

October 6, 2008

Ms. Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Docket Nos. RC08-5-000

Dear Ms. Bose:

On July 21, 2008, the Federal Energy Regulatory Commission (FERC or Commission) issued an “Order on Appeal of Electric Reliability Organization Compliance Registry Determination” to the North American Electric Reliability Corporation (NERC)¹ involving the United States Department of Energy, Portsmouth/Paducah Project Office (DOE/PPPO). In the July 21 Order, the Commission upheld DOE/PPPO’s Transmission Owner, Transmission Operator and Distribution Provider; the Commission also remanded the proceedings to NERC for further consideration on the issue whether DOE/PPPO was properly registered as a Load-Serving Entity (LSE).²

As discussed in the body of the decision included in Attachment A, the NERC Board of Trustees Compliance Committee (NERC BOTCC) affirms ReliabilityFirst Corporation’s (ReliabilityFirst) decision to retain DOE/PPPO’s registration as an LSE on the NERC Compliance Registry. The NERC BOTCC has rendered this decision based on the information provided by the ReliabilityFirst and DOE/PPPO and the specific factual circumstances of the matters before it.

Excerpts of information provided by ReliabilityFirst is included in Attachment B, excerpts of information provided by DOE/PPPO is included in Attachment C, and excerpts of information provided by Ohio Valley Electric Cooperation (OVEC) is included in Attachment D.

NERC respectfully requests that the Commission find this submittal as compliant with its July 21 Order.

Sincerely,

/s/ Rebecca J. Michael
Rebecca J. Michael
Attorney for the North American
Electric Reliability Corporation

cc: Service Lists

¹ U.S. Department of Energy, Portsmouth/Paducah Project Office, 124 FERC ¶ 61,072 (2008) (July 21 Order).

² *Id.* at PP 40-41, 59-60.

ATTACHMENT A

NERC Board of Trustees Compliance Committee Remand Decision

**Board of Trustees Compliance Committee
Decision on Remand
(Issued October 6, 2008)**

On July 21, 2008, the Federal Energy Regulatory Commission (FERC or the Commission) issued an “Order on Appeal of Electric Reliability Organization Compliance Registry Determination” to the North American Electric Reliability Corporation (NERC)¹ involving the United States Department of Energy, Portsmouth/Paducah Project Office (DOE/PPPO). The Commission upheld the registration of DOE/PPPO as a Transmission Owner (TO), Transmission Operator (TOP) and Distribution Provider (DP), but remanded to NERC the issue of whether DOE/PPPO should be registered as a Load-Serving Entity (LSE). By this decision, the NERC Board of Trustees Compliance Committee (NERC BOTCC) finds that there is adequate support to justify retaining DOE/PPPO on the NERC Compliance Registry as an LSE in the ReliabilityFirst Corporation (ReliabilityFirst) Region.

Background

On October 16, 2007, DOE/PPPO filed an appeal of its being included on the NERC Compliance Registry for the functions of Purchasing-Selling Entity (PSE), TO, TOP, LSE and DP with respect to the DOE Portsmouth Site within the ReliabilityFirst Region.

On February 10, 2008 the NERC BOTCC remanded DOE/PPPO’s appeal to ReliabilityFirst to work with DOE/PPPO, Ohio Valley Electric Company (OVEC) and United States Enrichment Corporation (USEC) to resolve several issues, including whether the Joint Registration Organization (JRO) process would provide an appropriate solution to resolve the issues raised in DOE/PPPO’s appeal.

After the discussions among the parties failed to resolve the issues, the NERC BOTCC once again reviewed all the information provided and rendered a decision on April 22, 2008 to include DOE/PPPO on the NERC Compliance Registry within ReliabilityFirst for the functions of TO, TOP, LSE and DP. The NERC BOTCC determined, however, that DOE/PPPO did not meet the criteria for registration as a PSE.

On May 13, 2008, DOE/PPPO filed an appeal at FERC of the April 22, 2008 Decision rendered by the NERC BOTCC to include DOE/PPPO on the NERC Compliance Registry within the ReliabilityFirst for the functions of TO, TOP, LSE and DP.

On July 21, 2008, the Commission issued its order finding that DOE/PPPO was properly included on the NERC Compliance Registry as a TO, TOP and DP, but remanded to

¹ U.S. Department of Energy, Portsmouth/Paducah Project Office, 124 FERC ¶ 61,072 (2008) (July 21 Order).

