

March 17, 2010

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

SUBJECT: APPROVAL OF AREVA ENRICHMENT SERVICES LLC EXEMPTION REQUEST  
RELATED TO REQUIREMENTS GOVERNING COMMENCEMENT OF  
CONSTRUCTION (TAC L32730)

Dear Mr. Harper:

The U.S. Nuclear Regulatory Commission (NRC) has granted AREVA Enrichment Services LLC (AES) an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) 30.4, 30.33(a)(5), 40.4, 40.32(e), 70.4, and 70.23(a)(7) which govern the commencement of construction. This action is in response to your request dated June 17, 2009, as supplemented by letter dated October 15, 2009, that requested an exemption from specific requirements of 10 CFR Parts 30, 40 and 70 to allow AES to commence certain construction activities associated with the proposed Eagle Rock Enrichment Facility before completion of the NRC's environmental review under 10 CFR Part 51.

AES is granted an exemption to 10 CFR 30.4, 30.33(a)(5), 40.4, 40.32(e), 70.4, and 70.23(a)(7) to authorize certain construction activities provided that none of the facilities or activities subject to the exemption will be, at a later date, a component of AES's Physical Security Plan or its Standard Practice Procedures Plan for the Protection of Classified Matter or otherwise subject to NRC review or approval.

The exemption covers the following activities and facilities:

- Clearing the site
- Site grading and erosion control
- Excavating the site including rock blasting and removal
- Installing parking areas
- Constructing storm water detention pond
- Constructing highway access roadways and site roads
- Installing utilities (e.g., temporary and permanent power) and storage tanks
- Installing fences for investment protection (not used to implement the physical security plan)
- Installing construction buildings, offices (including construction trailers), warehouses and guardhouse

In a letter dated October 15, 2009, AES also supplemented the Environmental Report to distinguish between the environmental impacts of the construction activities covered by this exemption and construction activities which will not be undertaken until after issuance of a license by the NRC.

A copy of safety evaluation report and the environmental assessment are enclosed. This action closes out Task Activity Code (TAC) Number L32730.

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 Breeda Reilly at (301) 492-3110, or via email to [breeda.reilly@nrc.gov](mailto:breeda.reilly@nrc.gov).

Sincerely,

**/RA/**

Daniel H. Dorman, Director  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Enclosures:

1. Safety Evaluation Report
2. Environmental Assessment

Docket No.: 70-7015

cc: James Curtiss, Curtiss Law  
Jim Kay, AREVA Enrichment Services  
Sam Shakir, AREVA Enrichment Services

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DOCKET: 070-7015

LICENSEE: AREVA Enrichment Services LLC  
Eagle Rock Enrichment Facility  
Bonneville County, Idaho

SUBJECT: SAFETY EVALUATION REPORT: EXEMPTION REQUEST FOR EARLY  
CONSTRUCTION ACTIVITIES, DATED JUNE 17, 2009

## BACKGROUND

AREVA Enrichment Services LLC (AES) is an applicant for a license, under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30, 40, and 70, to construct and operate a gas centrifuge uranium enrichment facility, to be located in Bonneville County, Idaho. The proposed facility would enrich uranium for use in producing nuclear fuel for commercial power plants.

The U.S. Nuclear Regulatory Commission (NRC) requirements for approval of a license application are described in 10 CFR 70.23. 10 CFR 70.23(a)(7) requires, for uranium enrichment facility construction and operation, that the environmental review under 10 CFR Part 51 be completed and a license application be approved by the NRC before the commencement of construction. 10 CFR 70.23(a) and 10 CFR 70.4 define "commencement of construction" as any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

Under the provisions of 10 CFR 30.11, 40.14, and 70.17, "Specific exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Parts 30, 40 or 70, respectively, when the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the interest of the public.

On June 17, 2009, AES requested an exemption from the requirements of 10 CFR 30.4, 10 CFR 30.33(a)(5), 10 CFR 40.4, 10 CFR 40.32(e), 10 CFR 70.4, and 10 CFR, 70.23(a)(7) for early construction of certain site facilities, at the proposed Eagle Rock Enrichment Facility, without prior NRC approval. AES's submittal to the NRC includes a list of activities and facilities to be covered by the exemption and the basis for the request. On October 15, 2009, AES submitted additional information to support its request. The staff reviewed the exemption request and the subsequent additional information.

## DISCUSSION

In the exemption request, AES states that both 10 CFR 70.4 and 10 CFR 70.23(a)(7) define "commencement of construction" to include various activities that have been excluded by the Commission from the definition of construction found in 10 CFR 50.

10 CFR 50.10(a)(1) defines construction activities that require a combined license, an early site permit or a limited work authorization. Under 10 CFR 50.10a(1) construction includes the driving of piles, subsurface preparation, placement of backfill, concrete or permanent retaining walls within an excavation, installation of foundations, or in-place assembly, erection, fabrication, or testing for safety-related structures, systems, or components (SSCs); SSCs relied upon to mitigate accidents or transients or used on plant emergency operating procedures; SSCs whose failure could prevent safety-related SSCs from functioning; SSCs whose failure

could cause a reactor scram or actuation of a safety-related system; SSCs necessary to comply with 10 CFR Part 73; and onsite emergency facilities.

10 CFR 50.10(a)(2) identifies activities which do not meet the definition of construction, including, preparation of a site for construction of a facility, including, clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas; erection of fences and other access control measures; excavation; erection of support building (such as, construction equipment storage sheds, warehouses and shop facilities, utilities, concrete mixing plants, docking and unloading facilities; and office buildings) for use in the construction of the facility; building of service facilities such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities; and transmission lines.

