

July 15, 2008

Ms. Tammy G. Orr, President
Global Laser Enrichment, LLC
GE-Hitachi Nuclear Energy
P.O. Box 780
MC J-20
Wilmington, NC 28402

Dear Ms. Orr:

I am responding to your letter dated May 8, 2008, in which you requested that the Commission issue a Notice of Hearing and Commission Order (Hearing Order) following the submission of the GE Hitachi (GEH) Global Laser Enrichment's proposed uranium enrichment facility license application, similar to those issued for Louisiana Energy Services (LES) and USEC Inc., and to address two specific issues in the Hearing Order. In support of this request, you submitted two white papers addressing: (1) prelicensing site-related activities; and (2) adoption of a 24-month milestone schedule. Although you addressed your letter to the Office of the Secretary, I have been asked to respond to your letter. Thus, this response is written from the perspective of the U.S. Nuclear Regulatory Commission (NRC) staff.

The first white paper discusses recent changes to Title 10 of the *Code of Federal Regulations*, (10 CFR), Part 50, which concerned the definition of "commencement of construction," and broadened the range of activities that can be performed by an applicant without NRC approval prior to receiving a license. Based on the white paper, you request that the Commission issue an Order allowing GEH to follow a similar approach to construction and licensing of the planned uranium enrichment facility. The staff has identified two approaches which would permit you to commence the types of preparatory actions which have been explicitly allowed under the new definition of "construction" in Section 50.10(a). First, under 10 CFR §70.17, you may request an exemption from the regulations, either concurrent with, or in advance of your application. I note that the staff cannot speculate on the outcome or duration of its review of such a request without having before it the request and its supporting bases. Second, under 10 CFR §2.802, you may petition for rulemaking to amend the regulations. I note, however, that while there has been substantial regulatory focus over several decades regarding the concept of "construction" of nuclear power plants, there has been little consideration of the term as applied to enrichment or other materials facilities. A rulemaking to modify the definition of commencement of construction in 10 CFR, Parts 30, 40, and 70 may not be completed in time to support your internal planning for preparatory site activities for the contemplated enrichment facility.

The second white paper discusses the precedent of establishing model milestones in proceedings such as the recent LES and USEC Inc. enrichment facility proceedings. You ask that the Commission follow that approach and impose a detailed 24-month milestone schedule to be followed by the NRC staff and the Licensing Board in the event there is a contested hearing. The staff recognizes the value of Commission guidance in the form of high-level hearing milestones, similar to those contained in 10 CFR Part 2, Appendix B. However, our experience in previous adjudications is that it is equally important that the Licensing Board have

sufficient flexibility to set deadlines for specific filings that account for circumstances unique to the parties and the complexity of the issues in the adjudication. In the staff's view, the preferred approach is for the Commission to establish milestones only for significant events in the licensing process, as in the previous uranium enrichment adjudications. This would allow the Licensing Board to establish a detailed hearing schedule that fits within those milestones based on considerations which cannot be known now, such as the interests of the parties and the number and complexity of any contested issues.

You propose starting the contested hearing on safety and environmental issues prior to the issuance of the safety evaluation report and final environmental impact statement. The staff notes that before implementing this approach, the Licensing Board will have to consider the impact on the staff's ability to complete its reviews in a timely manner under 10 CFR § 2.332(d).

You also propose to have the contested and mandatory hearings conducted simultaneously. The staff's preferred approach is to conduct these hearings in series. For planning purposes, the NRC has been using a 30-month milestone schedule as the basis for projecting agency resource needs, and does not foresee completing the licensing process in less than 30 months.

I appreciate your interest in communicating with the NRC early in the application process and your efforts in developing these white papers. If you have questions related to this matter, please contact Brian Smith, Chief, Enrichment and Conversion Branch, at 301-492-3137.

Sincerely,

/RA/ Martin J. Virgilio for

R. W. Borchardt
Executive Director
for Operations

sufficient flexibility to set deadlines for specific filings that account for circumstances unique to the parties and the complexity of the issues in the adjudication. In the staff's view, the preferred approach is for the Commission to establish milestones only for significant events in the licensing process, as in the previous uranium enrichment adjudications. This would allow the Licensing Board to establish a detailed hearing schedule that fits within those milestones based on considerations which cannot be known now, such as the interests of the parties and the number and complexity of any contested issues.

You propose starting the contested hearing on safety and environmental issues prior to the issuance of the safety evaluation report and final environmental impact statement. The staff notes that before implementing this approach, the Licensing Board will have to consider the impact on the staff's ability to complete its reviews in a timely manner under 10 CFR § 2.332(d).

You also propose to have the contested and mandatory hearings conducted simultaneously. The staff's preferred approach is to conduct these hearings in series. For planning purposes, the NRC has been using a 30-month milestone schedule as the basis for projecting agency resource needs, and does not foresee completing the licensing process in less than 30 months.

I appreciate your interest in communicating with the NRC early in the application process and your efforts in developing these white papers. If you have questions related to this matter, please contact Brian Smith, Chief, Enrichment and Conversion Branch, at 301-492-3137.

Sincerely,

/RA/ Martin J. Virgilio for

R. W. Borchardt
Executive Director
for Operations

DISTRIBUTION: G20080350/LTR-08-0289/EDATS: SECY-2008-0311

FCSS r/f	RidsRgn2MailCenter	TCJohnson/ECB	RHannah/RII	MBaker/FMB
EDO r/f	RidsRgn3MailCenter	MLesser/RII	KClark/RII	PHabighorst/FMB
RidsOgcMailCenter	RidsRgn4MailCenter	TGody/RII	APowell/OCA	CRidge/FSME
RidsSecyMailCenter	BJones/OGC	JHenson/RII	RVirgilio/FSME	GKulesa/FSME
RdsRgn1MailCenter	LClark/OGC	DSeymour/RII	DMcIntyre/OPA	GSuber/FSME

ADAMS Accession No.: ML081910468

OFFICE	FCSS/ECB	FCSS/ECB	TECH ED	FCSS/ECB	FCSS/FFLD
NAME	BReilly	VWilliams	EKraus (by fax)	BSmith	MTSchiltz
DATE	05/21/08	05/21/08	05/21/08	05/22/08	06/26/08
OFFICE	OGC	DWMEP	FCSS/DO	NMSS/DO	EDO
NAME	LClark (by email)	PBubar (by email)	RPierson (M.Tschiltz for)	MWeber (C.Haney for)	RWBorchardt (MJVirgilio for)
DATE	06/26/08	06/30/08	07/01/08	07/03/08	07/15/08

OFFICIAL RECORD COPY