This was clear error. Also, the Board's insistence that the FEIS "identify the location, extent, or significance of impacts" (FID at 83) — somehow to differentiate between property value impacts in the "minority communities" and other communities (FID at 86) — is impractical and well beyond the demands of NEPA or Executive Order 12898. The Board did not explain how the NRC Staff should differentiate between homes in Forest Grove and Center Springs and homes in other nearby areas, or why such a comparison is compelled by NEPA or Executive Order 12898.<sup>31/</sup> Whatever the area covered, any refinement of predictions on property values is bound to be rife with speculation.

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<sup>30/</sup>(...continued)

that less valuable properties will certainly not suffer diminution in value.

<sup>31/</sup> Forest Grove and Center Springs are hardly unique. There are many other unincorporated communities in Claiborne Parish without stores, businesses, schools, a hospital or even a gas station. Tr. 917-18, 967, 976-77. And although these two communities are predominantly black, Claiborne Parish is largely black. FID at 51 n.17. No rationale exists for considering property value impacts for Forest Grove and Center Springs separately, nor did the Board (or CANT) posit a methodology for doing so.

**C. The FEIS as supplemented by hearing findings adequately discusses secondary, socioeconomic impacts upon pedestrianism and property values.**

The Safety Evaluation Report ("SER"), the FEIS and hearing decisions amply prove that the CEC will be operated well within established safety and environmental parameters, and in full compliance with applicable regulations and permits for protection of public health and safety as well as the environment. Neither pedestrian nor property value impacts are significantly related to human health or the environment, and NEPA does not therefore require expansive discussion in the FEIS. Similarly, neither impact is "disproportionately high and adverse" as to locally affected populations within the ambit of Section 1-101 of Executive Order 12898.

Even if the FEIS were deficient, the hearing record sufficiently supplements the FEIS as to pedestrian and property value impacts. Citizens for Safe Power, Inc. v. NRC, 524 F.2d 1291, 1294 n.5 (D.C. Cir. 1975); Ecology Action v. AEC, 492 F.2d 998, 1001-02 (2d Cir. 1974); Seabrook, CLI-78-1, 7 NRC 1, 29 n.43 (1978). Under NEPA's "rule of reason," the federal courts have repeatedly ruled that secondary, socioeconomic impacts of a project are likely to be speculative (as with impacts on walking and property values), and do not require more than generalized discussion to alert the agency and the public to the possibilities. Enos v. Marsh, 769 F.2d 1363, 1373 (9th Cir. 1985); South Louisiana Environmental Council, Inc. v. Sand, 629 F.2d 1005, 1016 (5th Cir. 1980). For example, "pedestrian congestion" impacts do not require extensive EIS discussion, if at all, because those impacts are secondary and socioeconomic. Como-Falcon Community Coalition, Inc. v. Department of Labor, 609 F.2d 342, 344 (8th Cir. 1979).

The FEIS discussion of property values is likewise adequate under NEPA. In fact, it is just as descriptive as the discussion approved in Town of Norfolk v. EPA, 761 F. Supp. 867 (D. Mass. 1991), aff'd, 960 F.2d 143 (1st Cir. 1992). The EIS for a sewage residuals landfill in that case did

not quantify the possible negative impact on property values predicted, but, like the FEIS here, simply noted that a variety of factors affect property values and could produce different, perhaps negative impacts on properties at various distances from the landfill. Indeed, the plaintiff in Tongass Conservation Society v. Cheney, 924 F.2d 1137, 1142-43 (D.C. Cir. 1991), challenged the sufficiency of a brief recitation that the presence of a new nuclear submarine testing facility "may result" in business losses by nearby recreational enterprises, adding that the impact "on the charter and lodge business is probably negative but unknown in size." The Court nonetheless rejected the claim that a further survey, like the market appraisal ordered by the Board, must be conducted to assess more precisely the socioeconomic effects of siting the submarine facility nearby. Id. at 1144. See also City of Evanston v. Regional Transp. Auth., 825 F.2d 1121, 1126 (7th Cir. 1987) (conjectured decline in property values insufficient for standing under NEPA); Providence Road Community Ass'n v. EPA, 683 F.2d 80, 81 (4th Cir. 1982) (EIS not required to evaluate the possible depreciation of property values).

Given the excessive time and resources already invested in this proceeding, it is of paramount importance that the Commission resolve all issues itself, fully and finally, rather than remand for further hearings. NRC and federal case law amply support this result because secondary impacts of pedestrian traffic and affected property values do not go to the heart of NEPA's primary concern for the physical environment. The CEC project has already, quite literally, been just about analyzed to death.

### Conclusion

At bottom, the Licensing Board rested its decision upon (1) an unenforceable Executive Order never pertinent to the proceeding or its contentions, and never applied by the NRC or any sister agency to facility site selection, and (2) two minor NEPA "impacts" unrelated to the physical environment and introduced to the proceeding on the eve of trial, and then improperly so. The Commission should reverse the Licensing Board, find that no discrimination occurred, and send a strong message that the Commission's procedures and hearing orders will be followed. This can and should be accomplished without remand of any sort, as the record is sufficient for the Commission to determine all factual and legal issues for itself. And inasmuch as the cloud of racial bias continues to cast a lengthening shadow over the reputation of LES and its employees, LES urges the Commission to act expeditiously.

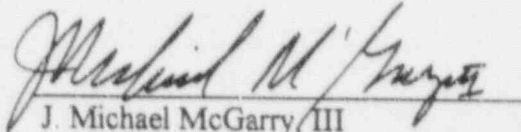
Respectfully submitted,

LOUISIANA ENERGY SERVICES, L.P.



Marcus A. Rowden

FRIED, FRANK, HARRIS,  
SHRIVER & JACOBSON



J. Michael McGarry, III

Robert M. Rader

Robert L. Draper

WINSTON & STRAWN,

ATTORNEYS FOR LOUISIANA ENERGY SERVICES, L.P.

Dated at Washington, D.C., this 7th day of August, 1997



## APPENDICES

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Environmental Justice Excerpts from Representative  
Draft or Final Environmental Impact Statements  
by Other Federal Agencies

# **TUSCARORA NATURAL GAS PIPELINE PROJECT**

**F I N A L**

Environmental Impact Report/Environmental Impact Statement

**EIR/EIS**

**Federal Energy Regulatory Commission  
Washington, D.C.**

**California State Lands Commission  
Sacramento, CA**

**V O L U M E 1**

**April 1995**

**FERC/EIS-0078F  
Docket No. CP 93-685-000**

**State Clearinghouse  
No. SCH93112055**

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
AND  
CALIFORNIA STATE LANDS COMMISSION

Tuscarora Gas Transmission Company )

Docket Nos. CP93-685-000  
CP93-685-001

TO THE PARTY ADDRESSED:

The staffs of the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (SLC) have prepared a Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) on the natural gas pipeline facilities proposed by Tuscarora Gas Transmission Company (Tuscarora) in the above docket.

The FEIR/EIS was prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act. The FERC and the SLC staffs conclude that approval of the proposed project, with appropriate mitigating measures including receipt of necessary permits and approvals, has the potential to significantly impact the environment. The FEIR/EIS evaluates alternatives to the proposal.

