

August 11, 2005 (7:45am)

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ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Lawrence G. McDade, Chairman
Paul B. Abramson
Richard E. Wardwell

In the Matter of)	August 10, 2005
)	
USEC Inc.)	Docket No. 70-7004
(American Centrifuge Plant))	
)	
)	

**USEC INC. RESPONSE TO GEOFFREY SEA
REQUEST TO DELAY ASLB RULING ON CONTENTIONS**

By letter dated August 10, 2005, Mr. Geoffrey Sea (Petitioner) requested that the Atomic Safety and Licensing Board (Board) delay any ruling on the admissibility of Petitioner's contentions in the above-captioned proceeding until after August 15, 2005. For the reasons set forth below, USEC Inc. (USEC) opposes Petitioner's request.

Petitioner requested that the Board delay ruling on the admissibility of Petitioner's contentions to enable him to submit various additional pleadings based upon the results of a tour of a portion of the Portsmouth Gaseous Diffusion Plant (PORTS) site which was provided by USEC to Petitioner and several others on a voluntary basis on August 5. This is a repeat of the request that Petitioner filed on July 18, 2005 and was denied by the Board in the conference call on July 19, 2005. There is no good cause for Petitioner's request or for the Board to reverse its decision.

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Petitioner has provided no basis for delay. Petitioner's contentions alleging failure to identify and address cultural resources in the vicinity of the American Centrifuge Plant (ACP) are already before the Board for a decision on their admissibility. Petitioner's current allegations have nothing to do with the proposed action – the siting of the ACP approximately 2 miles away from the well fields in question. (The well fields were constructed many years ago and have been, and continue to be, in use to support the Portsmouth Gaseous Diffusion Plant.) The proposed ACP does NOT include any alteration of or construction near the well fields. Nor does Petitioner's request provide any new facts indicating that there will be any adverse impacts of continued water pumping from those well fields on any cultural resources. The Board now has before it sufficient information to rule on the admissibility of Petitioner's contentions.

USEC would also like to point out that this is at least the second time in which, on the very eve of a pending Board action, Petitioner has chosen to file an "eleventh hour" request for a delay. The Board chose to reject Petitioner's earlier request for a delay just prior to the prehearing conference telephone call, and now, as described below, he is seeking another "eleventh hour" delay. Under the Commission's Hearing Notice governing this proceeding, a milestone of July 11, 2005 was set for the Board to rule on the admissibility of Petitioner's contentions (the first milestone set for the Board in the Commission's milestone schedule). Under the hearing notice, if the Board "determines that any single milestone could be missed by more than 30 days" the Board must "inform the Commission promptly" and "include an explanation of why the milestone cannot be met and the measures the Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule." Today, August 10, 2005, marks the

expiration of that 30 day period. Given the Commission's direction and the importance of conducting an expeditious proceeding (since the ACP hearing process remains on the critical path to license issuance), Petitioner's last minute request should be denied.

With respect to Mr. Sea's specific assertions regarding the PORTS site tour, Petitioner alleges that he first proposed to DOE that he be given access to the GCEP well field site in December 2004, that DOE did not schedule a tour until July 14, and that DOE then cancelled the tour. Petitioner has no legal right to be granted such a site tour. Petitioner has not yet even been admitted as a party to this proceeding, yet he is arguing for discovery rights available only to an admitted party. *See* 10 CFR § 2.1020.

Furthermore, Petitioner has made no effort to explain what, if any, efforts he made to arrange a timely tour in the approximate seven month period between his alleged original "proposal" to DOE for a tour and DOE's scheduling of the tour, nor why he waited until December 2004 to request such a tour. In addition, USEC would like to note that its license application was filed one year ago. To the best of our knowledge, at no time prior to July of this year, on the eve of the Board's scheduled prehearing conference, did Petitioner raise with USEC or the NRC the perceived importance of this tour to his proposed contentions in this proceeding.

Moreover, USEC strongly objects to Petitioner's erroneous recounting of the facts. In particular, Petitioner alleges that after DOE cancelled the tour, "USEC subsequently took responsibility for arranging a site visit, but imposed numerous delays, postponements and limitations." That is patently false.

On Wednesday, July 27, outside counsel for USEC contacted Petitioner and advised Petitioner that USEC would, if he so desired, voluntarily make an effort to

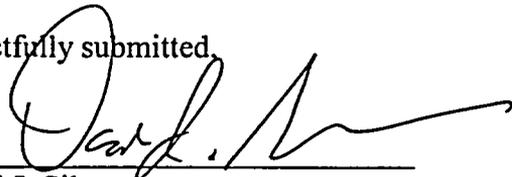
facilitate his request for a site tour to DOE. On Friday, July 29, two days later, USEC's assistant general counsel was able to reach the responsible DOE attorney to discuss the matter and received DOE's agreement that USEC could arrange the tour. On Monday, August 1 (the next business day), a USEC representative contacted Petitioner and agreed to arrange the tour on Friday, August 5, the date requested by Petitioner and the date it was indeed conducted. Thus, six business days elapsed before the tour was held.

Contrary to Petitioner's allegations, there were no "delays or postponements."

Furthermore, the "limitations" that Petitioner alludes to were USEC's direction that, rather than bring a total of 12 people on the tour (as Petitioner had requested) the tour would be restricted to five persons of Petitioner's choosing, and that no picture-taking or filming could occur, in accordance with PORTS visitor site access policies. These were by no means unreasonable restrictions.

In short, Petitioner has failed to provide good cause for any delay in the Board's ruling on his previously submitted contentions. Petitioner is free to file on August 15, 2005 any pleadings he desires to submit and the Board will, of course, rule on those in accordance with applicable requirements. In the meantime, no delay of any kind in this proceeding is warranted. For the reasons discussed above, Petitioner's request should be denied.

Respectfully submitted,



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Dated August 10, 2005

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "USEC Inc. Response to Geoffrey Sea Request to Delay ASLB Ruling on Contentions" were served upon the persons listed below by U.S. mail, first-class, postage prepaid, and by electronic mail, on this 10th day of August, 2005.

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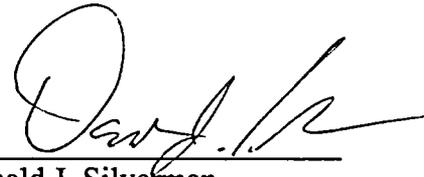
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