

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

May 19, 2010

INITIAL SCHEDULING ORDER

This proceeding concerns an application by Areva Enrichment Services, LLC (Areva) for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of five percent U-235 by the gas centrifuge process at a proposed enrichment facility to be located in Bonneville County, Idaho. This matter will proceed as an uncontested Subpart G hearing mandated by Section 193(b)(1) of the Atomic Energy Act, 42 U.S.C. § 2243(b)(1), and 10 C.F.R. § 70.23(a).

Under NRC regulations, this Board has the “duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order.” 10 C.F.R. § 2.319. This initial scheduling order is designed to ensure proper case management of this proceeding, including “expediting the disposition of the proceeding, establishing early and continuing control so that the proceeding will not be protracted because of lack of management, discouraging wasteful prehearing activities, [and] improving the quality of the hearing.” 10 C.F.R. § 2.332(c)(1)-(5).

I. BACKGROUND

On July 30, 2009, the Commission published a notice of hearing with regard to Areva's application, notifying the public of the mandatory hearing on certain uncontested safety and environmental issues and of the right to petition for leave to intervene to contest the application.¹ No petitions to intervene were filed in response to the Federal Register notice. On March 26, 2010, this Atomic Safety and Licensing Board was established to preside over the uncontested mandatory hearing.²

On April 12, 2010, the Board issued an order scheduling an initial scheduling conference with the parties.³ The purpose of the Order is to comply with the Commission's mandate that the Board:

[S]et 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 28½ months (855 days) from the date of this Order.

74 Fed. Reg. at 38,056.

The April 12, 2010 Order posed twelve questions to the parties. The Order also requested that the NRC Staff submit its best good-faith estimate of its projected schedule for its issuance of the draft and final environmental impact statements (DEIS and FEIS) herein, and for its issuance of the final safety evaluation report (FSER). April 12, 2010 Order at 2.

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 (July 30, 2009).

² Order of Chief Administrative Judge E. Roy Hawkens of the Atomic Safety and Licensing Board Panel (Establishing Atomic Safety and Licensing Board) (Mar. 26, 2010) (unpublished).

³ Licensing Board Order (Scheduling Initial Scheduling Conference) (Apr. 12, 2010) (unpublished) (April 12, 2010 Order).

On April 21, 2010, the NRC Staff submitted its best good-faith estimate of its projected schedule.⁴ The Staff estimated that it would issue the FSER in August 2010 and the FEIS in February 2011. Id. at 1.

On May 4, 2010, the Board held a prehearing conference call with the parties.

II. SYNOPSIS OF FIVE MANDATORY DETERMINATIONS

During the prehearing conference call, the parties agreed that Attachment A hereto is an accurate synopsis of five of the mandatory decisions or determinations that the Board must make in this uncontested proceeding. Tr. at 23. Accordingly, the Board hereby adopts Attachment A as a synopsis of the five mandatory decisions or determinations that it must make herein.

III. BIFURCATION OF SAFETY AND ENVIRONMENTAL HEARINGS

During the prehearing conference call, the Board and the parties discussed the best way in which to comply with the Commission's goal that the Board issue its initial decision within twenty-eight and one-half (28½) months of July 30, 2009 (i.e., by November 15, 2011). The Board noted, and the parties agreed, that the Commission's 28½ month schedule assumes that the NRC Staff will issue the FSER and FEIS no later than March 2011. Tr. at 17. Further, the Board noted that the Commission stated that:

This schedule assumes that the SER and FEIS are issued essentially at the same time. If these documents are not to be issued very close in time, the Board should adopt separate schedules but concurrently running for the safety and environmental reviews consistent with the timeframes herein for each document.

74 Fed. Reg. at 38,056 n.3; Tr. at 79.

In light of this instruction from the Commission, and the Staff's estimate that the FSER and FEIS would be issued seven months apart (August 2010 and February 2011, respectively), Counsel for Areva urged that the best way for the Board to meet the 28½ month goal would be

⁴ Letter/Notice to the Board from Counsel for NRC Staff Responding to Board's Request for Schedule for Completion of Staff's Review of the AES Application (Apr. 21, 2010).

for the Board to bifurcate the evidentiary hearings and hold the safety hearing promptly after the FSER and the environmental hearing promptly after the FEIS. Tr. at 18, 80-82. The Staff stated that, while it has some logistical concerns, it is not opposed to a bifurcated hearing. Id. at 82.