The proposed action involves the construction and operation of about 250 miles of interstate natural gas pipeline which includes, three laterals, five meter stations, and twelve mainline valves. The project gas would be used to generate electrical power at the Sierra Pacific Power Company (SPPC) power plant at Tracy, Nevada. A total of 113,050 dekatherms (Dkt/d) of gas per day would be provided. Part of the supply would also serve municipal, commercial, and industrial uses in the areas around Reno, Nevada; the California cities of Alturas and Susanville; and at the Sierra Army Depot in the Herlong area.

The FEIR/EIS will be used in the regulatory decision-making process at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The SLC is expected to certify the FEIR/EIS and act on the application of the Tuscarora Gas Transmission Company at its regularly scheduled meeting in May or June. Interested parties will be notified of the date, time, and place of the meeting when it is scheduled. The SLC will accept written comments at the address below. If you have any questions regarding the SLC hearing, or wish to testify, please contact Kirk Walker at the number below.

## 5.14 SOCIOECONOMICS

Presented in this introduction are the criteria for evaluating the significance of socioeconomic impacts from the project, and the general socioeconomic impacts from the construction and operation of the project. Each project element presents the site-specific impacts and mitigation measures for that element.

### Significance Criteria (for all project elements)

Adverse impacts on socioeconomic resources are considered significant and would require additional mitigation if project construction or operation would result in the following:

- Cause a total permanent population increase of three percent or more in a county affected by the project;
- Increase the demand for public services in excess of their existing capacities;
- Cause the vacancy rate for temporary housing to fall to less than five percent;
- The permanent conversion of more than one percent of agricultural land in a county to a nonagricultural use, or result in the loss of more than one percent of the acreage planted in a county's most valuable crop; and
- The permanent conversion of timberland that would cause at least one percent decrease in the volume of commercial timber produced in a county.

Unless otherwise noted, all identified impacts are considered to be potentially adverse impacts. Corresponding mitigation measures, unless otherwise noted, are expected to be sufficient to reduce impacts to a less-than-significant level. Implementation of the stated mitigation measures shall be the responsibility of Tuscarora.

### General Construction and Operational Impacts (for all project elements)

*Environmental Justice:* Executive Order 12898 on Environmental Justice requires that environmental analyses of proposed Federal actions address any disproportionately high and adverse human health or environmental effects on minority and low-income communities. Federal agencies' responsibility under this order shall also apply equally to Native American programs. In addition, each Federal agency must ensure that public documents, notices, and hearings are readily accessible to the public.

The FERC staff's mailing distribution list for this FEIR/EIS was initiated when the proposed project was first noticed, and has been continually updated during the EIR/EIS process. This mailing list includes all property owners without any distinction based on minority or



income status. The mailing list also includes the various Native American tribes who traditionally occupied, or currently occupy, the project area. Also, see Section 4.13 and 5.13 of the Final EIR/EIS regarding Native American issues. Chapter 1 of this EIR/EIS describes the public notification and participation process.

The FERC staff requires a project sponsor to initially identify all residences and other structures located in the project area when it files its application for a Certificate. From that information, the staff concentrates on all residences located within 50 feet of the construction work area. The FERC analyzes the routing of the pipeline with respect to: 1) whether a home is inhabited; 2) how close in feet the proposed right-of-way is to the house; and 3) other engineering constraints that may affect construction and the safety and welfare of the residents. FERC usually imposes special construction techniques and/or site-specific mitigation measures to minimize impact to any residences potentially affected, regardless of the income or minority status.

Finally, Tuscarora's project intent is to supply natural gas to specific customers. A practical and economic route design minimizes the length of pipeline after considering all engineering and environmental effects. In this regard, Tuscarora's proposed route crosses mostly rural communities of varying economic and ethnic compositions throughout the project area in the southern Oregon, northeastern California, and western Nevada areas (see table 4.10-2). No residences are located within 50 feet of the proposed construction right-of-way. The route does parallel existing utility and road corridors for about 75 percent of the route throughout these communities. Generally, the use of existing rights-of-way and/or corridors are environmentally preferable to constructing new rights-of-way and/or corridors and reduces overall effects on residential communities.

The FERC staff believes that, with the implementation of Tuscarora's proposed mitigation measures, construction and operation of the project would not result in a significant impact on urban or rural residential areas. In addition, the FERC staff has not identified any disproportionately high and adverse human health or environmental effects on minority and low-income communities, or Native American programs.

*Population:* Table 4.14.1-1 provides:

- The 1992 estimated population for each county within the socioeconomic study area;
- Present and projected growth rates; and
- The amount of project-related population increase anticipated, by spread.

Klamath, Modoc, and Lassen counties are affected by Spread 1, the northern spread, and Washoe, Storey, Lyon, and Douglas counties are affected by Spread 2, the southern spread. The short duration of the project makes it highly unlikely that any of the non-local workers

**JFK INTERNATIONAL AIRPORT LIGHT RAIL SYSTEM**  
Queens County, New York

United States Department of Transportation  
Federal Aviation Administration

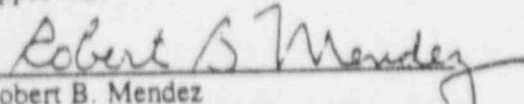
**FINAL ENVIRONMENTAL IMPACT STATEMENT**  
May 1997

This statement is submitted for review pursuant to the following public law requirements: section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969; section 106 of the National Historic Preservation Act of 1966; 49 U.S.C. section 40117, as amended by Pub. L. No. 103-305 (August 23, 1994), of the Federal Aviation Act of 1958, as amended; and 49 U.S.C. sections 47101(a)(6), 47101(h), and 47106(b)(2), of the Airport and Airway Improvement Act (AIA) of 1982, as amended.

APPROVAL

After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969.

Approved:

  
Robert B. Mendez  
Manager, Airports Division—AEA-600

May 12, 1997

Date

TRANSPORTATION LIBRARY

Disapproved:

Robert B. Mendez  
Manager, Airports Division—AEA-600

Date

NORTHWESTERN UNIVERSITY

The following persons may be contacted for additional information concerning this document:

Mr. Laurence Schaefer  
Airports Division, AEA 610  
Federal Aviation Administration  
Fitzgerald Federal Building  
JFK International Airport  
Jamaica, NY 11430  
(718) 553-3340

Mr. Victor Teglas, P.E.  
New York State Department of Transportation, Region 11  
47-40 21st Street  
Long Island City, NY 11101  
(718) 482-4519

**ABSTRACT:** The EIS documents the environmental impacts of the proposed project (Build Alternative) and the No-Build Alternative. The proposed project is the development of a Light Rail System to improve ground access within JFK International Airport, as well as to and from JFK via connections at Jamaica Station and the New York City Transit Howard Beach Station. The FAA has selected the Build Alternative as the preferred alternative on the basis of environmental analysis.

## 5.25 Environmental Justice

Executive Order 12898 (E.O. 12898) directs federal agencies to develop a strategy to address environmental justice concerns in its programs, policies and regulations including the NEPA. Its purpose is to avoid disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment.

