



June 19, 2002  
AET 02-0003

Mr. Martin J. Virgilio  
Director, Office of Nuclear Material Safety and Safeguards  
Attention: Document Control Desk  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

### USEC Comments Regarding Licensing a Uranium Enrichment Facility

Dear Mr. Virgilio,

The purpose of this letter is to provide the Nuclear Regulatory Commission (NRC) with USEC Inc. (USEC) comments regarding licensing a Uranium Enrichment Facility (UEF). In a meeting with the NRC on April 30, 2002, Louisiana Energy Services (LES) asked the NRC to set forth guidance that would eventually culminate in a Commission Order regarding six specific issues related to licensing a UEF. In a letter dated May 14, 2002 (Reference 1), USEC requested that the NRC afford potentially affected parties an opportunity to comment on these issues before adopting any new regulatory policies and positions regarding the licensing of a UEF. In Reference 2, the NRC asked USEC to provide comments by June 21, 2002.

USEC is pleased to provide the comments contained in the Attachment to this letter on those issues raised by LES that affect licensing a UEF. Due to the short comment period, USEC may have additional comments as it further evaluates the issues or as new information is brought forward on these issues. As you are aware, USEC plans to apply for a license to construct and operate a UEF using centrifuge technology and would be affected by new regulatory policies and positions related to licensing a UEF. However, USEC notes that other stakeholders may be affected by some of the policy issues raised by LES.

We appreciate the NRC's effort to ensure that actions taken in the LES licensing proceedings do not inadvertently affect USEC's licensing or unfairly impact either LES or USEC. If you have any questions on this matter, please contact Mario Robles, Manager of Advanced Technology Licensing, at 301-564-3408.

Sincerely,

for Steven A. Toelle, Director  
Nuclear Regulatory Affairs

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**References:**

1. Letter from Steven A. Toelle (USEC) to Martin J. Virgilio (NRC), "Regulatory Policies and Positions Regarding Licensing of Uranium Enrichment Facilities," AET 02-0002, dated May 14, 2002.
2. Letter from Melvin N. Leach (NRC) to Steven A. Toelle (USEC), "Policy Issues Associated with the Licensing of a Uranium Enrichment Facility," dated June 6, 2002.

**Attachment: As Stated**

cc: J. Giitter, NRC HQ  
T. Johnson, NRC HQ  
M. Leach, NRC HQ  
J. Dyer, NRC Region III

**Attachment**  
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**USEC Comments Regarding Issues Involving Licensing of Uranium Enrichment Facilities**

1. **Tails Disposition** – Section 313 of the 1996 USEC Privatization Act obliges the Department of Energy (DOE) to accept Depleted Uranium (DU) for disposal upon the request of “any person licensed by the NRC to operate a uranium enrichment facility...under...the Atomic Energy Act.” if two conditions are satisfied. First, the DU is declared to be Low-Level Waste (LLW) and second, the generator reimburses DOE for the cost of disposal. LES recommends that the NRC consider this disposal path as a “plausible strategy” for disposing of the depleted tails created by a UEF. USEC agrees with this LES recommendation.
2. **Environmental Justice (EJ)** – In 1994, Executive Order 12898 directed federal agencies to make EJ part of their mission to help identify and address situations where minority and/or low-income populations bear a disproportionate amount of adverse health and environmental effects. The Order and the Interagency Working Group established by the Order, however, did not provide quantitative measures to ascertain whether an EJ issue exists. LES has recommended that the NRC adopt a six-part, quantitative criterion to provide a clear standard for this issue. USEC agrees in principle with this LES recommendation.

USEC agrees that clarity, predictability and repeatability in the licensing process are axiomatic to effective and efficient regulation. To that end, a Commission Order on EJ could provide needed clarity on this issue. However, USEC notes that such an Order may have broader implications for licensing other nuclear facilities and it may be appropriate for the NRC to solicit comments from other stakeholders prior to adopting the LES recommended standard for EJ.

3. **Antitrust Review** – At the time of the first attempt by LES to license a domestic UEF, an antitrust review pursuant to Section 105 of the Atomic Energy Act (AEA) of 1954 was required because the facility was to have been licensed pursuant to Sections 103(d) or 104(d), to which Section 105 applies. However, in 1990, the Congress enacted Public Law 101-575 (the “Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990”) that added a new Section 193 to the AEA pertaining specifically to licensing a UEF. This new section transferred statutory authority for licensing a UEF to Sections 53 and 63 of the AEA. One consequence of this change is that an antitrust review is no longer required. LES recommends that the NRC confirm that an agency antitrust review is not required. USEC agrees with this recommendation.
4. **Financial Qualification** – Regulations require that an applicant be financially qualified to engage in the proposed activities associated with a UEF. However, neither the regulations in 10CFR Part 70 nor the implementing Standard Review Plan (NUREG-1520) provide specific guidance regarding what constitutes financial qualification. LES has recommended that the NRC establish two conditions that must be satisfied by LES prior to constructing or operating the UEF proposed by LES. The first condition is that the construction of the UEF would not begin until all funding is fully committed, with a minimum of 30% equity being derived from the parents and affiliates of the applicants with the balance taking the form of “firm commitments.” The

second condition is that work on the UEF project would not proceed unless LES has "long-term" (i.e., 5 years) enrichment contracts with sufficient prices to cover construction and operating costs and a return on the investment for the entire term of the contracts.

