

RAS 12419

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

October 19, 2006 (2:13pm)

**Before Administrative Judges:
Lawrence G. McDade, Chairman
Peter S. Lam
Richard E. Wardwell**

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

) October 19, 2006

USEC Inc.)
(American Centrifuge Plant))

) Docket No. 70-7004

) ASLBP No. 05-838-01-ML
)

**USEC INC. COMMENTS ON
NRC STAFF'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW IN THE MANDATORY HEARING**

On October 11, 2006, the NRC Staff filed "NRC Staff's Proposed Findings of Fact and Conclusions of Law in the Mandatory Hearing" (Staff Proposed Findings) in the above-captioned proceeding. By Order of the Atomic Safety and Licensing Board (Board), dated April 19, 2006, USEC Inc. was afforded an opportunity to provide comments on the Staff's Proposed Findings. *See* Order (Request for Documents and Briefings), April 19, 2006.

USEC Inc. has reviewed, and concurs with, the Staff's Proposed Findings as written, with the exception of the following recommended technical corrections.

The Commission set forth the matters of fact and law to be considered in this proceeding in its October 7, 2004 "Notice of Receipt of Application for License; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; and Notice of Hearing and Commission Order" (CLI-04-30) (Commission Hearing Notice). The Commission's Hearing Notice stated that:

TEMPLATE = SECY-037

SECY-02

C. The matters of fact and law to be considered are whether the application satisfies the standards set forth *in this Notice* and Commission Order and the applicable standards *in 10 CFR 30.33, 40.32, and 70.23*, and whether the requirements of 10 CFR Part 51 have been met.

69 Fed. Reg. 61,411, 61,411 (Oct. 18, 2004) (Emphasis added). The Commission went on to state, among other things, that:

D. If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4, the Board will determine the following, without conducting a de novo evaluation of the application: (1) whether the application and record of the proceeding contain sufficient information and whether the NRC staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards, *with respect to the matters* set forth in paragraph C of this section, [*i.e.*, 10 CFR §§ 30.33, 40.32 and 70.23]

Id. (Emphasis added).

The Staff's Proposed Findings, as written, do not cite to the above regulatory standard established by the Commission, but instead reference the standards for hearings on nuclear power reactor construction permits set forth in 10 CFR § 2.104(b). In particular:

- Paragraph 2.2 of the Staff's Proposed Findings states that the Commission directed the Board to "make certain findings required by 10 CFR § 2.104(b)";
- Paragraph 2.4 also makes reference to 10 CFR § 2.104(b);
- Paragraph 3.2 references 10 CFR § 2.104(b)(1), which provides criteria for contested hearings on nuclear power reactor construction permit applications;
- Paragraph 3.3 references 10 CFR § 2.104(b)(2) which provides criteria for uncontested hearings on nuclear power plant construction permit applications; and
- Paragraphs 5.1 and 5.2 also reference 10 CFR § 2.104(b).

USEC hereby recommends that the Board adopt the Staff's Proposed Findings, but that it add specific references, as appropriate, to the standard set forth in Section II.D of the

Commission's Hearing Notice governing this proceeding quoted above (*i.e.*, whether the Application and record contain sufficient information and whether the Staff's review has been adequate to support findings with respect to the criteria in 10 CFR §§ 30.33, 40.32 and 70.23).

USEC's recommendations are consistent with the Atomic Safety and Licensing Board's June 23, 2006 Partial Initial Decision (Mandatory Hearing/Uncontested Issues) in the *Louisiana Energy Services, L.P.* (National Enrichment Facility), LBP-06-17, slip op. 63 NRC __ (2006). In paragraph 1.5 of that Decision, the Board referenced 10 CFR § 2.104(b), but noted that the provision was "pertinent, albeit not applicable on [its] face to uranium enrichment facilities." USEC proposes that the Board adopt language comparable to that adopted by the Board in the LES proceeding.

In particular, USEC proposes the following specific modifications to the Staff's Proposed Findings:

- In paragraph 2.2, replace "to make certain findings required by 10 C.F.R. § 2.104(b)" with "to make certain findings required by the Commission's Notice of Hearing, CLI-04-30."
- In paragraph 2.4, delete the phrase "pursuant to 10 C.F.R. § 2.104(b)."
- In paragraph 3.2, add the following at the beginning of the paragraph:

"For contested hearings, the Commission directed the Board to make findings of fact and conclusions of law on admitted contentions. With respect to matters set forth in paragraph C of this section [*i.e.*, the criteria set forth in 10 CFR §§ 30.33, 40.32 and 70.23] but not covered by admitted contentions, the Board will make the determinations set forth in paragraph D [of Section II of the Commission's Hearing Notice] without conducting a *de novo* evaluation of the application.

Albeit not applicable on its face to uranium enrichment facilities,"

and change "For contested hearings" at the beginning of existing paragraph 3.2 to "for contested hearings"

- In paragraph 3.3, add the following at the beginning of the paragraph:

“For hearings on uncontested applications (or on uncontested portions of otherwise contested applications), the Board, pursuant to the Commission’s Hearing Notice, CLI-04-30, must determine the following, without conducting a *de novo* evaluation of the application: (1) whether the application and record of the proceeding contain sufficient information and whether the NRC Staff’s review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards, with respect to the matters set forth in paragraph C of this section [*i.e.*, the criteria set forth in 10 CFR §§ 30.33, 40.32 and 70.23]; and (2) whether the review conducted by the NRC Staff pursuant to 10 CFR Part 51 has been adequate.

Again, albeit not applicable on its face to uranium enrichment facilities,”

and change “For hearings on uncontested applications” at the beginning of the existing paragraph to “for hearings on uncontested applications”

- To conform more closely with the Commission’s Hearing Notice, we recommend deleting subparagraph 3.4(3) in the Staff’s Proposed Findings and replacing it with the following:

“(3) Determine whether the requirements of sections 102(2)(A), (C), and (E) of NEPA and Subpart A of 10 CFR Part 51 have been complied with in the proceeding; independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and determine whether a license should be issued, denied, or conditioned to protect the environment.”

- In paragraph 5.1, replace the entire paragraph with the following:

“Based on the foregoing, the Board finds that the Application and the record in the above-captured proceeding contain sufficient information, and the Staff’s review of the Application is adequate, to support findings in accordance with 10 CFR §§ 30.33, 40.32 and 70.23 that the Applicant is technically and financially qualified to construct and operate the proposed ACP and the issuance of the license for the construction and operation of the proposed ACP will not be inimical to the common defense and security or to the health and safety of the public. *See also*, 10 CFR §§ 2.104(b)(i)-(iv).”

- In paragraph 5.2, delete “in accordance with 10 C.F.R. § 2.104(b)(2)(ii)” and replace with “in accordance with Section II.D of the Commission’s Hearing Notice. *See also* 10 CFR § 2.104(b)(2)(ii).”

USEC Inc. has consulted with the NRC Staff and counsel for the Staff has indicated that they have no objections to the proposed modifications described above.

Respectfully submitted,



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Dated October 19, 2006

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

**Before Administrative Judges:
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| |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of "USEC Inc. Comments on NRC Staff's Proposed Findings of Fact and Conclusions of Law in the Mandatory Hearing" were served upon the persons listed below by U.S. mail, first-class, postage prepaid, and by electronic mail, on this 19th day of October, 2006.

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