The U.S. DOT has set forth four broad objectives in its implementation of E.O. 12898:

- Improve the environment and public health and safety in the transportation of people and goods, and the development and maintenance of transportation systems and services;
- Harmonize transportation policies and investments with environmental concerns, reflecting an appropriate consideration of economic and social interests;
- Consider the interests, issues and contributions of affected communities, disclose appropriate information and give communities an opportunity to be involved in decision-making; and
- The U.S. DOT will implement E.O. 12898 by integrating its provisions into existing DOT programs, policies, activities, regulations and guidance to the greatest extent possible.

The LRS project was evaluated to determine if there were adverse impacts to human health or environmental or social effects as a result of the construction and/or operation of the proposed LRS. The project area as described in Chapter 4.0, "Affected Environment," does include areas in Jamaica and its environs, as well as along the project alignment that are considered to include minority and low-income populations.

The following summarizes the results of analyses applicable and related to project impacts on the health and environment of minority and low-income populations with reference to where these analyses are found in the FEIS.

- **Land Use (Section 4.1).** The project involves no residential displacement. However, there will be impacts on three business properties — two gas stations and one vacant warehouse. At least one of the gas stations and the warehouse will require a full taking; depending on guideway pier placement, the impact on the other gas station may be a partial taking.
- **Community Facilities (Section 4.3).** No effect.
- **Economics (Section 4.6).** The employment losses associated with the business property takings will be offset by LRS employment opportunities. There are numerous alternative gas stations nearby for consumers affected by the taking of the gas station(s). The project will strengthen the role of Jamaica as a regional transportation hub.
- **Traffic (Section 5.1).** By diverting airport vehicle trips largely from outside the Jamaica area to the LRS, the project will improve travel conditions on the interstate highway serving Jamaica, the VWE.
- **Noise and Vibration (Section 5.2).** The project noise levels were compared with noise abatement guidelines of the U.S. HUD, New York City, and U.S. DOT FTA. These guidelines



are established to protect public health and community quality-of-life. The project noise levels will not exceed these guidelines. Project vibration will likely be imperceptible to all but possibly a few residences near the Jamaica LRS Station.

- **Air Quality (Section 5.3).** The project's air quality effects were compared with national ambient air quality standards designed to protect public health, as well as with federal and city *de minimis* criteria. There will be no violation of national ambient air quality standards and the project's effects on pollutant emissions and concentrations will be below *de minimis* levels. The reduction in airport-related vehicle trips (from diversions to LRS) will create a corresponding improvement in air quality.
- **Water Quality (Sections 5.4 and 5.5).** The project will have no effect on local drinking water, nor will it adversely affect the capability of Jamaica Bay or its tributaries to support designated uses.
- **Ecology and Wetlands (Sections 5.7, 5.9, 5.15).** The project will eliminate some vegetated areas within the VWE right-of-way, as well as less than one acre of vegetative and open water habitat associated with a tributary of Hawtree Basin (0.46 acre of which is wetland). The wetland impact will be mitigated on site.
- **Solid and Hazardous Waste (Sections 5.6, 5.19).** Materials from project construction, operation and maintenance will be controlled, transported and disposed of in accordance with applicable laws.
- **Parks (Section 5.17).** The project will not require land from any park, nor will it interfere with the use or enjoyment of any park.
- **Historic Properties (Section 5.18).** The project will not adversely affect any historic property; indeed, the project is consistent with the use of the Jamaica Station, and TWA and Pan Am Terminals, significant historic properties.
- **Electromagnetic Fields (Section 5.23).** Electromagnetic fields will be produced by the LRS guideway and substations. These fields will be well below any level that has been suggested as necessary to protect public health.

The results of the analysis indicate that the proposed project will not substantially affect human health or the environment of minority or low-income populations. The Alternatives Analysis documented in Section 3.0 of the FEIS shows that the LRS project is the only practical and feasible transportation improvement for improving ground access to JFK. The logical termini for the system are major transportation facilities that have developed in Jamaica over the past century. The system alignment is one which predominantly uses existing transportation corridors. As such, the project will not materially affect land use or neighborhood character in the Jamaica area. The trains and stations of the LRS will be patrolled by the Port Authority Police Department, and a variety of safety and security features (detailed in Section 3.2.1.1) will be implemented. Because the LRS limits ingress-egress points to Jamaica Station, Howard Beach Station and on-airport locations, there is no potential for inducing criminal activity in the area. The DBOM contractor will be responsible for prompt removal of graffiti, debris and other results of criminal mischief on the guideway exterior (access to which will be extremely constrained due to elevation and the system's location in the VWE ROW). As documented in Section 1.3 of the FEIS, minority and low-income populations have been afforded the opportunity to participate in the development of the project and comment on the project. As outlined above, minority and low-income populations will benefit from



improved access to JFK for employment and travel, and from reduced motor vehicle travel and emissions. The analyses documented in the FEIS and summarized above support the conclusion that the LRS project has been planned in compliance with the provisions of Executive Order 12898 on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

## 5.26 Cumulative Impacts

The CEQ NEPA regulations define a cumulative impact at 40 CFR 1508.7 as:

"...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

The environment of southeastern Queens has undergone massive urbanization over the past century that reflect general growth trends in the New York City metropolitan area — namely, an increase in the demand for lower-density housing and the development of a transportation system to serve the movement of people and goods. The transportation system was also a factor in development location decisions, e.g., the occurrence of the LIRR Jamaica Station, the hub of the LIRR system. Meanwhile, JFK grew as the airline industry grew consuming a greater area of what was marsh and open water adjacent to Jamaica Bay for airport and related business facilities.

The net effect of the urbanization, transportation system development, and the development of JFK has been an essentially irreversible alteration of the landscape of southeastern Queens. Actions undertaken in the latter half of the century to minimize, control, or prevent further deterioration of the environment of southeastern Queens have included the development of the Jamaica Bay National Wildlife Refuge within the Gateway National Wildlife Area (USFWS and NPS, respectively) and the installation of sewage treatment plants by the NYCDEP. Current planned efforts include the control of landfill leachate at landfills around Jamaica Bay by the NYCDEP, the development of the Shore Parkway Bicycle Path by the NYCDPR, and the expansion of the JWPC Plant.

Portions of southeastern Queens, particularly Jamaica, are undergoing redevelopment. Recent government efforts at stimulating redevelopment in Jamaica include the Social Security Building, the Master Plan at York College, the extension of the New York City subway system to the Parsons/Archer Station in Jamaica Center, the creation of a transit mall, and the designation of Jamaica as an Economic Development Zone.

Currently proposed projects in Jamaica include the development of an intermodal transportation center plan intended to reduce traffic and congestion, improve air quality, and enhance economic development. The Jamaica Transportation Center project is financially supported by a Congestion Mitigation Air Quality grant from the federal government to the State of New York. The Port Authority is responsible for contractual management and overall administration of the project. The JFK LRS is being considered in the Jamaica Transportation Center planning.

Other proposed projects in Jamaica include the following:

- Queens Civil Court Building;
- FDA Building at York College;



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

DEC 11 1996

TO INTERESTED AGENCIES, OFFICIALS, PUBLIC GROUPS AND INDIVIDUALS:

Enclosed is a copy of the Supplemental Draft Environmental Impact Statement (SDEIS) on the modification/reissuance of a new source National Pollutant Discharge Elimination System (NPDES) permit to TU Services for its proposed expansion of the Oak Hill Surface Lignite Mine into the DIII Area, in Rusk County, Texas. The SDEIS evaluates the environmental consequences of the U.S. Environmental Protection Agency's (EPA) proposed NPDES permit.