NERC for further consideration the issue whether DOE/PPPO was properly registered as an LSE. The Commission requested that the record be further developed regarding DOE/PPPO's function as an LSE prior to the Commission issuing an order on the merits as to this particular LSE function. Specifically, the Commission requested clarification on the following: (i) whether DOE/PPPO procures energy to serve end-use customers; (ii) whether the NERC registry decision intends that DOE/PPPO is an LSE because it serves its *own* load; and (iii) whether DOE/PPPO's contract with OVEC is determinative that DOE/PPPO is properly registered as an LSE.

By correspondence dated August 19, 2008, NERC requested that ReliabilityFirst take the following actions, in order to assist NERC in making a revised registration determination:

- (1) Identify whether the energy and/or transmission services DOE/PPPO is securing through its contract with OVEC is used to serve the USEC load at the DOE/PPPO site. Identify any other third party load at the DOE/PPPO site, in addition to the USEC and DOE/PPPO load, that receives energy and transmission service as a result of the OVEC and DOE/PPPO contract or via any other contract with DOE/PPPO for energy and/or transmission services. Request that OVEC and USEC identify who is securing the energy used to serve the USEC load.
- (2) Request copies of the memorandums and other agreements between and among OVEC, DOE/PPPO and USEC that govern the provision of energy and transmission services for USEC and any other third parties at the DOE PPPO site.
- (3) Submit ReliabilityFirst's analysis, recommendations, and supporting materials regarding a revised registration determination for these matters.

NERC requested that OVEC and DOE provide information to ReliabilityFirst and that ReliabilityFirst in turn provide its assessment thereafter.

On August 28, OVEC provided a response to the NERC request for information. OVEC confirmed "that the entire load at the DOE/PPPO site (comprising approximately 5,000 acres in Southern Ohio) is served by the DOE PPPO through its short-term, arranged power contract with OVEC."² According to OVEC, "we understand that USEC and other third parties are engaged in a variety of for-profit activities on the DOE PPPO site, as lessor or sub-lessor of property and buildings and/or as contractor or sub-contractor to the DOE PPPO, USEC or others on the site."³

OVEC provided certain agreements, modifications thereto and other documents to ReliabilityFirst and NERC as requested by NERC. NERC believes that the public

² OVEC August 28, 2008 letter at 2.

³ *Id.*

response OVEC submitted is sufficient to support a finding that DOE/PPPO is an LSE, because it secures energy and power for third parties at the DOE/PPPO site.

On September 5, 2008, DOE provided a response to the NERC request for information. DOE explains that:

The electrical power for the Portsmouth site is currently supplied by the OVEC under the terms and conditions of the “Letter Agreement Relating to Temporary Supply of Arranged Power” dated June 16, 2003 In accordance with this letter agreement, OVEC solicits bids from third-party power providers⁴ for “arranged power” on a month-to-month basis to meet the loads projected for the Portsmouth site. Bids are received by OVEC and communicated to DOE. DOE notifies OVEC of the bid that DOE desires to accept. OVEC then purchases the power, and the power is delivered to the site over OVEC power lines

The electrical power that is delivered to the site by OVEC over OVEC’s transmission lines is measured and monitored by USEC’s Power Operations Group. Incoming usage data is obtained from meters contained in the incoming power lines owned and maintained by OVEC. This data is used to summarize the mega watts used each month.

Electricity delivered to the site pursuant to the OVEC power agreement is primarily used to conduct Government operations at the Portsmouth site. These Government operations are carried out by contractors under cost-reimbursement type contracts with the Government (with management/oversight provided by a small cadre of on-site federal employees). These contractors include LATA/Parallax Portsmouth, LLC (LPP), which provides DOE with waste management and environmental remediation services; Theta Pro2Serve Management Company, LLC (TPMC), which provides DOE’s projects at the site with infrastructure services (e.g., maintenance, janitorial); Uranium Disposition Services (UDS), which is constructing a depleted uranium hexafluoride conversion plant for DOE; and USEC, [which] provides Cold Shutdown and other services to DOE at the site. Electrical power is typically supplied to the Government contractors as a Government Furnished Service or Item (GFSI) at no cost to the contractors. It should be noted that there is a maintenance and repair shop (one relatively small facility on-site) leased by DOE to the Ohio National Guard for servicing military mobile equipment, and DOE supplies electrical power at no cost to the Guard’s Government operations at that facility.

