

September 14, 2009

Mr. Jim Kay, Licensing Manager
Eagle Rock Enrichment Facility
AREVA Enrichment Services LLC
400 Donald Lynch Boulevard
Marlborough, MA 01752

SUBJECT: REQUEST FOR ADDITIONAL INFORMATION FOR AREVA ENRICHMENT SERVICES EAGLE ROCK ENRICHMENT FACILITY EXEMPTION REQUEST RELATED TO COMMENCEMENT OF CONSTRUCTION (TAC L32730)

Dear Mr. Kay:

On June 17, 2009, AREVA Enrichment Services LLC (AES) transmitted a "Request for Exemption from 10 *Code of Federal Regulations* (10 CFR) 70.4, 10 CFR 70.23(a)(7), 10 CFR 30.4, 10 CFR 30.33(a)(5), 10 CFR 40.4, and 10 CFR 40.32(e) Requirements Governing Commencement of Construction," to the U.S. Nuclear Regulatory Commission (NRC) for review and approval.

Pursuant to 10 CFR 70.17(a), AES requested an exemption from the requirements in 10 CFR 70.4 and 70.23(a)(7) to allow AES to commence certain activities prior to NRC's completion of the environmental review, under 10 CFR Part 51, and the NRC's issuance of a license for the Eagle Rock Enrichment Facility (EREF), under 10 CFR Part 70. Pursuant to 10 CFR 30.4 and 10 CFR 40.14, AES also requested an exemption from the applicable provisions of 10 CFR 30.4, 30.33(a)(5), 40.4, and 40.32(e) as those provisions apply to the licensing of the EREF.

We reviewed the submittal considering the "Interim Staff Guidance on the Definition of Construction and on Limited Work Authorizations," COL/ESP-ISG-4. The guidance was written for nuclear power plants and, consequently, does not reflect all the considerations that might be applicable to a uranium enrichment plant, specifically, the requirements for physical security and the protection of classified information. Structures, buildings, equipment, or systems that fall under NRC jurisdiction may not be defined as preconstruction activities.

Attached is a request for additional information that focuses on your proposed preconstruction activities and how they may relate to requirements for licensing and physical security and protection of classified matter. Please provide a response within 30 days of the date of this letter.

If an exemption is granted, the exemption would cover specifically defined preconstruction activities, such as those listed in your request for the exemption.

As described in the "Interim Staff Guidance on the Definition of Construction and on Limited Work Authorizations," COL/ESP-ISG-4, the NRC staff will separate the impacts of preconstruction and construction activities in the Environmental Impact Statement. In your request for the exemption, AES states that it will supplement its Environmental Report to distinguish between the environmental impacts of preconstruction and construction activities. NRC staff will need this information to complete the environmental impact statement (EIS). The timing of the receipt of this information may impact the completion date for the EIS.

J. Kay

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In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's Agencywide Document Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions, please contact me at (301) 492-3110 or via email to breeda.reilly@nrc.gov.

Sincerely,

/RA/

M. Breeda Reilly, Senior Project Manager
Advanced Fuel Cycle, Enrichment, and Uranium
Conversion Branch
Special Projects and Technical Support Directorate
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Enclosure: Request for Additional Information

Docket No.: 70-7015

cc: James Curtiss/Curtiss Law
George Harper/ AREVA Enrichment Services
Sam Shakir/ AREVA Enrichment Services

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Sincerely,

/RA/

M. Breeda Reilly, Senior Project Manager
 Advanced Fuel Cycle, Enrichment, and Uranium
 Conversion Branch
 Special Projects and Technical Support Directorate
 Division of Fuel Cycle Safety
 and Safeguards
 Office of Nuclear Material Safety
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Request for Additional Information

AREVA Enrichment Services Eagle Rock Enrichment Facility

Exemption Request from Requirements Governing Commencement of Construction

Enclosure 1, Page 5 of 9

Enclosure 1, "Request for Exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) 70.4, 10 CFR 70.23(a)(7), 10 CFR 30.4, 10 CFR 30.33(a)(5), 10 CFR 40.4, and 10 CFR 40.32(e) Requirements Governing Commencement of Construction," contains a list of activities identified by AREVA Enrichment Services (AES) as items that should be excluded from the definition of construction. Provide the following information:

1. Under the seventh bullet, "Installing utilities (e.g., temporary and permanent power) and storage tanks," the purpose of the storage tanks and whether they fall under the license application is not clear. Provide additional detail on the storage tanks that you propose to consider under pre-construction activities, including, a description of the materials and quantities of materials to be stored in these tanks; the purpose of the storage tanks and the intended use of the stored materials; whether the storage tanks would be temporary or permanent items; whether they would be used strictly for construction purposes; and any design and construction features that would require the U.S. Nuclear Regulatory Commission (NRC) approval for their use.
2. Concerning the eighth bullet, "Installing fences for investment protection (not used to implement the Physical Security Plan), describe what is meant by the term "investment protection," explain the purpose of the fence that you propose to include under pre-construction activities and identify whether the fence would be temporary or permanent.
3. Under the ninth bullet, "Installing construction buildings, offices (including construction trailers), warehouses and guardhouse," confirm that the guardhouses that you propose to include under pre-construction activities are not part of the Physical Security Plan required under 10 CFR 73.67. Provide additional detail on the guardhouses that you propose to include under pre-construction activities including a description of their purpose.
4. Under the ninth bullet, "Installing construction buildings, offices (including construction trailers), warehouses and guardhouse," confirm that the buildings, offices, and warehouses that you propose to include under pre-construction activities are not part of the Standard Practice Procedures Plan for the Protection of Classified Information or otherwise require NRC approval.