The EPA encourages public participation in its decision-making process and invites your written comments on the SDEIS. In addition, the EPA will hold a public hearing to receive comments on the adequacy of the draft document. The public hearing is scheduled for 7:00 pm on Tuesday, February 11, 1997, in the Henderson Community Center, located at 302 Fairpark, in Henderson, Texas.

- If, in consideration of the comments received, only minor changes to the SDEIS are necessary, the Final Supplemental EIS will incorporate the SDEIS by reference and include: 1) a revised and updated Summary; 2) revisions and additions to the SDEIS; 3) EPA's responses to written and oral comments received on the SDEIS; and 4) EPA's preferred alternative. Therefore, this SDEIS should be retained for possible use in combination with the Supplemental Final EIS.

Copies of the Supplemental Final EIS will be mailed to those making substantive comments on the SDEIS and those specifically requesting a copy (subject to supply limits). All comments on the SDEIS should be addressed to: Mr. Robert D. Lawrence, Chief of the Office of Planning and Coordination, EPA (6EN-XP), 1445 Ross Avenue, Dallas, Texas 75202-2733. Comments to EPA are due within 45 days of the notice of availability in the Federal Register. The deadline is stipulated on the enclosed Project Abstract.

Sincerely yours,

*Jane N. Saginaw*  
Jane N. Saginaw  
Regional Administrator

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

DEC 11 1996

**ABSTRACT**

**SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT STATEMENT  
OAK HILL EXPANSION INTO DIII AREA  
RUSK COUNTY, TEXAS**

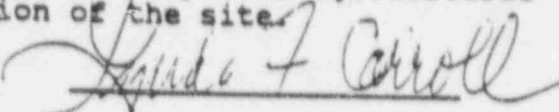
**RESPONSIBLE AGENCY:** U.S. Environmental Protection Agency

**ADMINISTRATIVE ACTION:** Modification/reissuance of a National Pollutant Discharge Elimination System (NPDES) permit to comply with the Clean Water Act, Texas water quality standards, and EPA regulations.

**EPA CONTACT:** Robert D. Lawrence, Chief  
Office of Planning and Coordination  
EPA Region 6EN-XP  
1445 Ross Avenue  
Dallas, Texas 75202-2733

**ABSTRACT:** A surface lignite mine is proposed near Henderson, Texas. Lignite would be delivered from the mine to the Martin Lake Steam Electric Station. Over the 19-year mine-life, approximately 1,623 surface acres would be disturbed by mining and mine related activities. The maximum mining depth would be about 130 feet. After mining, the land would be returned to its approximate original contours and reclaimed to conditions productive for wildlife and grazing.

Predicted effects of the project include: dust emissions; degradation of surface water quality; alterations in surface water flow and ground water recharge; increased traffic and noise levels; visual and aesthetic changes around the mine; disruption of wildlife habitat; increased incomes from new jobs, mining leases and royalties; increased tax revenues for local governments; and the potential for improved agricultural productivity after reclamation of the site.

  
**RESPONSIBLE OFFICIAL:** Jane N. Saginaw  
Regional Administrator



the dragline for the Oak Hill mine in 1994 was almost \$600,000. The expansion of the proposed mine, as opposed to cessation of mining operations, would result in continued revenues from ad valorem taxation of the dragline and existing project facilities as long as existing tax rates remain the same (Hintz, 1995).

TABLE 3-52  
1992-1994 CONTRIBUTIONS TO AD VALOREM  
TAX REVENUES FOR DRAGLINE AT OAK HILL MINE<sup>1</sup>

Tax District	1992		1993		1994	
	Rate (per \$100)	Revenue	Rate (per \$100)	Revenue	Rate (per \$100)	Revenue
Rusk County	0.36	\$107,250	0.38	\$112,815	0.42	\$125,331
Henderson ISD	1.35	\$405,000	1.41	\$423,000	1.50	\$448,500
Rusk County Fire District	0.03	\$9,000	0.03	\$9,000	0.03	\$9,000
Total		\$521,250		\$544,815		\$582,831

<sup>1</sup> Based on the assessed value of the dragline.

Source: Hintz, 1995.

**Sales Tax Revenues.** Sales tax revenues generated by the construction and operation of the proposed mine expansion would ensure that the local economy would continue to benefit from taxes generated by mining, as they have from current mining operations in adjacent areas. This contribution would include retail sales tax, revenues attributable to income from land purchases or lease payments, and household expenditures by TUMCO employees.

### 3.8.2.7 Environmental Justice

The EPA defines Environmental Justice (EJ) as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The goal of "fair treatment" is not to shift risks among populations, but to identify potential disproportionately high adverse impacts (i.e., on minority and low income communities), and identify alternatives to mitigate these impacts.

The Region 6 EJ Index Methodology defines demographic criteria, applies basic principles of science, and requires environmental managers to use program specific data to identify communities



of most concern. To evaluate the potential impacts on minority and low income communities, the EJ index uses Geographical Information System (GIS) maps, census demographic data and a mathematical formula to rank the project.

The EJ methodology currently analyzes 50 square mile and 1 square mile geographic areas. Based on the methodology, the proposed mine expansion site ranked a 1, on a scale from zero to 100. Although higher scores can indicate a concern, the population density, percent minority population, and percent economically depressed household data are also important analytical factors (see maps and table in Appendix F).

### 3.9 PUBLIC HEALTH

Potential impacts to public health would consist of effects of the project on the general public, off the mine site. The primary means through which such impacts might occur would be air pollution, water pollution, or noise. Existing conditions and potential effects on public health in each of these areas are discussed in detail in Section 3.0 of this SEIS, and summarized below.

#### 3.9.1 Existing Environment

Air. Statistics on the effects of air quality on public health in Rusk County are not available from the TNRCC. Therefore, the effects of existing ambient conditions on public health cannot be directly addressed. However, the incremental and combined effects of the proposed project on public health are projected in the sections which follow, using existing standards as a basis for comparison. These effects are discussed in terms of regulated and non-regulated pollutants, which are introduced below.

Regulated Air Pollutants. The EPA has determined the exposure-dependent threshold level (or levels) for each formally regulated air pollutant by a lengthy and complex process. During this process, a primary NAAQS was developed based upon the latest scientific evidence available with additional scientific research commissioned, if necessary. Each primary NAAQS was established only after careful evaluation by the EPA, an independent panel of scientists, and the general public. The primary NAAQS for regulated air pollutants are set at concentrations below the public health impacts threshold level and include a margin of safety considering the health of especially sensitive persons (e.g., the very young, the aged, and the infirm). Possible inadequacies in the scientific evidence on health-related effects are also considered in the standard-setting process.

Non-Regulated Air Pollutants. Some substances emitted to the air which are suspected of causing (either directly or indirectly) adverse impacts to public health are not formally regulated. These pollutants are not regulated because scientific evidence relating an air pollutant to a purported adverse impact does not exist, or ambient concentrations are so low that they are never expected to approach health-threatening levels. Some pollutants are in the process of having a regulatory mechanism established (e.g., arsenic) or are regulated only for a specific source (e.g., mercury).