Given the Commission's instruction that this Board issue its initial decision herein as soon as possible, and the fact that the Staff currently expects that the FSER and FEIS will be issued seven months apart, the Board agrees with Areva that bifurcation of the safety and environmental evidentiary hearings will likely expedite the resolution of this mandatory proceeding. Accordingly, we adopt a bifurcated schedule.⁵

IV. SCHEDULE FOR SAFETY MATTERS

The safety matters required to be addressed and determined in this mandatory hearing are summarized in Question 1 (General Issue 1) specified on Attachment A. Based on our consultation with the parties and in accordance with 10 C.F.R. § 2.332, the Board establishes the following schedule for dealing with safety matters for the remainder of this uncontested mandatory hearing:

1. Written Questions Primarily Related to Safety Matters

A. Approximately forty (40) days after the issuance of the FSER, the Board will issue written questions to the parties relating primarily to safety issues. The Board will endeavor to ask all of its safety-related questions in this one wave.

B. Fourteen (14) days after the Board issues its safety-related questions, the parties will file written answers to the Board's questions. The answers shall, for each question, identify the responding subject matter expert(s) or individual(s), and be submitted in exhibit form, under

⁵ If subsequent Staff estimates reveal that the FSER and FEIS are expected to be issued less than seven months apart, then the Board may revisit the bifurcation decision and instead hold the safety and environmental evidentiary hearings (and related filings) at the same time.

oath, so that they are suitable for receipt into evidence without the necessity of the personal appearance of each expert or individual.⁶

2. Conduct of Oral Evidentiary Hearing Related to Safety Matters

A. Twenty-one (21) days after the parties file written answers to the Board's safety-related questions, the Board will issue an order specifying the date and place of the oral evidentiary hearing related primarily to safety matters, the topics to be covered, the written testimony and exhibits to be filed, and the procedures to be followed in the hearing.

B. Fourteen (14) days after the Board's order, the parties will file their respective written testimony and exhibits. The prefiled written testimony shall identify the responding subject matter expert(s) or individual(s), and be submitted in exhibit form, under oath, so that it is suitable for receipt into evidence without the necessity of the personal appearance of the expert or individual.⁷ However, unless otherwise specified by the Board, each party, including the Staff, will, at its own expense and effort, assure that each person for whom it submits written testimony personally attends the oral evidentiary hearing and is available to testify and respond to questions. In addition, the Board's order may specify, either by name or by designation,⁸ additional witnesses who must appear and testify in person during the oral hearing.⁹

⁶ This procedure – a single wave of questions on a given subject from the Board and a single wave of full and complete answers by each of the parties – is designed to expedite the process. If the parties cooperate, this will obviate or reduce the need for written follow-up questions.

⁷ After reviewing the prefiled testimony and exhibits, the Board may advise the party that oral testimony from a given subject matter expert or individual is not needed and that he or she need not appear in person at the oral hearing.

⁸ See Rule 30(b)(6) of the Federal Rules of Civil Procedure.

⁹ The need for written testimony and/or oral testimony in-person during the evidentiary hearing may be reduced if the parties' answers to the Board's prior written questions resolve the Board's concerns and establish a sufficient record.

V. SCHEDULE FOR ENVIRONMENTAL MATTERS

The environmental matters to be addressed and determined in this mandatory hearing are summarized in Questions 2-5 (General Issue 2 and NEPA Baseline Issues 1-3) on Attachment A. Based on our consultation with the parties and in accordance with 10 C.F.R. § 2.332, the Board establishes the following schedule for dealing with environmental matters for the remainder of this uncontested mandatory hearing:

1. Written Questions Primarily Related to Environmental Matters

A. Approximately forty (40) days after the issuance of the FEIS, the Board will issue written questions to the parties relating primarily to environmental issues. The Board will endeavor to ask all of its environmentally-related questions in this one wave.