⁴ OVEC has indicated that it does not have capacity to deliver power generated from OVEC’s power plants to the Portsmouth site.

A small portion of the electricity delivered to the site pursuant to the OVEC power agreement is used by USEC Inc.⁵ in support of its commercial uranium enrichment venture known as the American Centrifuge Project or ACP. The electricity is made available to ACP under the DOE-USEC lease, specifically Exhibit F of the lease, titled Memorandum of Agreement between United States Department of Energy and United States Enrichment Corporation for the Supply of Services, Modification No. 1 (hereafter "Services Agreement") DOE is paid by USEC under the Services Agreement for the electricity used by USEC Inc. to support its operation of the ACP. Payment to DOE for electricity is based on the actual monthly usage by ACP (pro-rata share of site usage).⁶

On September 19, 2008, ReliabilityFirst provided the information requested by the NERC BOTCC and supplemented its findings and recommendations as follows:

- (1) [DOE/PPPO] [i]s responsible to provide services to USEC such as the provision of electric power as stated in the Memorandum of Agreement between DOE/PPPO and USEC for Supply of Services Modification No. 1. ReliabilityFirst realizes that it appears USEC and the DOE/PPPO can charge each other for such electrical services which would result in a zero net basis; however, ReliabilityFirst does believe this financial arrangement has a basis for determination of the DOE/PPPO as a LSE
- (2) [DOE/PPPO] [h]as entered into agreements with OVEC to provide power and energy to the DOE and reimburse OVEC for all costs related to procuring power and energy from third parties as stated in the Letter Agreement Relating to the Temporary Supply of Arranged Power dated April 29, 2003.
- (3) [DOE/PPPO] [i]s responsible to schedule power as discussed in Section 2.08 of the Power Agreement dated October 15, 1952. In addition, this section instructs OVEC under DOE direction to provide power from third parties if the project generating facilities are unable to provide the desired power to the point of delivery.
- (4) [The letter supplement] [a]mends the Letter Agreement Relating to the Temporary Supply of Arranged Power dated April 29, 2003 and modifies OVEC-DOE/PPPO Arranged Power Request dated April 27, 2005 with DOE/PPPO Letter Supplement for Contract Number

⁵ USEC Inc., which operates the [American Centrifuge Project] ACP, is a separate corporation from USEC. USEC leases the enrichment facilities, including the ACP facilities, from DOE. USEC subleases the ACP facilities to USEC Inc.

⁶ DOE/PPPO September 5 Response at 1-2 (emphasis added).

DE-AC05-030R22988 September 4, 2008. This letter supplement is for a term of three months, provides for fees for power purchased and delivery of the power, and provides for the scheduling and purchase of additional power.

- (5) [DOE/PPPO] [h]as ownership and responsibility for the equipment to deliver the secure power from the point of delivery.⁷

The NERC BOTCC considered the Reliability*First* supplemental information and recommendations on October 6, 2008.

Analysis

An LSE is an entity that secures energy and transmission service (and related interconnected operations services) to serve the electrical demand and energy requirements of its end-use customers.⁸

In response to the Commission's July 21st remand order, DOE/PPPO is not registered as an LSE because it secures energy for itself as an end use customer; rather, DOE/PPPO is registered as an LSE because it secures energy *for third parties* at the DOE/PPPO site.

As the quoted language above in DOE/PPPO's September 5, 2008 response provides, part of the electricity delivered to the site pursuant to the OVEC power agreement is used by an end-use customer, USEC Inc., in support of its commercial uranium enrichment venture known as the American Centrifuge Project or ACP, under DOE-USEC lease. In addition, as noted above, DOE/PPPO also identifies other government contractors and entities at the site that similarly receive power procured by DOE under the OVEC power agreement to third party entities, including LPP, TPMC and UDS. According to DOE/PPPO, electrical power is typically supplied to the Government contractors as a Government Furnished Service or Item (GFSI). Moreover, DOE/PPPO supplies electrical power to the Ohio National Guard's maintenance and repair shop (an on-site shop leased by DOE to the Ohio National Guard). These entities would also be classified as end-use customers. Thus, it is clear from the DOE/PPPO's quoted language that DOE/PPPO is securing energy not only for its own needs but also for third parties as end-use customers.