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

Appendix D

As lead Federal agency pursuant to the National Environmental Policy Act of 1969

PORT OF OAKLAND, CALIFORNIA

As lead agency pursuant to the California Environmental Quality Act of 1970

U.S. ARMY CORPS OF ENGINEERS

As cooperating agency pursuant to Council on Environmental Quality Regulations Section 1501.6(a)(1)

**DRAFT**  
**ENVIRONMENTAL IMPACT STATEMENT /**  
**ENVIRONMENTAL IMPACT REPORT**

PROPOSED AIRPORT DEVELOPMENT PROGRAM

METROPOLITAN OAKLAND INTERNATIONAL AIRPORT  
Oakland, Alameda County, California

This Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) evaluates the environmental impacts potentially caused by the proposed expansion or relocation of existing passenger and air cargo terminal facilities; construction of additional air cargo facilities; construction of additional air cargo and airline support facilities; reconfiguration of existing roadways and intersections; construction of new roadway segments within the existing airport boundaries and outside the airport in the cities of Oakland and Alameda; and construction of additional automobile parking, transit, and rental car facilities. This environmental document is submitted for review pursuant to the following public law requirements: Section 102(2)(C) of the National Environmental Policy Act of 1969, the California Environmental Quality Act of 1970, and Section 509(b)(5) of the Airport and Airway Improvement Act of 1982, as amended.

*Comments on the Draft EIS/EIR must be received no later than November 21, 1996*



VOLUME 1: DOCUMENTATION

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PORT OF OAKLAND

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SEPTEMBER 10, 1996

CHAPTER 1.0

CHAPTER 2.0

CHAPTER 3.0

CHAPTER 4.0

Under the proposed ADP, construction and expansion of some project components in undeveloped site areas would be an irreversible commitment of those parts of the site to development, including filled and otherwise altered wetlands. Reducing the amount of unpaved surface that currently supports wildlife habitat would result in a small irreversible removal of some natural vegetation and associated wildlife habitat.

The proposed ADP would add daily and peak-hour vehicle trips, irreversibly, to local streets and intersections and add aircraft operations to the San Francisco Bay Area. Project generated vehicle and aircraft trips would irreversibly increase related emissions into the air of total organic gases, carbon monoxide, and nitrogen gases. Increased consumption of energy, water, and materials during operation and construction would be required by the ADP. The project would irreversibly increase the number of persons (employees and visitors) on the site, resulting in a corresponding increase in the demand for public services. The visual character of the project site would be irreversibly altered by buildings and infrastructure proposed as part of the ADP.

## 5.6 ENVIRONMENTAL JUSTICE

Executive Order (E.O.) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population* (1993) requires that federal agencies, in carrying out environmental analyses pursuant to NEPA, assess "environmental effects, including human health, economic and social effects ... on minority communities and low-income communities," and that they provide opportunities for community input (Presidential Memorandum, 1994). As feasible, mitigation measures discussed in environmental analyses should address significant adverse environmental impacts that affect those communities. It is the responsibility of the EPA, when reviewing NEPA documents as provided in Section 309 of the Clean Air Act, to ensure that the agency preparing the document has analyzed impacts on low-income and minority communities.

Chapter 4, Affected Environment, Environmental Consequences and Mitigation, of this Draft EIR/EIS analyzes the environmental impacts of the proposed project and of the no project alternative. Among the impacts identified in Chapter 4 are four that could affect low-income and minority communities. Of the four, three are considered adverse effects and one is considered beneficial.

SOCIAL (EMPLOYMENT, HOUSING) IMPACTS

The Draft EIR/EIS identifies, as a beneficial impact of the proposed ADP and the no project alternative, the generation of additional employment at MOIA (Section 4.3, Social Impacts, *Employment Impacts*). Growth in employment under the no project alternative would result from increased utilization of existing Airport facilities, rather than from development proposed by the Port. Minorities occupy a substantial portion (about 44 percent) of existing air cargo jobs at MOIA (Port of Oakland, 1994). Projected increases in employment at MOIA under the ADP and the no project alternative would be expected to provide jobs in a similar proportion for members of the minority community. In addition, many air cargo jobs are semi-skilled and thus may benefit members of the low-income community. Total direct and induced employment resulting from the proposed ADP in 2010 would be 116 percent greater than current employment and 40 percent greater than employment resulting from the no project alternative in that year.

The Draft EIR/EIS identifies potential housing availability problems as an adverse, less-than-significant cumulative impact of the proposed ADP and the no project alternative in 2000 and 2010. Availability problems could result from the number of employed persons increasing faster than housing supply in Alameda County and the Bay Area generally. Increased employment resulting from implementation of the ADP could contribute to the imbalance in the ratio of employed persons to dwelling units. Any housing availability problems would be expected to affect members of the low-income community disproportionately.

The Draft EIR/EIS identifies relocation of two to three households that would result from construction of Airport Roadway Project (ARP) Segments 5 and 6 as a significant impact of the ADP (Section 4.3, Social Impacts, *Home and Business Relocation Impacts*). Two to three houses located in the vicinity of the intersection of 98th Avenue and Empire Road would be displaced by the proposed widening of 98th Avenue. These houses are owned and occupied by households characterized as African-American and also as "potentially" low-income (Woodward Clyde, 1994). Section 4.3 notes that similar two-bedroom to three-bedroom homes are available for sale in the vicinity of 98th Avenue and that relocation of the affected households is therefore feasible. In addition, the City of Oakland's Relocation Plan provides that families and individuals to be displaced will be offered full opportunity to occupy standard housing that is within their financial means and adequate for their needs, and that no family or individual will be required to move until suitable housing is available. Relocation of the affected households would compensate for loss of the houses and thus reduce the identified impact to a less-than-significant level.



## NOISE

The Draft EIR/EIS identifies cumulative vehicle noise impacts on up to 20 residences adjacent to 98th Avenue. These noise impacts would be significant under the proposed ADP and the no project alternative in 2010 (Section 4.1, Noise, *Surface Traffic Noise Impacts*). The houses experiencing the impact would vary according to alternative: under the no project alternative, none of the houses would be residences relocated by ARP construction, while under the ADP two homes that are within the ARP right-of-way on Empire Road would be affected. Port studies indicate that the neighborhood in which the houses subject to cumulative noise impacts are located is predominantly a minority community and likely also a low-income community. As discussed in Section 4.1, the significant cumulative noise impacts of all alternatives on these homes could be reduced to a less-than-significant level by construction of noise walls.

Additional mitigation measures are also considered in Section 4.1. Aircraft noise increase in 2010 in the Cities of Alameda and San Leandro (Section 4.1, Noise, *Aircraft Noise and Vibration Impacts*) would also result in significant impacts to residences. The number of affected homes is estimated to be about 1,800 on Bay Farm Island and approximately 1,100 in San Leandro. Some of these residences may be occupied by members of minority and/or low-income communities.

The remaining significant, adverse effects of the proposed project and the no project alternative may affect members of the low-income community and the minority community, as well as other communities. Those impacts are summarized in Chapter 1, Summary, of this document (see Table 1.2).

