



HITACHI

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Global Laser Enrichment
Docket Number 70-7016

GLNR-2008-0001

ATTN: Document Control Desk
Michael Weber, Director
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

**SUBJECT: GE-HITACHI GLOBAL LASER ENRICHMENT LLC REQUEST FOR EXEMPTION FROM 10 CFR §§
51.60(a) and 70.21(h) TO ALLOW EARLY SUBMITTAL OF AN ENVIRONMENTAL REPORT**

GE-Hitachi Global Laser Enrichment LLC (GLE) intends to submit to the U.S. Nuclear Regulatory Commission (NRC) in 2009 a license application for a full-scale uranium enrichment facility deploying laser isotope technology, to be located in Wilmington, North Carolina. NRC regulations contained in 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material" and 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," state that such an application must be accompanied by an Environmental Report (ER). Per the enclosed exemption request, and pursuant to 10 CFR §§ 51.6 and 70.17(a), GLE formally requests an exemption from the filing requirements of 10 CFR §§ 51.60(a) and 70.21(h), respectively, to permit GLE to submit the Environmental Report for a proposed enrichment facility in advance of the associated 10 CFR Part 70 license application. For the reasons set forth in the enclosed request, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

If you have any questions, or require additional information, regarding your review and acceptance of this exemption request, please contact myself, President and Chief Executive Officer of GLE, at 910-819-5752 or email TammyG.Orr@ge.com; or Albert E. Kennedy at 910-819-1925 or email Alberte.Kennedy@ge.com.

Sincerely,

President and CEO, GLE

Enclosures: Exemption Request

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**GE-HITACHI GLOBAL LASER ENRICHMENT LLC
REQUEST FOR EXEMPTION FROM 10 CFR §§ 51.60(a) AND 70.21(h)
TO ALLOW SUBMITTAL OF ENVIRONMENTAL REPORT
IN ADVANCE OF FACILITY LICENSE APPLICATION**

I Introduction

GE-Hitachi Global Laser Enrichment LLC (GLE) intends to submit to the U.S. Nuclear Regulatory Commission (NRC) in 2009 a license application for a full-scale uranium enrichment facility deploying laser isotope technology, to be located in Wilmington, North Carolina. NRC regulations contained in 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material" and 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," state that such an application must be accompanied by an Environmental Report (ER). Specifically, 10 CFR § 70.21, "Filing," states that: "A license application for a uranium enrichment facility must be accompanied by an Environmental Report required under subpart A of part 51 of this chapter." 10 CFR § 70.21(h). Section 51.60, "Environmental report – materials licenses," states, in pertinent part:

(a) Each applicant for a license or other form of permission, or an amendment to or renewal of a license or other form of permission issued pursuant to parts 30, 32, 33, 34, 35, 36, 39, 40, 61, 70 and/or 72 of this chapter, and covered by paragraphs (b)(1) through (b)(5) of this section, shall submit with its application . . . a separate document, entitled "Applicant's Environmental Report" or "Supplement to Applicant's Environmental Report," as appropriate.

10 CFR § 51.60(a). *See also* 10 CFR § 51.60(b)(1)(vii) ("As required by paragraph (a) of this section, each applicant shall prepare an [ER] for . . . [i]ssuance or renewal of a license or other form of permission for . . . [c]onstruction and operation of a uranium enrichment facility.")

Consistent with representations made to the NRC Staff, GLE plans to submit the ER for its proposed enrichment facility no more than three months in advance of the associated license application. It is GLE's expectation that this would allow the NRC to commence its acceptance

review of the ER upon submittal thereof, and to docket the ER if it meets the applicable NRC acceptance criteria. The NRC regulations identified above, however, appear to require that the ER and the license application be submitted concurrently. This, in fact, is the conclusion reached by the NRC Staff in connection with another prospective license applicant's request to submit a "stand-alone" ER prior to the license application so that the NRC could initiate its acceptance review. The Staff stated that:

NRC regulations in 10 CFR 51 require the preparation of an ER for the license application for the proposed [enrichment facility]. 10 CFR 51.60(a) states that the ER must be submitted with the license application. Therefore, a request for an exemption from 10 CFR 51.60(a) is necessary for the NRC to initiate an acceptance review and docketing of a stand-alone ER. To initiate the NRC's consideration of an exemption, you should submit a formal request.¹

Therefore, pursuant to 10 CFR § 51.6 and 10 CFR § 70.17 (concerning specific exemptions), GLE hereby formally requests an exemption from the filing requirements of 10 CFR §§ 51.60(a) and 70.21(h), to permit GLE to submit the ER for its proposed enrichment facility in advance of the associated 10 CFR Part 70 license application.² For the reasons discussed below, GLE's request for exemption from §§ 51.60(a) and 70.21(h) is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest. Accordingly, GLE respectfully requests that the NRC grant the requested exemption.

