

October 23, 2006

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In the Matter of
SYSTEM ENERGY RESOURCES, INC.
(Early Site Permit for Grand Gulf ESP Site)
Docket No. 52-009-ESP

Dear Administrative Judges:

In its Order dated October 11, 2006, as part of its revised schedule for the remainder of the mandatory proceeding, the Licensing Board set a prehearing conference for October 31, 2006. The parties view this prehearing conference as a timely opportunity to confirm the Board's expectations with respect to A) written testimony, B) the format of the mandatory hearing itself, C) certain hearing-related logistics, and D) the nature of public participation in the hearing. Consequently, after consultation, the parties respectfully submit the following proposed agenda items for the Board's consideration at the prehearing conference.

A) Structure and Submission of Written Testimony

In its revised schedule, the Board indicated that the written direct testimony to be submitted on November 20, 2006, will address specific safety and environmental topics identified by the Board in an Order to be issued on November 6, 2006. Given the limited time between that Order and the submission of testimony, the Staff and Applicant are proceeding on the understanding that the Board expects the testimony to focus on a limited subset of issues, rather than encompass the entirety of technical topics addressed in the Application and in the Staff's FSER and FEIS. In short, the parties do not anticipate that the testimony will need to address all of the matters addressed in previous filings. The parties agree that the sources of the parties' written testimony – i.e., the responsible technical reviewers – will need to be clearly indicated for the Board's reference.

Also, with respect to the timing of the submission of written testimony, the Board's revised schedule has the Staff submitting testimony on November 20, with the Applicant submitting on November 27 "any additional written direct testimony and exhibits" relevant to the hearing issues identified by the Board. The Staff understands that the Applicant is concerned that this arrangement will provide it with insufficient time to review the Staff's submission, identify additional testimony or exhibit needs, secure appropriate witnesses, and prepare its testimony in time for the hearing, which is scheduled to begin on November 29. The Staff understands, therefore, that the Applicant intends to request the Board's permission to submit its own written testimony and exhibits on November 20 on the specific safety and environmental topics to be identified by the Board on November 6, 2006. The Staff has no objection to this request.

Proposed Agenda Item #1: The parties request that the Board comment on whether the above discussion is consistent with the Board's expectations. If not, the parties would like to discuss the anticipated scope of testimony and the timing of the Applicant's submission of testimony.

B) Format of the Mandatory Hearing

Related to the discussion in part A, the parties anticipate that the conduct of the mandatory hearing itself, including the number of live witnesses needed to be present, would be largely determined by the scope of the issues on which the Board requests advance written testimony. In particular, the parties are proceeding on the understanding that the Board will not require all technical reviewers who prepared the Application, FSER, or FEIS to be present to give testimony and answer related questions from the Board. Rather, the parties anticipate that the Board will need the attendance of only the applicable Project Managers (to sponsor the Application and primary Staff review documents into evidence) and the specific technical reviewers whose expertise is the subject of the written testimony requested by the Board (to sponsor the testimony and respond to any associated Board questions). Given the parties' understanding (noted above) about the limited scope of testimony, it would be necessary, for example, for only a limited subset of the more than 30 technical reviewers who contributed to the Staff's safety and environmental review – a significant number of whom are working under contract with the NRC but are located at Pacific Northwest National Laboratory in Washington State – to travel to the hearing in Rockville.

The parties recognize the possibility that after issuance of the November 6 Order, and even at the mandatory hearing, the Board may identify other questions or concerns it would like to have addressed. If, at the hearing, the Board has a question for which the responsible technical reviewer is not present because the question relates to a matter outside the scope of issues identified by the Board for written testimony, the Staff and/or Applicant will submit an appropriate post-hearing response to address the Board's inquiry, within a time period specified by the Board. See 10 C.F.R. § 2.1207(b)(5).

Proposed Agenda Item #2: The parties request that the Board comment on whether the above discussion is consistent with the Board's expectations. If not, the parties would like to discuss the Board's understanding of the mandatory hearing format.

C) Other Hearing-Related Logistics

The parties would also like to discuss the Board's expectations with respect to certain logistical details. These details include the format and number of copies of any documents the Board expects the parties to introduce (including, if the Board considers it necessary, the previously submitted responses to the Board's SER- and EIS-related inquiries), and the Board's preferred procedure for introducing such documents into evidence. See, e.g., 10 C.F.R. §§ 2.337(d), 2.1207(b)(2). The Board referenced some of these issues in footnote 3 to its October 11 Order.

Proposed Agenda Item #3: The parties request that the Board provide any guidance it may have with respect to these logistical concerns.

D) Nature of Public Participation at the Mandatory Hearing

Finally, the parties would like to confirm the role of the public during the mandatory hearing. It is the understanding of the parties that members of the public are welcome to attend but will not be permitted to ask questions directly to the Board, Staff, or Applicant. See Exelon Generating Company, LLC (Early Site Permit for Clinton ESP Site), CLI-05-17, 62 NRC 5, 49-50 (2005).

Proposed Agenda Item #4: The parties request that the Board comment on the scope of public participation at the hearing.

Counsel for the Applicant, Paul Bessette, has authorized me to state that the Applicant concurs with this proposed agenda.

Respectfully submitted,

/RA/

Patrick A. Moulding
Counsel for NRC Staff

cc: Office of Commission Appellate
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