Consistent with the E.O. 12898 requirement to provide opportunities for public input from low-income and minority communities into the NEPA process, the Port and FAA have incorporated a number of opportunities for review and meetings into the Draft EIR/EIS process.

DRAFT  
ENVIRONMENTAL IMPACT STATEMENT  
ENVIRONMENTAL IMPACT REPORT  
FOR THE  
EAGLE MOUNTAIN LANDFILL AND  
RECYCLING CENTER PROJECT  
Environmental Impact Report No. 397  
State Clearinghouse No. 95052023

July 1996

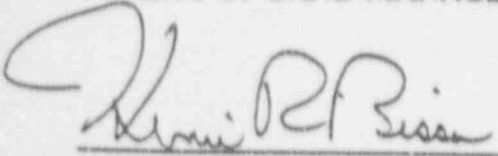
Applicant

MINE RECLAMATION CORPORATION  
and  
KAISER EAGLE MOUNTAIN, INC.

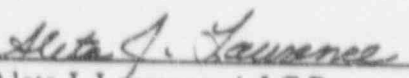
Prepared for

U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

COUNTY OF RIVERSIDE  
PLANNING DEPARTMENT

  
Henri R. Bisson  
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6/25/96  
Date

  
Aleta J. Laurence, A.I.C.P.  
Planning Director

6/20/96  
Date

BLM-CACA-30070  
BLM-CACA-25594  
BLM-CACA-31926

**Eagle Mountain Landfill Project, Riverside County, California**  
**Draft Environmental Impact Statement/Environmental Report**  
Issued: July, 1996

**Lead Agencies**

U.S. Department of the Interior  
Bureau of Land Management  
California Desert District  
Palm Springs—South Coast Resource Area  
(NEPA Lead Agency)

County of Riverside  
Riverside, California  
(CEQA Lead Agency)

**Cooperating Agencies:** National Biological Service, National Park Service

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**ABSTRACT:** Mine Reclamation Corporation (MRC) and Kaiser Eagle Mountain, Inc., a wholly owned subsidiary of Kaiser Ventures, Inc., has proposed to develop the Eagle Mountain Project. The Project comprises a Class III nonhazardous solid waste landfill in an unused open pit mine at the Eagle Mountains in Riverside County, California, and the renovation and resulting repopulation of the adjacent Eagle Mountain Townsite by Kaiser on property owned by Kaiser. The Project is located in the California Desert Conservation Area. Under the Federal Land Policy and Management Act, Kaiser Eagle Mountain, Inc., has applied for about 3,481 acres of Bureau of Land Management lands in exchange for about 2,486 acres of land currently owned by Kaiser and for a new FLPMA rights-of-way for the entire length of the Eagle Mountain Railroad, the existing Eagle Mountain Road, and the proposed Eagle Mountain Road Extension. The landfill will comprise about 2,164 acres and an additional 2,490 acres will be used for landfill support facilities and open space. At full operation, the landfill will accept up to 20,000 tons of solid waste per day from 7 Southern California counties for 117 years. Approximately 16,000 tons per day will be shipped in containers along the Southern Pacific Railroad to Ferrum Junction. From there, the trains will use the 52-mile Eagle Mountain Railroad to the Project site. A total of 4,000 tons per day of containerized waste will be delivered by truck. The Eagle Mountain Landfill Specific Plan amends the Riverside County General Plan and Zoning Ordinance and Map to facilitate the landfill operation. The Eagle Mountain Townsite Specific Plan covers 429 acres, identifies the existing residential/commercial and circulation patterns in the Townsite, provides planning standards consistent with the infrastructure already located within the Townsite, and provides for improvements to the currently unoccupied housing stock similar to improvements made by Kaiser to the existing occupied homes. The alternatives considered in this EIS/EIR are: (1) No Action, (2) Reduced Volume of Onsite Disposal, (3) Alternate Road Access, (4) Rail Access Only, (5) Landfill on Kaiser Land Only, and (6) Landfill Development/No Townsite Development.

**Last Date for Receipt of Written Public and Agency Comments:** September 10, 1996

Executive  
Summary

Section 1

Section 2

Section 3



### 4.8.3 Impacts to Minorities and Low-Income Populations

#### 4.8.3.1 Proposed Action

##### Impacts

**Disproportionately High and Adverse Human Health Effects.** As noted in Sections 4.2 (Public Health and Safety), 4.4 (Air Quality), and 4.4 (Traffic and Transportation), no potentially significant, Project-related health and safety risks to any member of the general population located adjacent to the proposed Project or along Project-related transportation corridors have been identified. Consequently, there is no evidence to suggest that the proposed Project would represent a disproportionately high or adverse (and therefore significant) human health risk to minority and low-income populations or communities as defined under Section 4.8.1.2, Standards of Significance.

**Disproportionately High and Adverse Environmental Effects.** Review of the potential environmental effects associated with the proposed Project, as presented throughout Chapter 4, Environmental Consequences, has identified no potentially adverse, significant, or mitigated environmental impacts affecting a minority or low-income population/community with a greater intensity, duration, or frequency than the general population. Consequently, there is no evidence to suggest that the proposed Project would represent a disproportionately high or adverse (and therefore significant) environmental risk to minority and low-income populations/communities as defined under Section 4.8.1.2, Standards of Significance.

**Impact on Low-Income Populations and Communities.** County-level income data in the vicinity do not accurately reflect the characteristics of the populations/communities to be affected by the Project. For example, according to 1990 U.S. Census Bureau data, the median family income in Riverside County was \$37,694. Applying the Housing and Urban Development (HUD) 80 percent criterion yields a median "low-income" level of \$30,155. In contrast, 1990 U.S. Census Bureau data indicate that the median family income in Census Tract 458 (Chuckwalla Valley) was \$25,347, which, under the HUD definition, means that the entire Census Tract would be defined as low income.

Approximately 37 percent of the total Chuckwalla Subdivision households surveyed for the 1990 Census reported no wage or salary income, whereas approximately 14 percent of the households surveyed were reported to be on public assistance income. In contrast, 1990 Riverside County census data identify 11.5 percent of the population at the poverty level and 25 percent of the population below the 50 percent poverty level.

Riverside County income levels are inflated by the incomes of residents in Indian Wells, Murage, Palm Springs and other affluent communities and do not accurately represent the income of residents in the County as a whole and the vicinity of the proposed Project in particular. Implementation of the proposed landfill will create a substantial



number of new Project-related jobs, as well as set the stage for the further economic development for the Townsite.

There is no evidence of potentially adverse, significant, or unmitigated social impacts affecting a low-income population/community with a greater intensity, duration, or frequency than the general population. Project-related socioeconomic effects appear to be of a positive nature, potentially benefiting the employment and income of the population whose economic characteristics fall below those of the Riverside County level. Consequently, there is no evidence that the proposed Project would have a disproportionately high or adverse (and therefore significant) impact to minority or low-income populations/communities as defined under Section 4.8.2.1, Standards of Significant Impacts.

**Effects on Minority Populations and Communities.** According to the White House Office of Environmental Justice, for a population to be classified as minority, the minority population composition should either exceed 50 percent, or be meaningfully greater than the minority population percentage in the general population or other unit of geographic analysis. The minority population composition of the general population, as reported in the 1990 U.S. Census, for the State of California, Riverside County, and the Chuckwalla Subdivision (Census Tract 453) is displayed in Table 4.8-1. In the Chuckwalla Subdivision, the minority population does not exceed 50 percent nor is greater than the comparable representation of the minority population in either the County of Riverside or the State of California.

