

November 21, 2006 (4:07pm)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

	)	
In the Matter of	)	November 21, 2006
	)	
USEC Inc.	)	Docket No. 70-7004
(American Centrifuge Plant)	)	
	)	ASLBP No. 05-838-01-ML
	)	

**USEC INC. MOTION TO ACCELERATE  
MANDATORY HEARING SCHEDULE AND FOR  
OPPORTUNITY TO SUBMIT PREFILED DIRECT TESTIMONY**

**I. INTRODUCTION**

On November 17, 2006, the Atomic Safety and Licensing Board (Board) in this proceeding issued an "Order (Establishing Tentative Case Schedule)" (Scheduling Order). The Board's Scheduling Order set a tentative schedule for the completion of the mandatory hearing in this proceeding, with the goal of issuing an initial decision on USEC Inc.'s (USEC) application for a license to construct and operate the American Centrifuge Plant (ACP) by May 9, 2007 – 240 days after the NRC Staff's issuance of the final SER. For the reasons discussed below, USEC respectfully requests that the Board revise the hearing schedule with the goal of issuing an initial decision by approximately March 15, 2007.

In addition, the Board's Scheduling Order establishes a specific milestone for the submission by the NRC Staff of pre-filed direct written testimony, but does not appear to afford any opportunity for USEC, the Applicant for the license at issue in this proceeding, to submit

TEMPLATE = SELY-041

SELY-02

such testimony. For the reasons discussed below, USEC also respectfully requests that the Board grant USEC the right to submit such testimony simultaneously with the Staff's submittal.

USEC believes it is critical that the hearing be completed as expeditiously as possible to allow construction to commence on the ACP (assuming a favorable decision from the Board) at the earliest possible time. USEC also believes that as the proponent of the application for a license before the NRC it should be afforded the right to present direct testimony in the form traditionally authorized by licensing boards in NRC proceedings. The bases for USEC's Motions are set forth below.<sup>1</sup>

**II. THE BOARD SHOULD ACCELERATE THE HEARING SCHEDULE WITH THE GOAL OF ISSUING AN INITIAL DECISION NO LATER THAN MARCH 30, 2007**

In its Scheduling Order, the Board explained that it "intends to conform with the hearing schedule set forth by the Commission ... which states the expectation that an initial decision will be handed down ... within 240 days of the issuance of the final SER/EIS." Scheduling Order at 1. In the Commission's October 7, 2004 Notice of Hearing and Commission Order, CLI-04-30, 60 NRC 426 (2004), it established a specific schedule for a *contested* hearing that contemplated issuance of an initial decision 240 days after the issuance of the final SER/EIS. The Commission's schedule specifically stated that "[i]f this is a contested proceeding, the Board should adopt the following milestones" (which included the 240 day milestone). *USEC Inc.* (American Centrifuge Plant), CLI-04-30, 60 NRC at 433. The 240 day schedule clearly contemplated that a host of significant procedural steps would need to be accomplished during the 240 day period that are not required in this uncontested mandatory hearing proceeding.<sup>2</sup> As

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<sup>1</sup> USEC counsel contacted counsel for NRC Staff, who stated that they do not object to the filing of this motion.

<sup>2</sup> As the Board is aware, requests for hearing were denied by the Board in *USEC, Inc.* (American Centrifuge Plant), LBP-05-28, 62 NRC 585 (2005).

explicitly laid out in the Commission's milestone schedule, those steps included, among other things, motions to amend or file late-filed contentions and responsive pleadings, summary disposition motions, completion of formal discovery in this Subpart G proceeding, and cross-examination plans. *See USEC Inc.*, CLI-04-30, at 434. USEC does not believe that under the circumstances of an uncontested proceeding, the Commission intended the Board to utilize the full 240 day period to issue its initial decision, nor that such an extended schedule is necessary.