Based on DOE/PPPO's own statements interpreting the OVEC contract and the review by Reliability*First* and NERC of that contract, NERC finds that the OVEC contract and DOE/PPPO's clarification statements about supplying power to other customers support a finding that DOE/PPPO is properly registered as the LSE.

⁷ Reliability*First* September 19 Response at 2.

⁸ See NERC *Statement of Compliance Registry Criteria (Revision 4.0)* at 5.

(http://www.nerc.com/fileUploads/File/Compliance/Statement_of_Compliance_Registry_Criteria_V4-0.pdf)

DOE/PPPO provided certain agreements, modifications thereto and other documents to ReliabilityFirst and NERC as requested by NERC. Because DOE/PPPO has asserted that certain of these materials are “For Official Use Only” and/or are otherwise confidential, non-public information, NERC is not providing them as part of this submittal. NERC believes that the public response DOE/PPPO filed is sufficient to support a finding that DOE/PPPO is an LSE, because it secures energy and power for third parties at the DOE/PPPO site.

Decision

For the foregoing reasons, the NERC BOTCC finds that DOE/PPPO is properly included as an LSE on the NERC Compliance Registry.

By the Board of Trustees Compliance Committee

ATTACHMENT B

Reliability*First* Corporation's September 19, 2008 Response



September 19, 2008

Rebecca J. Michael
Assistant General Counsel
North American Electric Reliability Corporation
Washington, D.C. 20005

Subject: Reliability*First* Response to NERC Registration Appeal RA070106 — U.S. Department of Energy Portsmouth/Paducah Project Office

Dear Ms. Michael;

In the NERC letter dated August 19, 2008 subject NERC Registration Appeal RA070106 — U.S. Department of Energy Portsmouth/Paducah Project Office” it is noted that on July 21, 2008, the Federal Energy Regulatory Commission (“Commission”) remanded to NERC the decision involving the registration of the U.S. Department of Energy Portsmouth/Paducah Project Office (“DOE PPPO”) for the function of Load-Serving Entity for further consideration. NERC has been directed to submit a registration determination with further explanation regarding DOE PPPO’s registration as a Load-Serving Entity within 75 days of the issuance of the Commission’s order.

In this letter NERC requested Reliability*First* to:

1. Identify whether the energy and/or transmission services DOE PPPO is securing through its contract with Ohio Valley Electric Company (“OVEC”) is used to serve the United States Enrichment Corporation (“USEC”) load at the DOE PPPO site. Identify any other third party load at the DOE PPPO site, in addition to the USEC and DOE PPPO load, that receives energy and transmission service as a result of the OVEC and DOE PPPO contract or via any other contract with DOE PPPO for energy and/or transmission services. Request that OVEC and USEC identify who is securing the energy used to serve the USEC load;
2. Request copies of the memorandums and other agreements between and among OVEC, DOE PPPO and USEC that govern the provision of energy and transmission services for USEC and any other third parties at the DOE PPPO site;
3. Submit Reliability*First*’s analysis, recommendations, and supporting materials regarding a revised registration determination for these matters.

Reliability*First* has been in contact with DOE and OVEC and has received copies of the memorandums and other agreements between and among OVEC, DOE PPPO and USEC

that govern the provision of energy and transmission services for USEC and any other third parties at the DOE PPPO site.

ReliabilityFirst has reviewed the following documents in response to the items above:

1. Letter Agreement Relating to the Temporary Supply of Arranged Power dated April 29, 2003.
2. Power Agreement dated October 15, 1952
3. Modification #15 to Power Agreement dated October 15, 1952
4. OVEC-DOE Arranged Power Request dated April 27, 2005
5. Acceptance Bids for "Arranged Power" Under Contract No. AC08-030R22988, Letter Agreement Modification A001
6. Memorandum of Agreement between DOE & USEC for Supply of Services Modification No. 1
7. DOE Letter Supplement for Contract Number DE-AC05-030R22988 September 4, 2008

These documents are attached for your review as requested.