¹ See Letter from Michael Tschiltz, Deputy Director, Fuel Facility Licensing Directorate, NRC, to Rod Krich, Director, Regulatory Affairs, AREVA NC, Inc., "Eagle Rock Enrichment Facility, Request for Acceptance Review of an Early Environmental Report" (Oct. 8, 2008), *available at* ADAMS Accession No. ML082730713.

² Insofar as licensing of the proposed uranium enrichment facility also may require the issuance of byproduct and source material licenses to GLE under 10 CFR Parts 30 and 40, respectively, GLE also requests exemptions from any provision therein that may otherwise preclude advance submittal of an ER. See 10 CFR §§ 30.32(f), 40.31(f) (stating that applications for licenses to receive and possess byproduct material and source material for the conduct of any activity which the Commission has determined pursuant to 10 CFR Part 51, Subpart A to significantly affect the quality of the environment "shall be accompanied by any Environmental Report"); 10 CFR § 40.31(k) ("A license application for a uranium enrichment facility must be accompanied by an Environmental Report required under subpart A of part 51 of this chapter."). 10 CFR §§ 30.11 and 40.14 permit specific exemptions of the type requested herein.

II. The Requested Exemption is Authorized By Law.

The requested exemption is authorized by law because there is no statutory prohibition on its issuance. Section 193 of the Atomic Energy Act (AEA) of 1954, as amended, which sets forth requirements specific to the licensing of a uranium enrichment facility, requires the NRC to prepare an environmental impact statement (EIS) before the hearing on the issuance of a license for the construction and operation of such a facility is completed. *See* 42 U.S.C. § 2243(a) (2006). Section 193 does not, however, preclude an applicant from submitting its ER (which is intended to support the NRC's preparation of an EIS) before the license application. Additionally, AEA Section 182, which contains provisions applicable to the submittal and review of license applications, does not preclude the advance submittal of an applicant's ER. *See* 42 U.S.C. § 2232 (2006).

Accordingly, because there is no statutory prohibition on the requested exemption, it is authorized by law and should be granted.

III. The Requested Exemption Will Not Endanger Life or Property or the Common Defense and Security.

The requested exemption seeks relief from a purely administrative or procedural requirement; *i.e.*, concurrent submittal of the ER and license application. As explained above, GLE is seeking NRC approval to submit the ER in advance of the license application by no more than three months. GLE still would be required to submit (and would, in fact, submit) a full license application for the proposed enrichment facility.³ GLE's advance submittal of the ER (a NEPA-related document) would in no way obviate the NRC's obligation to perform a complete review of GLE's license application to ensure compliance with applicable environmental and

³ The relatively small gap between submittal of the ER and license application (*i.e.*, no more than 3 months) is not likely to render any information in the ER "stale" for purposes of the NRC's licensing review.

safety requirements, as established by statute and regulation. *See* 10 CFR § 70.31(a). In fact, NRC regulations expressly preclude the issuance of a license to build and operate a uranium enrichment facility “if the Commission finds that the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.” 10 CFR § 70.31(d). Accordingly, the requested exemption will not endanger life or property or the common defense and security.

IV. The Requested Exemption Is In the Public Interest.

Finally, the requested exemption is in the public interest. Construction and operation of the GLE enrichment facility will help achieve an important national objective of national energy security policy long recognized by Congress, the Department of Energy, and other federal agencies. That objective is to assure the availability of diverse *domestic* sources of enriched uranium, in order to lessen dependence on foreign sources and to increase security of supply, through the use of more advanced and energy-efficient technologies than are currently available in the United States.⁴ The NRC staff explicitly recognized this important national policy objective in its FEISs for the National Enrichment Facility (NEF) and the American Centrifuge