B. Fourteen (14) days after the Board issues its environmentally-related questions, the parties will file written answers to the Board's questions. The answers shall, for each question, identify the responding subject matter expert(s) or individual(s), and be submitted in exhibit form, under oath, so that they are suitable for receipt into evidence without the necessity of the personal appearance of each expert or individual.

2. Conduct of Oral Evidentiary Hearing Relating Primarily to Environmental Matters

A. Twenty-one (21) days after the parties file written answers to the Board's environmentally-related questions, the Board will issue an order specifying the date and place of the oral evidentiary hearing related primarily to environmental matters, the topics to be covered, the written testimony and exhibits to be filed, and the procedures to be followed in the hearing.

B. Fourteen (14) days after the Board's order, the parties will file their respective written testimony and exhibits. The prefiled written testimony shall identify the responding subject matter expert(s) or individual(s), and be submitted in exhibit form, under oath, so that it is suitable for receipt into evidence without the necessity of the personal appearance of the expert

or individual.¹⁰ However, unless otherwise specified by the Board, each party, including the Staff, will, at its own expense and effort, assure that each person for whom it submits written testimony personally attends the oral evidentiary hearing and is available to testify and respond to questions. In addition, the Board's order may specify, either by name or by designation,¹¹ additional witnesses who must appear and testify in person during the oral hearing.¹²

VI. OTHER ADMINISTRATIVE MATTERS

1. Monthly Status Reports

Commencing on June 3, 2010, the NRC Staff shall submit a short report specifying its best estimates of the dates when it expects to issue the draft and final version of the EIS, and the dates it expects to issue the SER, including any "advance" SER, SER with open items, and its final SER. Thereafter, the Staff shall update this status report on the first Thursday of each month.

2. Submission of Documents to Board

In addition to any documents that are submitted as evidence for the formal record herein, as mentioned in the conference call, the Board requests that the NRC Staff submit to the Board, within five (5) days of issuance, four (4) electronic copies each of the draft and final EIS, and the final SER. Tr. at 87. The Board also requests that, at the same time, the NRC Staff submit two (2) hardbound copies of each of these reports.

¹⁰ After reviewing the prefiled testimony and exhibits, the Board may advise the party that oral testimony from a given subject matter expert or individual is not needed and that he or she need not appear in person at the oral hearing.

¹¹ See Rule 30(b)(6) of the Federal Rules of Civil Procedure.

¹² The need for written testimony and/or oral testimony in-person during the evidentiary hearing may be reduced if the parties' answers to the Board's prior written questions resolve the Board's concerns and establish a sufficient record.

3. Submission of Calendars for Evidentiary Hearings

Based on the Staff's estimated date for issuance of the FSER and the schedule set forth herein, the evidentiary hearing regarding safety issues appears likely to occur between the months of December 2010 and February 2011 (inclusive). Likewise, based on the Staff's estimated date for issuance of the FEIS, the evidentiary hearing regarding environmental issues appears likely to occur between the months of June and August 2011 (inclusive). On or before June 15, 2010, counsel for each party should submit a calendar identifying the dates during the above-referenced time-frames when they (and their witnesses) are NOT available for an evidentiary hearing in the Idaho Falls, Idaho area.¹³ Counsel should be prepared to explain and justify (e.g., a previously scheduled formal commitment) why they or their witnesses are not available.

VII. LIMITED APPEARANCE STATEMENT SESSION

The Board plans to hold an oral limited appearance statement session in this matter in accordance with 10 C.F.R. § 2.315(a). During this session members of the public will be permitted to make short oral statements setting forth their position on matters of concern relating to this proceeding.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, MD
May 19, 2010

¹³ Unless necessary, the Board will not conduct the evidentiary hearing during the time period from December 20, 2010, to January 3, 2011, inclusive.

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.”¹⁴ 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.

¹⁴ 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.”

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)
AREVA ENRICHMENT SERVICES, LLC) DOCKET NO. 70-7015-ML
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)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **INITIAL SCHEDULING ORDER**, dated May 19, 2010, have been served upon the following persons by Electronic Information Exchange.

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AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility) – 70-7015-ML
INITIAL SCHEDULING ORDER

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[Original signed by Linda D. Lewis]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 19th day of May 2010