ReliabilityFirst believes that these documents support its opinion that DOE should be registered as a LSE as the DOE:

1. Is responsible to provide services to USEC such as the provision of electric power as stated in the Memorandum of Agreement between DOE & USEC for Supply of Services Modification No. 1. ReliabilityFirst realizes that it appears USEC and the DOE can charge each other for such electrical services which would result in a zero net basis however ReliabilityFirst does believe this financial arrangement has a basis for determination of the DOE as a LSE
2. Has entered into agreements with OVEC to provide power and energy to the DOE and reimburse OVEC for all costs related procuring power and energy from third parties as stated in the Letter Agreement Relating to the Temporary Supply of Arranged Power dated April 29, 2003.
3. Is responsible to schedule power as discussed in Section 2.08 of the Power Agreement dated October 15, 1952. In addition, this section instructs OVEC under DOE direction to provide power from third parties if the project generating facilities are unable to provide the desired power to the point of delivery.
4. Amends the Letter Agreement Relating to the Temporary Supply of Arranged Power dated April 29, 2003 and modifies OVEC-DOE Arranged Power Request dated April 27, 2005 with DOE Letter Supplement for Contract Number DE-AC05-030R22988 September 4, 2008. This letter supplement is for a term of three months, provides for fees for power purchased and delivery of the power, and provides for the scheduling and purchase of additional power.
5. Has ownership and responsibility for the equipment to deliver the secure power from the point of delivery.

Therefore, Reliability*First* recommends that DOE be designated as a LSE and be included in the NERC Compliance Registry bringing this matter to a close.

Sincerely;

Gary H. Campbell
Manager of Compliance Audits
ReliabilityFirst Corporation

Cc: Tim Gallagher, President, Reliability*First*
Ray Palmieri, Vice President and Director of Compliance, Reliability*First*
Dave Hilt, Vice President of Compliance, NERC
Craig Lawrence, Manager Organization Registration, NERC

**Reliability*First*'s September 19, 2008
Response**

Attachments Omitted

ATTACHMENT C

DOE/PPPO's September 5, 2008 Response

Mr. Palmieri,

The Department of Energy (DOE) Portsmouth/Paducah Project Office (PPPO) provides the following response to questions posed in your e-mail to James Gambrell dated August 22, 2008:

RESPONSE TO NERC ACTION 1: Identify whether the energy and/or transmission services DOE PPPO is securing through its contract with Ohio Valley Electric Company (“OVEC”) is used to serve the United States Enrichment Corporation (“USEC”) load at the DOE PPPO site. Identify any other third party load at the DOE PPPO site, in addition to the USEC and DOE PPPO load, that receives energy and transmission service as a result of the OVEC and DOE PPPO contract or via any other contract with DOE PPPO for energy and/or transmission services. Request that OVEC and USEC identify who is securing the energy used to serve the USEC load.

The electrical power for the Portsmouth site is currently supplied by the OVEC under the terms and conditions of the “Letter Agreement Relating to Temporary Supply of Arranged Power” dated June 16, 2003 (Attachment 1). In accordance with this letter agreement, OVEC solicits bids from third-party power providers¹ for “arranged power” on a month-to-month basis to meet the loads projected for the Portsmouth site. Bids are received by OVEC and communicated to DOE. DOE notifies OVEC of the bid that DOE desires to accept. OVEC then purchases the power, and the power is delivered to the site over OVEC power lines (An example is shown as Attachment 2).

The electrical power that is delivered to the site by OVEC over OVEC’s transmission lines is measured and monitored by USEC’s Power Operations Group. Incoming usage data is obtained from meters contained in the incoming power lines owned and maintained by OVEC. This data is used to summarize the mega watts used each month.

Electricity delivered to the site pursuant to the OVEC power agreement is primarily used to conduct Government operations at the Portsmouth site. These Government operations are carried out by contractors under cost-reimbursement type contracts with the Government (with management/oversight provided by a small cadre of on-site federal employees). These contractors include LATA/Parallax Portsmouth, LLC (LPP), which provides DOE with waste management and environmental remediation services; Theta Pro2Serve Management Company, LLC (TPMC), which provides DOE’s projects at the site with infrastructure services (e.g., maintenance, janitorial); Uranium Disposition Services (UDS), which is constructing a depleted uranium hexafluoride conversion plant for DOE; and USEC, provides Cold Shutdown and other services to DOE at the site. Electrical power is typically supplied to the Government contractors as a Government Furnished Service or Item (GFSI) at no cost to the contractors. It should be noted that there is a maintenance and repair shop (one relatively small facility on-site) leased by DOE to the Ohio National Guard for servicing military mobile equipment, and DOE supplies electrical power at no cost to the Guard’s Government operations at that facility.

¹ OVEC has indicated that it does not have capacity to deliver power generated from OVEC’s power plants to the Portsmouth site.

