

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

Before Administrative Judges:

Alex S. Karlin, Chairman
Dr. Kaye D. Lathrop
Dr. Craig M. White

In the Matter of
AREVA ENRICHMENT SERVICES, LLC
(Eagle Rock Enrichment Facility)

Docket No. 70-7015-ML

ASLBP No. 10-899-02-ML-BD01

April 12, 2010

ORDER
(Scheduling Initial Scheduling Conference)

On July 30, 2009 the Commission issued a Federal Register notice in this matter, establishing certain milestones and directing that the Board:

set a schedule for the hearing in this proceeding consistent with this Order that establishes, as a goal, the issuance of a final Commission decision on the pending application within two-and-one-half years (30 months) from the date of this Order. Accordingly, the Licensing Board should issue its decision on . . . the . . . mandatory hearing . . . held in this matter no later than 28 ½ months (855 days) from the date of this Order.¹

This is to notify the applicant, AREVA Enrichment Services LLC (AES), and the NRC Staff that, consistent with the Commission Order, the Board will hold an initial scheduling conference in this matter on May 4, 2010 at 2:00 PM EDT. The purpose of the conference is to assist in the development of a scheduling order that will meet the goals and requirements specified in the Commission Order and that will promote the fair, efficient, and expeditious resolution of this uncontested case.

¹ Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility), CLI-09-15, 74 Fed. Reg. 38,052, 38,056 (July 30, 2009) (Commission Order).

Pursuant to 10 C.F.R. § 2.332(d) and the Commission Order, the Board is to consider the NRC Staff's projected schedule for completion of its safety and environmental evaluations in developing the hearing schedule. Accordingly, the NRC Staff is requested to submit to the Board, with copies to AES, its best good-faith estimate of its projected schedule for completion of its review of the AES application. This estimate should be submitted on April 21, 2010, and should include the dates when the Staff estimates that it will issue the draft and final environmental impact statements (EIS) and the dates when it will issue the safety evaluation report (SER) (including any "advance" SER, SER with open items, and its final SER). On that same date, AES should submit its best good-faith description of any of its currently planned actions (such as the filing of amendments to the application), that might change or affect the Staff's schedule.

Among other matters, AES and the NRC Staff should be prepared to address the following at the initial scheduling conference:

1. The Commission Order sets forth a schedule of milestones. See 74 Fed. Reg. at 38,056-57. How does this schedule apply to a mandatory hearing?
2. The Commission Order requires that the Board set a schedule with the goal of issuing the initial decision by November 15, 2011 (twenty-eight and one-half months after the date of the Commission Order). Meanwhile, the milestone schedule specifies that the initial decision be issued within 245 days after the Staff issues the final SER/EIS. Thus, by implication, the Commission Order anticipates that the Staff will issue the final SER/EIS no later than March 10, 2011. If the Staff is not able to issue the final SER/EIS by that date, how does this affect the goal of issuing the initial decision within twenty-eight and one-half months?
3. The Commission Order sets forth a number of decisions and determinations that the Board must make in this uncontested proceeding. See 74 Fed. Reg. at 38,054. Attachment A is a list of five of the mandatory decisions or determinations that the

- Board must make. Do the parties agree that Attachment A is an accurate synopsis of the determinations that the Board must make, as mandated by the Commission Order? If not, why not? What additional questions or determinations, if any, do the parties believe that the Board must address in this uncontested proceeding?
4. The Atomic Energy Act specifies that the NRC “shall conduct a single adjudicatory hearing on the record with regard to the licensing of the construction and operation of a uranium enrichment facility.” 42 U.S.C. § 2243(b)(1) (emphasis added). How should the Board conduct this adjudicatory mandatory hearing?
 5. The NRC regulations specify that this mandatory hearing will be held under 10 C.F.R. Part 2, Subpart G. 10 C.F.R. § 70.23(a). How should the Board conduct this mandatory hearing under Subpart G?
 6. The Atomic Energy Act specifies that the NRC “shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.” 42 U.S.C. § 2021(l) (emphasis added). How should the Board implement this statutory right in this case?
 7. The NRC regulations specify that the Board “will afford an interested State, local governmental body (county, municipality or other subdivision), and affected, Federally-recognized Indian Tribe, which has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing” and that they “shall be permitted to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission . . . file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission. . . .” 10 C.F.R. § 2.315(c) (emphasis added). How should the Board implement this regulatory right in this case?

