

June 1, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)
)
AREVA ENRICHMENT SERVICES, LLC) Docket No. 70-7015-ML
)
(Eagle Rock Enrichment Facility))

REQUEST FOR CLARIFICATION OR FOR CERTIFICATION

INTRODUCTION

On May 19, 2010, the Atomic Safety and Licensing Board (“Licensing Board”) issued an Initial Scheduling Order in which it established schedule milestones related to the required hearing on the application of AREVA Enrichment Services, LLC (“AREVA”) for its Eagle Rock Enrichment Facility (“EREF”). The Licensing Board’s Scheduling Order sets a tentative schedule for the hearing on uncontested issues in this proceeding, with the goal of issuing an initial decision on AREVA’s application by November 15, 2011 — 28.5 months from the Notice of Hearing.¹

Under 10 C.F.R. § 2.323 and for the reasons set forth below, AREVA respectfully requests that the Board clarify its Order with respect to the schedule for completing the environmental portion of the hearing on uncontested issues.² Order at 6-7. The Initial Scheduling Order does not include any expected dates for an initial decision. Other than the

¹ “Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission 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),” 74 Fed. Reg. 38052 (July 30, 2009).

² Counsel for AREVA has contacted counsel for NRC Staff. Counsel for NRC Staff advised that the NRC takes no position with respect to this Request for Clarification or Certification.

November 15, 2011 deadline, the Order is silent on the timing of the initial decision. AREVA submits that, in the absence of any information on the timing of the initial decision, this portion of the Order is potentially inconsistent with prior Commission guidance on the conduct of hearings on uncontested issues. AREVA requests that the Licensing Board clarify the timing of the Board's decision on all uncontested issues to confirm that the schedule is consistent with the expectations set forth by the Commission in CLI-06-20 for decisions in uncontested cases. *Exelon Generation Co., LLC* (Early Site Permit for Clinton ESP Site), CLI-06-20, 64 NRC 15, 26-27 (2006). Under CLI-06-20, a final decision by the Board would be expected between four to six months from the projected February 2011 release of the Final Environmental Impact Statement, or between June and August of 2011, and, as the Commission has further suggested for "most cases", perhaps significantly earlier than this. If the Licensing Board declines to clarify the expected date of its decision, AREVA requests that the Board certify the schedule question to the Commission for interlocutory review.

DISCUSSION

In its Scheduling Order, the Licensing Board explained that it intends to issue its initial decision within twenty-eight and one-half (28.5) months of the date of the Notice of Hearing (*i.e.*, by November 15, 2011). The Board also explained that the Commission's 28.5-month schedule assumes that the NRC Staff will issue the Final Safety Evaluation Report ("FSER") and Final Environmental Impact Statement ("FEIS") no later than March 2011. The Licensing Board calculated the March deadline based on the Commission's direction in the Notice of Hearing that the Licensing Board issue its initial decision no later than 245 days after the Staff issues the FSER or FEIS, whichever is later.

The schedule in the Notice of Hearing, however, is inapplicable to this proceeding. In the Notice of Hearing, the Commission established a specific schedule for a

contested hearing that contemplated issuance of an initial decision 245 days after the issuance of the final SER/EIS. The Commission’s schedule specifically stated that “[i]f this is a contested proceeding, the Board should adopt the following milestones” (which included the 245-day milestone). 74 Fed. Reg. at 38057. But here, there is no contested proceeding. No contentions were submitted prior to the deadline for requesting a hearing and, to date, there have been no late-filed requests for a hearing.

In the absence of a contested hearing, many of the activities that were projected to occur during the 245-day period following issuance of the FSER/FEIS are unnecessary. The 245-day schedule clearly contemplated that a host of significant procedural steps would need to be accomplished during the 245-day period but that are not required in this uncontested hearing. For example, the milestones included motions to amend or file late-filed contentions and responsive pleadings, summary disposition motions, formal discovery, and cross-examination plans. 74 Fed. Reg. at 38057. In sum, as Counsel for the applicant stated during the telephone call of May 4, 2010, the milestones set forth in the Notice of Hearing and the resulting 28.5 month schedule were not intended to apply to an uncontested hearing such as we have here. Indeed, it defies logic to conclude that the 28.5 month schedule that the Commission established for the completion of both a contested and mandatory hearing should also be the schedule applied by the Board where there is no uncontested hearing.