Table 4.8-1 Population Data (Percent) (U.S. Census Bureau—1990)			
California	Riverside County	Coachella Valley Division	Chuckwalla Subdivision
White—69.1	White—76.5	White—54.2	White—57.4
Black—7.4	Black—5.4	Black—2.3	Black—18.5
Hispanic—25.4	Hispanic—25.8	Hispanic—71.9	Hispanic—24.0
Asian/Pacific Islander—9.6	Asian/Pacific Islander—3.6	Asian/Pacific Islander—1.6	Asian/Pacific Islander—1.6
American Indian, Eskimo, Aleut—0.8	American Indian, Eskimo, Aleut—1.0	American Indian, Eskimo, Aleut—0.7	American Indian, Eskimo, Aleut—2.0
Other—13.1	Other—13.5	Other—41.2	Other—23.9

Note: Race, as used by the Census Bureau, is not meant to denote any scientific or biological component of race. The subgroups displayed in this table represent the self-categorization of respondents (i.e., individuals identifying themselves). Hispanic could also be included under other ethnic classifications; therefore, the percentages could exceed 100 for a geographical area.

In addition, a review of the potential environmental effects associated with the proposed Project, as presented throughout Chapter 4, Environmental Consequences, has identified no evidence of potentially adverse, significant, or unmitigated environmental impacts affecting a minority population or community with a greater intensity, duration, or frequency than the general population. Consequently, the proposed Project would not have a disproportionately high or adverse (and therefore significant) impact to minority or low-income populations/communities as defined under Section 4.8.1.2, Standards of Significant Impacts.

**Mitigation.** No additional mitigation measures beyond those associated with existing requirements and aspects of the proposed Project are necessary or warranted.

**Significance After Mitigation.** The mitigation measures incorporated into the design of the proposed Project result in a potential for adverse impacts to minority and/or low-income communities, which are below the threshold of significance.

#### **4.2 No Action Alternative**

**Impacts.** The No Action Alternative would preclude the occurrence of any positive socioeconomic impacts associated with the Proposed Action.

**Mitigation.** No mitigation measures are required for this alternative.

**Significance After Mitigation.** The potential for adverse impacts to minority and/or low-income communities is not significant for this alternative.

#### **4.3 Reduced Volume of Onsite Disposal Alternative**

**Impacts.** The potential impacts under this alternative would be essentially identical to those of the Proposed Action. A change in landfill volume/configuration would not substantially alter the daily operations of the Project. Such a reduction would be unlikely to result in a major decrease in the number of employees needed to operate the landfill. This alternative would not alter the conclusions regarding impacts and mitigation measures associated with the Proposed Action.

**Mitigation.** Mitigation measures would be the same as those associated with the Proposed Action.

**Significance After Mitigation.** The mitigation measures incorporated into the proposed Project design result in a potential for adverse impacts to minority and/or low-income communities, which are below the threshold of significance for this alternative.

#### **4.4 Alternate Road Access Alternative**

**Impacts.** The potential impacts under this alternative would be identical with those of the Proposed Action. This alternative would not alter the conclusions regarding impacts and mitigation measures associated with the Proposed Action.

**Mitigation.** Mitigation measures would be the same as those associated with the Proposed Action.

**Significance After Mitigation.** The mitigation measures incorporated into the design of the proposed Project result in a potential for adverse impacts to minority and/or low-income communities, which are below the threshold of significance for this alternative.

#### ***4.8.3.5 Rail Access Only Alternative***

**Impacts.** The potential for impacts under this alternative would be identical with the Proposed Action. A change in landfill volume/configuration would not substantially alter the daily operations of the proposed Project. Such a reduction would be unlikely to result in a major decrease in the number of employees needed to operate the landfill. This alternative would not alter the conclusions regarding impacts and mitigation measures associated with the Proposed Action.

**Mitigation.** Mitigation measures would be the same as those associated with the Proposed Action.

**Significance After Mitigation.** The mitigation measures incorporated into the design of the proposed Project result in a potential for adverse impacts to minority and/or low-income communities, which are below the threshold of significance for this alternative.

#### ***4.8.3.6 Landfill on Kaiser Land Only Alternative***

**Impacts.** The potential impacts under this alternative would be identical with those of the Proposed Action. A change in landfill volume/configuration would not alter daily operations of the Project. Such a reduction would be unlikely to result in a major decrease in the number of employees needed to operate the landfill. This alternative would not alter the conclusions regarding impacts and mitigation measures associated with the Proposed Action.

**Mitigation.** Mitigation measures would be the same as those associated with the Proposed Action.

**Significance After Mitigation.** The mitigation measures incorporated into the design of the proposed Project result in a potential for adverse impacts to minority and/or low-income communities, which are below the threshold of significance for this alternative.

#### ***4.8.3.7 Landfill Development/No Townsite Development***

**Impacts.** Because daily operations of the Project would not be altered, the potential impacts under this alternative would be identical with those of the Proposed Action. The socioeconomic effects associated with further growth and development of the townsite would not take place; however, the number of employees needed to operate the landfill would be unaffected. Consequently, the net benefits of job creation would still accrue from the proposed Project; and the workforce required conceivably would be drawn from a large area within the Chuckwalla Subdivision. This alternative would not alter the conclusions regarding impacts and mitigation measures associated with the Proposed Action.

**Mitigation.** Mitigation measures would be the same as those associated with the Proposed Action.



**Significance After Mitigation.** The mitigation measures incorporated into the design of the proposed Project result in a potential for adverse impacts to minority and/or low-income communities, which are below the threshold of significance for this alternative.



# APCo 765 kV Transmission Line

## VOLUME III

CHAPTER 4.0	ENVIRONMENTAL CONSEQUENCES
CHAPTER 5.0	LIST OF CONTRIBUTORS
CHAPTER 6.0	CONSULTATION AND COORDINATION
CHAPTER 7.0	GLOSSARY
CHAPTER 8.0	REFERENCES
CHAPTER 9.0	INDEX



Prepared by  
U.S. Forest Service  
George Washington & Jefferson National Forests

In cooperation with the  
National Park Service  
and U.S. Army Corps of Engineers

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each corridor. Table 4.11-1 presents: 1) the total number of homes and other structures in each alternative corridor; 2) the densities of homes per square mile; and 3) the estimated number of residences within an assumed 200-foot-wide ROW. As Table 4.11-1 indicates, the largest numbers of residences (and the highest densities) are associated with Alternative 13 (Non-GW&JNF Corridor) which passes near Oakvale, Narrows, outer Blacksburg, and Pearisburg. This is followed by Alternatives 6 and 5 (Northern Link 2 and 1, respectively) which pass near Daleville, Troutville, and Fincastle, and then by Alternatives 11 and 12 (Southern 1 and 2) which pass near Narrows, Pearisburg, and Staffordville. Implementing any of these five alternatives would have the greatest potential for displacing residences. Alternatives 1 and 2 (Proposed Action with L & M Segments and Proposed Action with S & T Segments) have the least potential for displacing residences, and therefore, the lowest level of potential impacts.