A small portion of the electricity delivered to the site pursuant to the OVEC power agreement is used by USEC Inc.² in support of its commercial uranium enrichment venture known as the American Centrifuge Project or ACP. The electricity is made available to ACP under the DOE-USEC lease, specifically Exhibit F of the lease, titled Memorandum of Agreement between United States Department of Energy and United States Enrichment Corporation for the Supply of Services, Modification No. 1 (hereafter “Services Agreement”) (Attachment 3). DOE is paid by USEC under the Services Agreement for the electricity used by USEC Inc. to support its operation of the ACP. Payment to DOE for electricity is based on the actual monthly usage by ACP (pro-rata share of site usage).

RESPONSE TO A NERC ACTION (2): Request copies of memorandums and other agreements between and among OVEC, DOE PPPO and USEC that govern the provision of energy and transmission services for USEC and any other third parties at the DOE PPPO site.

See Attachments.

² USEC Inc., which operates the ACP, is a separate corporation from USEC. USEC leases the enrichment facilities, including the ACP facilities, from DOE. USEC subleases the ACP facilities to USEC Inc.

**DOE/PPPO's September 5, 2008
Response**

Attachments Omitted

ATTACHMENT D

OVEC's August 28, 2008 Response

OHIO VALLEY ELECTRIC CORPORATION
INDIANA-KENTUCKY ELECTRIC CORPORATION

3932 U.S. ROUTE 23
POST OFFICE BOX 468
PIKETON, OHIO 45661
(740) 289-7200

WRITER'S DIRECT DIAL NO:
(740) 289-7217

August 28, 2008

Mr. Ray Palmieri
ReliabilityFirst Corporation
320 Springside Drive, Suite 300
Akron, Ohio 44333

Dear Mr. Palmieri:

This letter and the enclosed materials are provided to you in response to the information requested from Ohio Valley Electric Corporation ("OVEC") and others in a letter from Mr. David W. Hilt of the North American Electric Reliability Corporation ("NERC") to Mr. Timothy Gallagher of ReliabilityFirst Corporation ("RFC"), dated August 19, 2008. In particular, OVEC was asked to provide information in response to two items specified in Mr. Hilt's letter (each of which is repeated below) to assist NERC and RFC in considering the registration of the U.S. Department of Energy Portsmouth/Paducah Office ("DOE PPPO") as a load serving entity ("LSE"). OVEC believes that this information (together with the information already gathered) further supports the proper registration of the DOE PPPO as an LSE.

OVEC notes that it was requested to provide this information to you no later than August 29, 2008. Thus, the information provided represents OVEC's best efforts to gather all relevant, publicly available information within this time frame. Please feel free to let me know if there is any additional information OVEC could provide to RFC or NERC to assist in your review of the DOE PPPO's registration as an LSE.

- (1) Identify whether the energy and/or transmission services DOE PPPO is securing through its contract with OVEC is used to serve the United States Enrichment Corporation ("USEC") load at the DOE PPPO site. Identify any other third party load at the DOE PPPO site, in addition to the USEC and DOE PPPO load, that receives energy and transmission service as a result of the OVEC and DOE PPPO contract or via any other contract with DOE PPPO for energy and/or transmission services. Identify who is securing the energy used to serve the USEC load.

Currently, we understand that the entire load at the DOE PPPO site (comprising approximately 5,000 acres in Southern Ohio) is served by the DOE PPPO through its short-term, arranged power contract with OVEC. OVEC is not aware of any self-generation at the DOE PPPO site or any electric interconnection over which the DOE PPPO or others at the site receive power or energy other than through the DOE PPPO/OVEC contract. As discussed below, we understand that USEC and other third parties are engaged in a variety of for-profit activities on the DOE PPPO site, as lessor or sub-lessor of property and buildings and/or as contractor or sub-contractor to the DOE PPPO, USEC or others on the site. Under the leases with USEC (described below), the DOE PPPO provides USEC with various services, including power and energy, and presumably the DOE PPPO (as well as USEC) has similar arrangements to provide power and energy to other lessors, sub-lessors and contractors on the site.