8. Do the parties believe that a site visit would assist the Board in understanding the application, the EIS and the SER and assist the Board in answering the five fundamental questions/determinations?
9. Please be prepared to discuss (without revealing the substance thereof) the nature and extent of classified information, safeguards information, or other privileged information contained in the application and likely to be contained in the EIS, SER and other Staff documents. What are the most efficient mechanisms for managing this sensitive information in this proceeding?
10. The Commission has recently amended its Internal Procedures to include certain procedures that the Commission will use when conducting mandatory hearings on applications for combined licenses.² Although these procedures do not apply to the licensing boards and apply only to combined licenses, they may provide valuable guidance. Please review the Commission's procedures and be prepared to discuss to what extent, if any, we should use the Commission's procedures in this case.
11. Do the parties have any other suggestions that will assist in promoting the fair, efficient and expeditious management and resolution of this proceeding?
12. Whether any of the foregoing questions, or any other questions, raise novel legal or policy issues that should be certified to the Commission pursuant to 10 C.F.R. §§ 2.319(l), 2.323(f), and Commission Order section V.B. 74 Fed. Reg. at 38,055.

² See NRC: Internal Commission Procedures, <http://www.nrc.gov/about-nrc/policy-making/internal.html>.

On or before Tuesday, April 27, 2010, counsel for each of the parties and the Staff should contact Ashley Prange at 301-415-1101 to obtain the telephone number and pass code for the May 4, 2010 conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Ms. Prange at the above number for the requisite information.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

 /RA/
Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
April 12, 2010

³ Copies of this memorandum and order were sent this date by the agency's E-Filing system to the counsel/representatives for (1) AREVA Enrichment Services, LLC.; and (3) NRC Staff.

ATTACHMENT A

MANDATORY DETERMINATIONS THAT MUST BE MADE IN THE UNCONTESTED PROCEEDING ON AREVA – EAGLE ROCK APPLICATION FOR URANIUM ENRICHMENT LICENSE

Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility) has applied to the NRC for a license to construct and operate a uranium enrichment facility. 74 Fed. Reg. 38,052 (July 30, 2009). In its notice of hearing, the Commission specified that, if the application was not contested, then the Licensing Board must nevertheless hold a Subpart G hearing and must make several mandatory determinations. These mandatory determinations are as follows:

1. General Issue 1: “[T]he Licensing Board will determine the following without conducting a de novo evaluation of the application (1) Whether the application and record of the proceeding contain sufficient information to support license issuance and whether the NRC staff’s review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials and Safeguards, with respect to the matters set forth set forth in paragraph C of this section.”¹ Notice of Hearing II.D.1.
2. General Issue 2: “[T]he Licensing Board will determine the following without conducting a de novo evaluation of the application . . . (2) whether the review conducted by the NRC staff pursuant to 10 C.F.R. Part 51 has been adequate.” Notice of Hearing II.D.2.
3. NEPA Baseline Issue 1: “The Licensing Board will, in the initial decision, in accordance with subpart A of 10 C.F.R. Part 51: determine whether the requirements of Section 102(2)(A), (C) and (E) of NEPA and Subpart A of 10 C.F.R. Part 51 have been complied with in the proceeding.” Notice of Hearing II.E.
4. NEPA Baseline Issue 2: “[T]he Licensing Board will, in the initial decision, in accordance with subpart A of 10 C.F.R. Part 51: . . . independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken.” Notice of Hearing II.E.
5. NEPA Baseline Issue 3: “[T]he Licensing Board will, in the initial decision, in accordance with subpart A of 10 C.F.R. Part 51: . . . determine, after weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values.” Notice of Hearing II.E.

¹ Subpart C states: “The matters of fact and law to be considered are whether the application satisfies the standards set forth in this Notice and Commission Order and the applicable standards in 10 C.F.R. parts 30, 40 and 70 and whether the requirements of NEPA and the NRC’s implementing regulations in 10 C.F.R. Part 51 have been met.”

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)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Board **ORDER (Scheduling Initial Scheduling Conference)**, dated April 12, 2010, have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555-0001

Alex S. Karlin, Chair
Administrative Judge
alex.karlin@nrc.gov

Catherine Scott, Esq.
clm@nrc.gov
Mauri T. Lemoncelli, Esq.
mauri.lemoncelli@nrc.gov
Carrie M. Safford, Esq.
cms6@nrc.gov
Marcia J. Simon, Esq.
mjs5@nrc.gov

Kaye D. Lathrop
Administrative Judge
kaye.lathrop@nrc.gov

Craig M. White
Administrative Judge
craig.white@nrc.gov

OGC Mail Center
OGCMailCenter@nrc.gov

Anthony C. Eitrem, Esq.
Chief Counsel
ace1@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001

Hearing Docket
hearingdocket@nrc.gov

ocaamail@nrc.gov

AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility) – 70-7015-ML
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Counsel for AREVA
Winston & Strawn, LLP
1700 K Street, N.W.
Washington, DC 20006

Rachael Miras-Wilson, Esq.
rwilson@winston.com
Carlos Sisco, Sr. Paralegal
csisco@winston.com

Counsel for AREVA
Curtiss Law
P.O. Box 153
Brookeville, MD 20833

James Curtiss, Esq.
curtisslaw@gmail.com

Counsel for AREVA
Winston & Strawn, LLP
101 California Street
San Francisco, CA 94111

Tyson Smith, Esq.
trsmith@winston.com

[Original signed by Linda D. Lewis]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 12th day of April 2010