These impacts would be reduced by implementation of state laws governing acquisition of property rights. In accordance with these laws, the landowners would be paid full fair market value for the rights acquired. Assistance with relocation, if required, would also be provided. Both the Virginia and West Virginia Codes emphasize that acquisition of real property for public projects be achieved through mutual agreement between the acquiring entity and the owners, and that the use of eminent domain proceedings and litigation be avoided to the extent possible. The State of Virginia Code also stipulates that except under unavoidable circumstances, a public service corporation (such as an utility company) shall not acquire through condemnation proceedings a strip of land for a ROW within 60 feet of a dwelling of any person. Therefore, in the light of the state law, all alternatives that avoid affecting areas with or near dwellings units, would be preferred over other alternatives.

#### **4.11.2.4 Impacts on Minority and Low-Income Population**

In 1994, Executive Order 12898 on Environmental Justice was signed. This order stipulates that all proposed federal actions be examined prior to implementation for any potentially disproportionate adverse and high human health and environmental effects on minority, including Native American and low-income populations. Some of the factors to be considered in analyzing effects on minority and low-income populations are possible community disruption caused by displacement of homes and businesses; impacts to a popular community facility (e.g., school, park, church, or historic place); degradation of aesthetic values; and impacts to the community's economic structure such as changes in tax base or property values in low-income and minority areas. The Executive Order requires assessment of disproportionate impacts to these populations. In the context of a transmission line project, impacts would be considered disproportionate if: 1) the project caused a large number of displacements, or affected aesthetic values at numerous locations, or caused property value and tax base changes in low-income/minority areas; and 2) more of the transmission line length were proposed for siting in areas where low-income and minority populations are concentrated.

Because of variation in corridor width (generally 1-mile-wide on non-federal lands and 1000-foot-wide on federal lands), exact assessment of potentially disproportionate health and environmental

effects on minority or low-income populations is not possible. After a precise route has been selected, it would be possible to determine if the route passes through minority or low-income neighborhoods and to assess the level of impacts in these areas. However, to determine if the alternative corridors could potentially affect these populations and which alternatives would likely have greater impacts than others, data on percentage minority (all non-white population) from the 1990 Census were gathered for each of the study area counties. These data (presented in Table 3.11-5) suggest that minority populations are relatively evenly distributed and are a rather small proportion of the total population of the study area (about 4 percent of the study area population). Therefore, disproportionate effects from the proposed transmission line on minority populations are unlikely overall.

County-level census data on the percentage population under poverty status in 1989 was examined (see Table 3.11-6) to assess potential effects on low-income populations. About 20 to 28 percent of the population is under poverty status in all four WV counties. However, as shown in Table 4.11-1, segments in these WV counties contain low densities of residential structures, so disproportionate impacts to low-income populations are unlikely in these counties.

Three of the six VA counties in the study area (Montgomery, Pulaski, and Giles) have 12 to 22 percent of their population under the poverty status. The density of residential structures in the alternative corridors that pass through these counties is slightly higher. Therefore, the alternatives that pass through these counties -- all the southerly alternatives (Alternatives 9 through 13) -- are more likely to affect low-income populations than are the other alternative corridors. Residential densities in these counties along Segments SNN, SY, and SAA are about 24 residences per square mile, 31 residences per square mile, and 23 residences per square mile, respectively.

Table 4.11-2 presents the miles of transmission line that would be located in each county, by alternative. From this table it can be seen that all alternatives are generally similar in terms of the length of transmission line in Wyoming and Mercer counties. Summers County would be affected only by two alternatives (Alternatives 1 and 2) while Monroe County would be affected by six alternatives (Alternatives 1 through 6).

Of the six VA counties in the study area, Montgomery County has the highest percent population under poverty status (about 22 %). Alternatives 7 through 13 would be located in this county, involving about 11 to 22 miles of transmission line length. In terms of percent population under poverty status, Pulaski County is next with about 13 percent of its population in this category. However, none of the alternatives, except Alternative 13, would affect this county, and there would be less than a mile of transmission line through this county. Giles County has about 12 percent of its population below poverty status. From 0 to about 4 miles of transmission line would be located in this county under Alternatives 1 through 6, whereas 21 to 26 miles of transmission line would be located in this county under Alternatives 7 through 13. Craig, Roanoke, and Botetourt counties have less than 10 percent of their population under poverty status. Craig County would be affected mainly by Alternatives 1



through 6, Botetourt County by all alternatives almost equally, and Roanoke County would be affected by 11 out of the 13 alternatives.

The portion of the transmission line which is located in counties with the highest (20 percent or greater) percent population under poverty status varies little by alternative. Alternative 5 has the greatest length (84 miles) and Alternatives 7 and 8 have the least (65 miles).

As mentioned above, in the absence of a precise route, the determination of exact impacts on minority/low-income populations is not possible. Analysis with county-level data is very general, and does not reveal all impacts. For instance Craig, Roanoke, and Botetourt counties generally have low percentages of their population below poverty level, and therefore in a corridor level comparison, it may be argued that those alternatives/segments that are located in these counties would generally have lesser impacts on low-income groups as these groups are present in these counties in lower numbers. However, since the transmission line routes have been developed to avoid high density areas and have been proposed for rural areas, the rural areas through which the line would pass could be the areas where low-income populations are concentrated in these counties. Despite this obvious drawback associated with county-level analysis, the analysis provided above is considered valid because it allows the reader to compare alternatives to see which alternative has a greater likelihood of affecting minority/low-income populations.

Federal actions for the proposed project would be limited to the location of the facilities on federal lands. Federal lands in the project area are not populated, therefore there would be little, if any, effects on minority/low income population from the project on federal lands.

#### **4.11.2.5 Impacts on Property Values**

The potential impacts of the proposed project on the value of real estate properties was identified as an issue during public scoping; in general, the concern was the potential decline in property values due to the proximity of the transmission line. There is no generally accepted methodology or standard analytical technique for identifying electrical transmission line property value impacts, nor is there consensus on whether such impacts occur. However, published research, specific property value case studies of existing transmission lines in Virginia, court cases dealing with property value effects of transmission lines, and other available literature were reviewed to assess this concern. All studies reviewed for this EIS are listed in the reference section. The findings from this review are summarized here.

The available literature summarizes two types of potential adverse economic effects on property from high voltage transmission lines: 1) a possible decrease in the value of the property; and 2) an increase in the time required to sell property located in the affected area causing an economic loss associated with the increased marketing time. Originally, these effects were considered to be associated only with visual reaction to lines and transmission towers. More recently, these effects



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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USNRC

BEFORE THE COMMISSION

97 AUG -8 P12:38

In the Matter of )

LOUISIANA ENERGY SERVICES, L.P. )

(Claiborne Enrichment Center) )

) Docket No. 70-3070-ML

) August 7, 1997

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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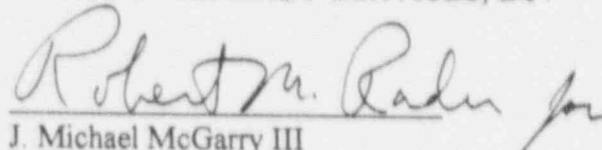
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