USEC is a publicly-owned, for-profit corporation with significant operations within the DOE PPPO site. The DOE PPPO has stated that “USEC leases facilities at the Portsmouth site in furtherance of USEC’s commercial interests.”¹ We understand that USEC’s activities within the site can be divided into two main areas:

- Activities at Former GDP Facilities. USEC is engaged in a variety of commercial, for-profit activities using property and equipment leased from the DOE PPPO associated with the former Gaseous Diffusion Plant and related facilities (“GDP”). We understand that this leased area represents almost all of the DOE PPPO site, except for certain portions returned to the DOE PPPO from time to time (such as for the Uranium Disposition Services activities described below). Indeed, recent USEC materials describe the scope of its operations as similar to a “small city” with various services provided to “more than six companies.”² We note that in its appeal of the NERC registrations, the DOE PPPO emphasized that while these facilities are technically owned by the DOE PPPO, they are leased by and remain under the control of USEC for USEC’s independent commercial activities.³

¹ Appeal And Request For Stay Of North American Electric Reliability Corporation’s “Board of Trustees Compliance Committee Decision On Appeal of Compliance Registry Determination (Issued April 22, 2008)”, filed on May 13, 2008 in FERC Docket RC08-5-000 (“DOE PPPO Appeal”), at p. 3.

² See Annual Report of USEC Government Services, Piketon, Ohio (2007), at p. 6, attached as Appendix 1 hereto (stating that “The Portsmouth Gaseous Diffusion Plant is considered by many a ‘small city’ with nearly 2,000 workers spread throughout more than 100 buildings. These workers represent more than six companies, including USEC, DOE, and its contractors.”)

³ See DOE PPPO Appeal, at p. 5 (stating that “[w]hile DOE retains title to the switchyard under consideration, USEC holds and exercises maintenance and control over these leased facilities (a form of ownership). Functional maintenance and control of the leased switchyards is the sole responsibility of the independent, for-profit lessor of these facilities – USEC.”)

- American Centrifuge Activities. A USEC subsidiary is engaged in the operation and development of the “privately funded next generation uranium enrichment project (the American Centrifuge Project)” on the DOE PPPO site.⁴ OVEC notes that this portion of the DOE PPPO’s site is in itself substantial, representing “approximately 1,750,000 square feet of state-of-the-art production and manufacturing buildings, along with the associated infrastructure on the 300-acre site.” (See DOE PPPO Press Release, dated December 8, 2006, attached hereto as Appendix 2.) USEC is in the midst of major construction at the site, and plans to begin commercial operation of the American Centrifuge Plant to re-start the sale of enriched uranium from the site to third parties in less than 2 years. (See information on USEC’s website at www.usec.com, including the fact sheet attached hereto as Appendix 3.)

OVEC does not have access to documents listing the other third-party loads at the DOE PPPO site. However, we understand that the DOE PPPO is engaged in a process of decontamination, decommissioning and demolition activities on portions of the site as a means for the DOE PPPO to lease (or possibly sell) portions of the site to third parties for new commercial activities. For instance, we note that “a new facility is being constructed at the site by the Uranium Disposition Services Corporation (UDS) to accomplish conversion of legacy depleted UF₆ co-product to UO_x.”⁵

- (2) Copies of the memorandums and other agreements between and among OVEC, DOE PPPO, and USEC that govern the provision of energy and transmission services for USEC and any other third parties at the DOE PPPO site.

The DOE PPPO/OVEC Contract. The DOE PPPO and OVEC are currently subject to a short-term (e.g., terminable on 30 days’ notice) letter agreement, dated as of April 29, 2003. (A copy of this letter agreement is attached hereto at Appendix 4.) Under this agreement, the DOE PPPO sends OVEC a letter each month requesting that OVEC solicit bids from third-party suppliers for an amount of power and energy that the DOE PPPO estimates it needs to serve all loads on the DOE PPPO site for the next month. Because the DOE PPPO’s letter requests such power and energy on a “7 x 24 basis for the entire month,” the DOE PPPO has requested OVEC to bid for delivery of this power and energy using firm transmission service. (A copy of the DOE PPPO’s request letter from August 11, 2008 for September power and energy is attached as Appendix 5 hereto.) In response to the DOE PPPO’s request, OVEC solicits bids and provides the results to the DOE PPPO for its review. The DOE PPPO then reviews the bids and selects the ultimate, third-party supplier of power and energy (using firm transmission, if available) to serve the loads at the DOE PPPO site. (A copy of the DOE PPPO’s letter, dated August 14, 2008, confirming its selection of the supplier, quantity and price for power and energy for September 2008 is attached as Appendix 6 hereto.) Thus, under the DOE PPPO/OVEC contract, the DOE PPPO is in control of all aspects of the purchase of energy and transmission to serve loads at the DOE PPPO site, including the load profile, pricing and applicable transmission service. Unlike a large industrial project (such as an automobile plant or aluminum smelter), the DOE PPPO is not procuring power and energy simply for its own commercial

⁴ DOE PPPO Appeal, at p. 3.