AES requests that it be allowed to undertake certain construction activities on the grounds that they would not be considered construction activities under the definition of construction currently in 10 CFR Part 50. Like Part 50 licensees, the applicant is asking to be permitted to undertake construction of facilities and construction activities that are not subject to NRC regulation and are not safety-related.

AES's exemption request covers the following activities and facilities:

1. Clearing the site
2. Site grading and erosion control
3. Excavating the site including rock blasting and removal
4. Installing parking areas
5. Constructing storm water detention pond
6. Constructing highway access roadways and site roads
7. Installing utilities (e.g., temporary and permanent power) and storage tanks
8. Installing fences for investment protection (not used to implement the physical security plan)
9. Installing construction buildings, offices (including construction trailers), warehouses and guardhouses

On October 15, 2009, AES submitted additional information to clarify the purpose of several of the facilities on this list and to confirm that these activities are not subject to NRC regulation and are not safety- or security-related.

AES clarified that the storage tanks, mentioned in the 7<sup>th</sup> bullet, will store well water to be used for dust control, wash down of construction vehicles and equipment, and general non-potable water use, such as concrete production. Temporary storage tanks will be used only for construction purposes. Permanent tanks will initially be used for construction purposes and later for process water, fire protection, and potable water storage. The temporary and permanent tanks do not contain any design and construction features that would require NRC approval for their use.

AES also clarified that the fences listed in the 8<sup>th</sup> bullet will be erected to prevent access to the construction site by unauthorized personnel that might remove or damage equipment and to prevent access to open excavations. The fence to be built during preconstruction is not part of the Physical Security Plan.

Finally, AES clarified that the building, offices, construction trailers and warehouses to be built during pre-construction activities, mentioned in the 9<sup>th</sup> bullet, are not part of the Standard Practice Procedures Plan for Protection of Classified Information and would not otherwise require NRC approval.

### ENVIRONMENTAL REVIEW

The NRC staff has completed its evaluation of the environmental impacts of the proposed action and concludes that the proposed activities are not considered construction activities under the definition of construction currently in 10 CFR 51.4. The NRC's authority under the National Environmental Policy Act (NEPA) does not include activities that are outside of its jurisdiction. Other Federal and state agencies exercise authority over the exempted activities.

The NRC staff concludes that there will be no significant environmental impacts caused by the action considered in this EA, because none of the activities approved by the action are considered "construction" for the purposes of Part 51 environmental analyses. As discussed in the EA, these activities will only be considered in the NRC's environmental review of the subsequent major Federal action (i.e., issuance of a license) to the extent necessary to establish an environmental baseline. Thus, these preparatory activities will be considered in the environmental impact statement (EIS) the NRC staff is preparing to support a licensing decision on the proposed Eagle Rock Enrichment Facility.

Accordingly, the NRC staff concludes that the proposed activities are not considered construction activities under the definition of construction currently in 10 CFR 51.4, and, because none of the activities approved by the action are considered "construction" for the purposes of Part 51 environmental analyses, there are no significant environmental impacts associated with the approval of the proposed exemption request.

### 10 CFR 30.11, 40.14, AND 70.17 REQUIREMENTS REVIEW

The staff reviewed the exemption request against the requirements of 10 CFR 30.11, 10 CFR 40.14 and 10 CFR 70.17 and determined the following:

#### Consistent with Law

As stated above, 10 CFR 30.11, 40.14, and 70.17 allow the NRC to grant exemptions from the requirements of 10 CFR Parts 30, 40 or 70, respectively. The proposed exemption is authorized by law because the Atomic Energy Act of 1954, as amended, contains no provisions excluding the early construction of activities that are outside the nexus of NRC regulatory authority. In addition, the Commission's authority under the NEPA does not include activities that are outside of its jurisdiction. NRC also agrees that the definition of construction in 10 CFR Part 50 does not constitute an unlawful segmentation of environmental impacts, because the single Federal action would not include private actions for which NRC has no regulatory authority. Therefore, the exemption is authorized by law.

#### Consistent with Not Endangering Life or Property

If the exemption is granted, the staff has concluded that the early construction activities would not endanger life or property. Staff applied the same definition of construction authorized for nuclear power plants, under 10 CFR Part 50. Under this definition, the only construction activities permitted to take place are those facilities and activities that fall outside NRC's

jurisdiction and are not security- nor safety-related. Granting the exemption would limit early construction to those facilities or activities that are not regulated by the NRC, or that do not have a public health and safety basis. Therefore, staff concludes that granting the exemption request would not endanger life or property.

#### Consistent with Common Defense and Security

If the exemption is granted, the staff concludes that early construction activities would not adversely impact the common defense and security. Staff applied the same definition of construction authorized for nuclear power plants, under 10 CFR Part 50. Under this definition, the only construction activities permitted to take place are those facilities and activities that fall outside NRC's jurisdiction and are not security- nor safety-related. Granting the exemption would limit early construction to those facilities or activities that are not regulated by NRC, or that do not have common defense or security basis. Therefore, staff concludes that granting the exemption would not adversely impact the common defense and security.

#### Consistent with Public Interest

AES states that the construction and operation of the Eagle Rock Enrichment facility will help achieve an important national objective of national energy security policy. If the proposed exemption is granted, AES would be able to complete certain on-site activities in parallel with the licensing review and hearing process, enabling it to undertake construction activities promptly upon receipt of the licensing approval. Therefore, this action is in the public's interest.

#### CONCLUSION

The staff has determined that granting this exemption request is authorized by law. The staff has reasonable assurance that granting this exemption request will not endanger life or property or the common defense and security, and is otherwise in the public interest. The staff recommends that the exemption be granted.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

#### PRINCIPAL CONTRIBUTORS

Breda Reilly, Senior Project Manager