In addition to the schedule milestones set by the Commission for a contested proceeding, it also established a more generic milestone governing the proceeding – regardless of whether it was contested or uncontested. In particular, the Commission “direct[ed] the Board to set a schedule for the hearing ... that establishes as a goal the issuance of a final Commission decision ... within 2 ½ years (30 months) from the date that the application was received.” *USEC Inc.*, CLI-04-30, at 432. USEC submitted its application on August 23, 2004. Thirty months from that date would be February 2007, and it is important to note that the 30 month schedule was for the issuance of a “final Commission decision,” not an initial decision by the Board. *Id.* USEC believes that it was the Commission's intent that the Board establish a specific hearing schedule designed to meet that goal.

Furthermore, in response to two NRC Staff petitions seeking review of Licensing Board orders in the *Clinton* and *Grand Gulf* uncontested mandatory hearing proceedings, the Commission stated as follows:

In keeping with the Commission's expectation that the boards act promptly in concluding the hearing process, the Commission expects the boards in uncontested cases to issue their final decisions generally within four, and at the most six, months of the staff's SER and FEIS issuances. In most cases, we expect that the time would be significantly shorter.

*Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, \_\_ NRC \_\_, slip op. at 15 (2006). In the USEC ACP proceeding, the final EIS was published in April 2006, and the final SER was published in September 2006. Using the SER publication date as the triggering point, it is clear that the Commission has set an expectation that an initial decision be issued no later than January to March 2006, and preferably earlier. The Board’s Scheduling Order is not consistent with that expectation.

Moreover, USEC is not aware of any circumstances that would necessitate the extended schedule set by the Board. The NRC Staff supplied the Board with the information and documentation requested by the Board in its April 19, 2006 “Order (Request for Documents and Briefings)” in a timely manner on June 12, 2006. The Staff submitted its proposed findings of fact and conclusions of law on October 11, 2006, and USEC promptly provided relatively minor comments on the Staff’s findings eight days later on October 19, 2006. The Staff explicitly did not object to USEC’s proposed modifications. Thus, the Board has had the principal documents it requested for over five months and the proposed findings for over a month.

USEC believes it is possible to achieve a more expeditious schedule. In particular, USEC is specifically requesting that the Board issue the following schedule that would achieve the goal of an initial decision by approximately March 15, 2007. We also explain our basis for concluding that the schedule is achievable.

Date	Milestone	Basis
January 2, 2007	Board issues hearing issues and questions	USEC is mindful of the Board members’ other hearing obligations and the pending holiday season. However, if the schedule is to be expedited in any meaningful way, it will be essential that the Board identify the hearing issues and questions as soon as possible.

Date	Milestone	Basis
		USEC does not believe that this must await the planned ACP site visit. If the Board has additional questions after the site visit, it can supplement the initial set of issues and questions as necessary.
January 9, 2007	Limited Appearance Session	Unchanged.
January 10, 2007	ACP Site Visit	Unchanged.
January 26, 2007	Submission of direct prefiled testimony	Testimony would be filed 24 days after the Board issues and questions are identified.
February 12, 2007	Prehearing Conference	This milestone would reduce the time between the filing of testimony and the prehearing conference from 26 to 17 days.
February 13, 2007	Hearing commences	Consistent with the existing tentative Board schedule, the hearing would commence the day after the prehearing conference.
Fourteen days after close of hearing	Submittal of proposed findings of fact and conclusions of law on hearing issues	USEC believes that the hearing will be completed in 1-2 days, based upon the experience with the LES hearing which was completed in 1 day. Based on this assumption, the proposed findings of fact and conclusions of law on hearing issues would be due by approximately February 28, 2007.
Approximately March 15, 2007	Initial Decision	The Board would issue its initial decision approximately 15 days after the findings are submitted, and approximately 30 days after commencement of the hearing. The existing

Date	Milestone	Basis
		tentative Board schedule calls for the initial decision 29 days after commencement of the hearing.