⁵ DOE PPPO Appeal, at p. 3.

enterprises on the site, but is also procuring power and energy (and deciding the load profile, pricing and terms for such procurement) for resale under leases and other agreements to third parties operating separate and independent commercial businesses utilizing a significant portion of the site.

The DOE PPPO/USEC Contracts. We understand that the agreement between the DOE PPPO and USEC for the supply of power, energy and transmission service to serve USEC's loads associated with the leased former GDP site is set forth in the Lease Agreement between the United States Department of Energy and USEC, dated as of July 1, 1993, attached as Appendix 7 hereto.⁶ Under Section 6.1 of this lease, the DOE PPPO agrees to "provide electric power to [USEC's] Leased Premises in accordance with the Memorandum of Agreement effective July 1, 1993, between the [DOE PPPO] and [USEC]." Under this Memorandum of Agreement, the DOE PPPO agrees to supply power and energy to USEC using the DOE PPPO's rights under certain former power agreements between the DOE PPPO and OVEC (and another supplier) in exchange for (among other consideration under the lease) USEC's payment of all applicable charges under those power agreements in accordance with terms set forth on Attachment A (which was not publicly filed).⁷ We understand that despite the termination of these former power agreements, the DOE PPPO continues to sell power and energy (and related transmission services) to USEC under the same or similar terms.

We understand that the DOE PPPO's provision of energy and transmission to serve USEC's loads associated with the American Centrifuge Plant is set forth in the Supplemental Agreement No. 1 to the July 1, 1993 Lease (discussed above), dated as of December 7, 2006, between the United States Department of Energy and USEC, attached as Appendix 9 hereto.⁸ Under Articles III and IV of the Supplemental Agreement, the DOE PPPO provides USEC with all services listed on Appendix A, including electric power, in return for USEC's payment of its pro rata share of any charges (including any improvements or modification not solely for the benefit of the DOE PPPO). In addition, under Section 6.2 of the Appendix to the Supplemental Agreement, the DOE PPPO commits to give USEC at least two years' prior notice to find an alternative source for utilities to serve USEC's leased premises if the DOE PPPO transfers ownership of the DOE PPPO site to another party after completion of its ongoing "Decontamination and Decommissioning and Demolition activities." While OVEC has not been included in recent discussions between the DOE PPPO and USEC regarding power supply to USEC at the site, these documents evidence a current commitment to continue to supply power to USEC at the site for many years (regardless of the DOE PPPO's source of power).

Other DOE and USEC Arrangements. OVEC does not have access to the agreements that govern the provision of power, energy, and transmission services by the DOE PPPO and

⁶ Exhibit 10.1 to USEC, Inc., Securities and Exchange Commission Form S-1, filed June 29, 1998, attached hereto as Appendix 5.

⁷ Exhibit 10.11 to USEC, Inc., Securities and Exchange Commission Form S-1, filed June 29, 1998, attached hereto as Appendix 8. OVEC was not able to locate a copy of Attachment A to the Memorandum of Agreement.

⁸ Exhibit 10.2 to USEC, Inc., 2006 Annual Report on Securities and Exchange Form 10-K, filed February 27, 2007.

USEC to other third parties located at the DOE PPPO site, including parties leasing or sub-leasing portions of the site, or long-term contractors performing various work at the site. We note, however, that these third parties must receive power and energy through purchases from either the DOE PPPO or USEC. As discussed above, we understand that the DOE PPPO has permitted other third party activities on the site, which (along with related subcontractors) presumably represents a material part of the overall load. For instance, based on information from its website, through April 30, 2007, Uranium Disposition Services has already awarded subcontracts of \$72 million for work at the DOE PPPO site related to conversion of depleted UF₆. (See materials from UDS' website, attached hereto as Appendix 10.)

Please let me know if I can be of any further assistance. Thank you.

Sincerely,

R. J. Matthey
Superintendent of
Electrical Operations

RJM:tjh

Enclosures

c: (w/out Enclosures)
D. L. Hart
D. E. Jones
B. Chisling
S. R. Cunningham
G. W. Brady

OVEC's August 28, 2008 Response

Attachments Omitted