

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

December 23, 2004 (1:31pm)

BEFORE THE COMMISSION

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

\_\_\_\_\_  
In the Matter of )  
USEC Inc. )  
(American Centrifuge Plant) )  
\_\_\_\_\_ )

Docket No. 70-7004

December 23, 2004

**USEC INC. RESPONSE TO REQUESTS FOR EXTENSION OF TIME**

USEC Inc. (USEC) hereby files its response to six requests for extension of time filed in the above-captioned proceeding.

On December 17, 2004 the Central Ohio Sierra Club Group (Central Ohio Sierra Club), Nuclear Information and Resource Service (NIRS), Portsmouth/Piketon Residents for Environmental Safety and Security/National Nuclear Workers for Justice (PRESS/NNWJ), Ewan Todd (Mr. Todd), Elisa Young (Ms. Young), and Geoffrey Sea (Mr. Sea) filed separate requests for extension of time to file Petitions to Intervene in the hearing for the American Centrifuge Plant (ACP).<sup>1</sup> The October 18, 2004 Federal Register Notice that established a December 17 deadline for all submissions of Petitions to Intervene in this proceeding stated that the ACP License Application was available at: (1) the Nuclear Regulatory Commission's (NRC) Gas Centrifuge Enrichment Facility Licensing Web site; (2) NRC's Agency Wide

<sup>1</sup> Letter from Patrica A Marida, Central Ohio Sierra Club Group, to the Secretary, dated December 17, 2004; Letter from Michael Mariotte, Nuclear Information and Resource Service, dated December 17, 2004; Letter from Ewan Todd, to the Secretary, dated December 17, 2004; Letter from Vina K. Colley, Portsmouth/Piketon Residents for Environmental Safety and Security/National Nuclear Workers for Justice, to the Secretary, dated December 17, 2004; Letter from Elisa Young, to the Secretary, dated December 17, 2004; "Notice of Intent to File a Petition to Intervene and Request for Extension of Time. Period for Filing Petitions of Intervention Submitted by Geoffrey Sea" (Sea Notice of Intent)(December 17, 2004).

Document Access and Management System (ADAMS); or (3) by contacting the Public Document Room (PDR).<sup>2</sup> On October 25, 2004, the NRC restricted public access to ADAMS.<sup>3</sup> It is also our understanding that the NRC has taken other steps to control public access to the ACP License Application.

The documents filed on December 17, 2004 clearly are not Petitions to Intervene. The letters from Central Ohio Sierra Club, NIRS, PRESS/NNJW, and Ms. Young clearly constitute simple requests for an extension of the December 17 filing deadline. The caption of Mr. Sea's "Notice of Intent", as well as various statements throughout that document, make it clear that it is not a Petition to Intervene.<sup>4</sup> Mr. Todd's only "contention" is that ADAMS is not available. Therefore, Mr. Todd's letter also constitutes a simple request for an extension of the December 17 filing deadline. Accordingly, USEC does not intend to respond to Mr. Sea's "Anticipated Contentions" or Mr. Todd's complaint about ADAMS. If, however, the Commission determines that any of the filings constitute a Petition to Intervene, USEC requests that the Commission promptly advise USEC, so that Answers can be submitted in a timely manner.

Pursuant to Section 193(b)(2) of the Atomic Energy Act of 1954 as amended<sup>5</sup>, the hearing on a License Application for a Uranium Enrichment Facility must be completed before the license can be issued. Accordingly, any delay in the hearing process adversely impacts USEC.

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<sup>2</sup> 69 FR 61411, 61411 (October 18, 2004).

<sup>3</sup> Press Release, U.S. Nuclear Regulatory Commission, NRC Initiates Additional Security Review of Publicly Available Documents; Temporarily Suspends Agency's On-Line Library (available at: <http://www.nrc.gov/reading-rm/doc-collections/news/2004/04-135.html>).

<sup>4</sup> The caption states that the document is a "Notice of Intent" to File a Petition, and throughout Mr. Sea expresses his intent to file a Petition to Intervene at a later date after the ACP License Application is made publicly available again. *See e.g.*, Sea Notice of Intent, p.3.

USEC is not taking a position as to whether the Commission should grant the requested time extensions.<sup>6</sup> If, however, the Commission does grant the extension requests, such extensions should only apply to persons who have filed a request for an extension by the December 17, 2004 deadline. To our knowledge only the Central Ohio Sierra Club, NIRS, PRESS/NNWJ, Mr. Todd, Ms. Young, and Mr. Sea have filed such requests. A general extension of time for others to file Petitions to Intervene is neither appropriate nor necessary. Any person with any interest in the ACP proceeding had ample opportunity to, at the very least, file a time extension request before the December 17 deadline for Petitions to Intervene. The limited public availability of the Application did not impact a potential intervenor's ability to file such a request because: (1) the Federal Register Notice announcing the December 17, 2004 deadline has been available continuously since its publication; (2) there have been multiple press releases concerning the planned ACP; and (3) an NRC sponsored public meeting was held near the site before the Application was even filed. Any person who felt that the unavailability of the Application warranted a time extension could and should have filed an extension request prior to December 17, 2004. Accordingly, extending the deadline for any new potential intervenor is neither necessary nor appropriate.

Furthermore, if the Commission determines that extensions of time are warranted for persons who have filed requests for extension before the December 17 deadline, the length of such extensions should be limited to the actual period that the Application was not publicly available and should not be extended for the full 60 days.

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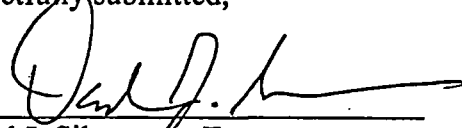
<sup>5</sup> 42 U.S.C. 2243(b)(2) (2004).

<sup>6</sup> While unlimited public access through the ADAMS systems has been restricted, it is unclear from the six extension requests what steps, if any, were taken by the potential intervenors to obtain access to the License Application.

In addition, in order to expedite the completion of the hearing process, USEC requests that the Commission make every effort to make the Application available to those persons who have timely filed a request for extension as soon as possible, and in any event no later than early January, 2005. As discussed above, the ACP cannot be licensed until the hearing process is completed. Delays in licensing will have an adverse impact on USEC's deployment of the ACP.

Finally, NIRS, PRESS/NNWJ, Ms. Young, and Mr. Ewan did not properly serve USEC's counsel. NIRS, Ms. Young and Mr. Ewan did not serve USEC counsel at all, and PRESS/NNWJ mailed its request to USEC counsel on December 20, three days late. USEC requests that the Commission instruct these potential intervenors to properly serve USEC's counsel on all future submittals.

Respectfully submitted,



Donald J. Silverman, Esq.  
Morgan, Lewis & Bockius, LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20005  
Phone: (202) 739-5502  
E-mail: dsilverman@morganlewis.com

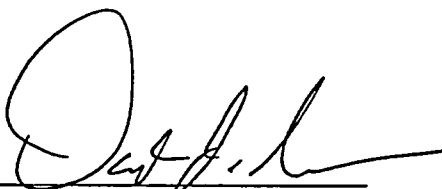
Dennis J. Scott, Esq.  
Assistant General Counsel  
USEC Inc.  
6903 Rockledge Drive  
Bethesda, MD 20817  
Phone: (301) 564-3352  
E-mail: scotttd@usec.com

Counsel for USEC Inc.

Dated December 23, 2004



Ewan Todd  
403 E. Oakland Ave.  
Columbus, OH 43202

A handwritten signature in black ink, appearing to read 'D. J. Silverman', written over a horizontal line.

Donald J. Silverman  
Counsel for USEC Inc.