It is critically important to USEC that an initial decision be issued at the earliest possible time. We note that the 30 month milestone schedule set by the Commission was achieved in the Louisiana Energy Services National Enrichment Plant (LES) proceeding, which involved both a contested proceeding and a mandatory, uncontested proceeding. In addition, USEC has entered into an agreement with the U.S. Department of Energy that requires the commencement of ACP construction no later than June 2007. The tentative schedule set by the Board leaves little or no margin for unanticipated circumstances or delays.

USEC is willing to take any action necessary to assist the Board and the Staff in achieving a more expeditious schedule. Accordingly, USEC respectfully requests that the Board issue a revised, accelerated hearing schedule designed to achieve the issuance of an initial decision by approximately March 15, 2007.

**III. THE BOARD SHOULD AFFORD USEC THE OPPORTUNITY TO SUBMIT PREFILED DIRECT TESTIMONY**

In its Scheduling Order the Board indicated that the NRC Staff would submit written, prefiled direct testimony, but made no provision for the submission of such testimony by USEC, which is of course, the Applicant for the license at issue in this proceeding. The findings to be made by the Board in this proceeding include, among other things, 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 [the Director of Nuclear Material Safety and Safeguards findings];” and whether the requirements of the National Environmental Policy Act (NEPA) sections 102(2)(A), (C), and (E) have been met. *USEC Inc.*, CLI-04-30, 60 NRC at 428.

USEC is mindful of, and concurs with the Board's determination in its May 31, 2006 "Memorandum and Order (Ruling on Motion for Modification and Clarification)" that it will not be "directly evaluating" the adequacy of USEC's Application. As the Board stated:

[O]nce USEC has established to the satisfaction of the NRC Staff that its application should be favorably acted upon, the NRC Staff must then explain and justify, to the satisfaction of this Board, the adequacy of its review and the logic supporting its findings.

Memorandum and Order (May 31, 2006), slip op. at 3. It is, therefore, USEC's understanding that the adequacy of the application *per se* will not be examined by the Board, but that instead the Board will make the requisite findings based upon its assessment of the adequacy, completeness and logic of the Staff's review process.

Nevertheless, USEC remains the Applicant for and proponent of the license in this proceeding and it believes it should and must be granted the opportunity to submit a direct case via written prefiled testimony as may be necessary after identification of the hearing issues and questions by the Board. As written, the Board's Scheduling Order makes no explicit provision for any evidence to be submitted by the Applicant in this proceeding. While USEC assumes that the Board envisioned some opportunity for USEC to be heard on the issues and questions identified in the mandatory hearing, that is by no means clear from the Scheduling Order.

In any event, consistent with longstanding, consistent practice in NRC proceedings, USEC should be afforded the opportunity to submit prefiled direct testimony as necessary.<sup>3</sup> As has been consistently recognized in NRC licensing proceedings over the years, such testimony is the most effective means for addressing issues of the type that arise in such proceedings.

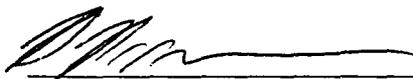
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<sup>3</sup> Such testimony was submitted by the Applicant in the mandatory hearing in the *LES* proceeding and in virtually every NRC proceeding we are aware of.

The filing of such testimony need not delay the proceeding in any respect. USEC proposes that it be authorized to submit such testimony, simultaneously with the Staff's filing.

Accordingly, USEC respectfully requests that the Board authorize it to submit written prefiled direct testimony simultaneously with the Staff's filing.

Respectfully submitted,



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Dated November 21, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of "USEC Inc. Motion to Accelerate Mandatory Hearing Schedule and for Opportunity to Submit Prefiled Direct Testimony" were served this day upon the persons listed below, by E-mail and first class mail, unless otherwise noted.

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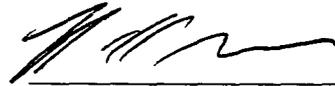
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