While the criteria proposed by LES may be one way an applicant may chose to satisfy the regulatory requirements, it is not the only way these requirements may be satisfied. Consequently, to the extent that the criteria proposed by LES are meant to establish the only means of satisfying the regulatory requirements, USEC believes that the LES recommendation is excessively broad and prescriptive for a UEF. The regulatory focus of financial qualification should assess whether there is reasonable assurance that an applicant has or will have the financial resources at each stage of the activity (i.e., construction, operations, and decommissioning) to protect public and worker health and minimize danger to life or property. This assessment is limited to financial resources dedicated to health and safety rather than all the financial factors necessary to make the project commercially viable, which although important, are not relevant to the satisfaction of the regulation.

Unlike reactors, a UEF can be financed and built incrementally; that is, the plant can safely produce commercial product well in advance of attaining full plant capacity. Further, regulations should not be construed as precluding a UEF from being built and operated as a "merchant" plant; that is, without the pre-existence of long-term contracts for the output of the UEF. A determination that such long-term contracts are needed appears to be inconsistent with the intent of the regulations.

5. **Foreign Ownership** – In 1990, when the Congress modified the AEA, the licensing of a UEF was brought under the nuclear materials licensing provisions of the AEA (Sections 53 and 63). As a result of this change for licensing a UEF, the applicable statutory authority governing the assessment of foreign involvement in a UEF is set forth in Section 57 of the AEA. Section 57 requires that issuance of the license not be "inimical to the common defense and security." LES recommends that the NRC affirm as a matter of law that the "inimicality" standard does not prohibit foreign ownership, control, or domination of up to and including 100% ownership, control or domination. USEC believes that the LES recommendation would render the inimicality standard meaningless and contravene Congressional intent. USEC believes that the NRC cannot reach an a priori determination that 100% foreign ownership is permissible. Instead, under the inimicality standard, each UEF application must be evaluated on a case-by-case basis and a specific determination of non-inimicality made.

The most recent pronouncement by Congress on this issue was the USEC Privatization Act in which Congress required that the sole domestic enricher not be "owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." (cf., Section 3116 of the USEC Privatization Act and 10 CFR 70.40). Although not directly applicable to UEF's in general, this prohibition against foreign ownership of the current domestic UEF underscores the importance of national security considerations in NRC evaluations under the inimicality standard.

In SECY-98-252, "Preliminary Staff Views Concerning Its Review Of The Foreign Ownership Aspects Of AmerGen, Inc.'s Proposed Purchase Of Three Mile Island, Unit 1," dated October 30, 1998, the NRC recognized a distinction between the foreign ownership issue for a UEF and other nuclear facilities (e.g., reactors). In SECY-98-252, the NRC states that "these differences relate both to the expressed goal of Congress to maintain a reliable and economical domestic source of enrichment services and to non-proliferation concerns...".

In summary, USEC believes that foreign ownership and control of domestic enrichment facilities is an issue to which Congress continues to assign important national security interests. NRC's evaluations of UEF applications should continue to rigorously apply the applicable standards for foreign ownership and control even-handedly.

6. **National Environmental Policy Act (NEPA) Analysis of Need and No Action Alternative** – LES has recommended that the NRC presume that a "need" exists for new, domestic enrichment capacity and that no consideration of a "no action alternative" is required in the Environmental Report. USEC sees no basis for exempting an applicant from the requirement to provide both an "Analysis of Need", and an evaluation of the "No Action Alternative" as part of the Environmental Report (ER), as required by NEPA, NRC implementing regulations and the Council of Environmental Quality (CEQ) regulations that NRC has decided to voluntarily follow in licensing proceedings. USEC expects to submit such information as part of its Environmental Report associated with USEC's application for a license to construct and operate a UEF using centrifuge technology. Such information appears to be needed to enable the NRC to meet its statutory obligations under NEPA.

The NRC should note that in addition to assessing the pure market impact of the additional enrichment capacity represented by another domestic UEF, the NRC may wish to solicit comments from other government agencies (e.g., The Department of State) regarding the potential impact of additional domestic UEF capacity to established national security objectives. Specifically, the 1993 United States-Russia nonproliferation agreement to convert highly enriched uranium (HEU) taken from dismantled Russian nuclear warheads into low-enriched uranium (LEU) fuel is buoyed by a stable enrichment market. As the U.S. Executive Agent for this program, USEC is responsible for administering and reporting on the goals of this national program and suggests that an evaluation by the NRC should consider and give due deference to government agency views concerning the impact of additional domestic UEF capacity on this program.

Finally, Section 193 of the Atomic Energy Act requires that an Environmental Impact Statement (EIS) must be prepared for any license for a UEF. Under NRC regulations and guidance (see Part 51 and NUREG 1520) as well as CEQ regulations and numerous court decisions, an EIS must include a discussion of the purpose and need for the proposed action and an analysis of reasonable alternatives including specifically the no action alternative. Understanding the purpose and need for a project is important to permit the NRC to make an informed decision on the costs and benefits of the proposed action and determine the scope of the alternatives that must be considered. The analysis of the "No Action Alternative" is important to establish an "environmental baseline" from which to judge the environmental impact of the proposed action.