⁴ Congress has noted that “domestic enrichment capability is essential for maintaining energy security” (S. REP. No. 101-60, at 20 (1989)), and that “a healthy and strong uranium enrichment program is of vital national interest” (H.R. REP. No. 102-474, pt. 2 at 76 (1992)). Specifically, national security interests require assurance that “the nuclear energy industry in the United States does not become unduly dependent on foreign sources of uranium or uranium enrichment services.” S. REP. No. 102-72, at 144-45 (1991). The Energy Policy Act of 1992 expressly cites the “national need to avoid dependence on imports.” 42 U.S.C. 2296b-6(a). In a 2002 letter to the NRC that references interagency discussions led by the National Security Council, the DOE cited the need to promote and maintain a viable and competitive domestic uranium enrichment industry for the foreseeable future. *See* Letter from William D. Magwood, Director, Office of Nuclear Science and Technology, DOE, to Martin J. Virgilio, Director, Office of Nuclear Material Safety and Safeguards, NRC (July 25, 2002) *available at* ADAMS Accession No. ML022350130. To enable the potential commercial deployment of the SILEX technology in the United States, the U.S. and Australian governments entered into an Agreement for Cooperation that came into force in May 2001.

Plant (ACP) licensing actions,⁵ as did the Licensing Board and the Commission in related adjudicatory decisions.⁶

In addition, the industry has previously conveyed to the NRC the importance of having multiple domestic enrichment facilities – owned by different entities and deploying different enrichment technologies – assuring a diverse and reliable fuel supply.⁷ The need for prompt deployment of additional domestic enrichment capacity is critical given projections of supply and demand, and the clear need to expand the nation’s nuclear infrastructure to accommodate numerous planned new U.S. reactors.⁸ As a potential domestic provider of enrichment services, GLE is seeking to deploy its enrichment technology on a commercial scale in the near-term to facilitate its entry into the market and to help meet the growing demand for uranium enrichment services. An efficient licensing process, which will include, *inter alia*, NRC Staff review of GLE’s ER and the preparation of an EIS, is integral to achieving the foregoing objectives.

Significantly, in the prior NEF and ACP licensing proceedings, the Commission emphasized the need for the timely completion of those proceedings.⁹ Toward that end, the Commission imposed detailed milestone schedules in both cases.¹⁰ As GLE previously has

⁵ See NUREG-1790, Vol. 1, Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico at 1-2 (June 2005); NUREG-1834, Environmental Impact Statement for the Proposed American Centrifuge Plant in Piketon, Ohio, Vol. 1, at 1-5 to -6 (Apr. 2006).

⁶ See *La. Energy Services, L.P.* (National Enrichment Facility), LBP-05-13, 61 NRC 385, 442, *aff’d*, CLI-05-28, 62 NRC 721, 726 (2005).

⁷ Letter from J. O’Neill and C. Peterson, Shaw Pittman, L.L.P. to M. Lesar, NRC (Nov. 13, 2002) *available at* ADAMS Accession No. ML023250521.

⁸ See, e.g., NUREG-1834, at 1-3 to -5 (including various enrichment demand and supply forecasts cited therein).

⁹ See *In the Matter of Louisiana Energy Services, L.P.* (National Enrichment Facility); 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, 69 Fed. Reg. 5873 (Feb. 6, 2004) (“LES Hearing Notice”); *USEC, Inc.* (American Centrifuge Plant); 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, 69 Fed. Reg. 61,411 (Oct. 18, 2004) (“USEC Hearing Notice”).

¹⁰ See LES Hearing Notice, 69 Fed. Reg. at 5875-77; USEC Hearing Notice, 69 Fed. Reg. at 61,413-14.

discussed at length, the considerations underlying the actions taken by the Commission in those proceedings to ensure “prompt and efficient” decisionmaking apply equally to the proceeding on GLE’s forthcoming enrichment facility license application.¹¹ In this regard, GLE maintains that granting the requested exemption would promote efficiency in the licensing proceeding by allowing the NRC Staff to commence its docketing review (and, potentially, its detailed technical review) of the ER sooner than would otherwise be possible. Thus, granting the exemption is clearly in the public interest.

V. Conclusion

For the reasons discussed above, GLE’s exemption request clearly satisfies the standards set forth in 10 CFR § 51.6 and 10 CFR § 70.17(a) (and 10 CFR §§ 30.11 and 40.14, as applicable). Accordingly, GLE respectfully requests that the exemption be granted.

¹¹ “Issues Associated with the Licensing of the GE-Hitachi Global Laser Uranium Enrichment Facility—Issue 2: Adoption of a 24-Month Milestone Schedule,” attached to Letter from Tammy G. Orr, President, GLE, to NRC Document Control Desk, “Subject: Submittal of White Papers Related to Licensing and Hearing Processes for Proposed Uranium Enrichment Facility” (May 9, 2008), *available at* ADAMS Accession No. ML081370443.