As discussed in more detail below, the inexplicable consequence of this interpretation is that the licensing review for the Eagle Rock Enrichment Facility could take nearly 35 months from when the application was first submitted, five months longer than the recently-completed 30 month licensing review for Louisiana Energy Services’ National Enrichment Facility (“NEF”) in New Mexico. In view of the fact that LES was a heavily contested case, and considering the similarity of the designs and the thoroughness of the review

conducted by the NRC Staff of many of these same issues in *LES*, it would be reasonable to expect that the Eagle Rock review could be completed in less, not more, time.

AREVA requests that the Board clarify that its schedule comports with Commission guidance on uncontested hearings from other proceedings. In response to two NRC Staff petitions seeking review of Licensing Board orders in the *Clinton* and *Grand Gulf* Early Site Permit uncontested mandatory hearing proceedings, the Commission stated as follows:

In keeping with the Commission's expectation that the boards act promptly in concluding the hearing process, the Commission expects the boards in uncontested cases to issue their final decisions generally within four, and at the most six, months of the staff's SER and FEIS issuances. In most cases, we expect that the time would be significantly shorter.

Clinton, CLI-06-20, 64 NRC at 26-27. The NRC Staff currently estimates that it will issue the DEIS in July 2010, the FSER in August 2010, and the FEIS in February 2011. Although the Initial Scheduling Order establishes dates for several milestones that are linked to issuance of the FEIS, the Order does not include an expected date for a hearing or an initial decision. Accordingly, consistent with the schedule milestones set by the Commission for an uncontested proceeding, AREVA requests that the Licensing Board clarify that its expected date for issuance of an initial decision is consistent with the expectations established by the Commission in CLI-06-20.

AREVA believes that issuance of an initial decision on uncontested environmental issues in this timeframe is achievable under the circumstances for several reasons. First, the EREF proceeding is uncontested, which reduces the overall resource and schedule burden associated with the proceeding. Second, the Licensing Board can take advantage of prior reviews of uncontested issues in the *LES* and *USEC* proceedings. For example, the EREF Licensing Board can refer to and rely on prior reviews regarding the methods for calculating the decommissioning cost estimate and the environmental impacts of depleted uranium disposal.

Third, as noted above, the NRC Staff expects to issue the DEIS in July 2010. The Licensing Board will therefore have an extended period of time in which to review environmental documents and develop preliminary positions on the required environmental findings. There is no legal bar to the Licensing Board beginning its hearing on uncontested issues based on the DEIS. For example, even if it did not hold the actual hearing, the Board could pose questions to the parties on issues based on the DEIS. Such an approach would have the additional advantage of permitting the NRC Staff to address any potential deficiencies identified by the Licensing Board in the FEIS. Finally, AREVA is not aware of any other circumstances that would necessitate an extended uncontested hearing schedule.

Issuance of an initial decision on uncontested in this timeframe would also be consistent with the schedule achieved for LES's NEF, which uses the same centrifuge design as the EREF. The *LES* proceeding was highly contested, involving several motivated intervenors and many safety and environmental contentions. The *LES* proceeding was also the first proceeding to necessitate a mandatory hearing in more than a decade. Yet, the Licensing Board there was able to issue several partial initial decisions on contested issues and uncontested issues within approximately 30 months. AREVA believes that the Licensing Board should be able to achieve similar results here. AREVA appreciates the magnitude of the Licensing Board's task and is willing to take any action necessary to assist the Licensing Board and the NRC Staff in achieving a more expeditious schedule.

In the event that the Licensing Board declines to adopt a schedule for issuing an initial decision, AREVA requests, in the alternative, that the Licensing Board certify and refer the following question to the Commission for immediate review:

1. Did the Commission intend for the 28.5-month milestone schedule or the schedule in CLI-06-20 to apply to this uncontested proceeding?

Pursuant to 10 C.F.R. §§ 2.319(l), 2.323(f), and 2.341(f), certification and referral of this issue to the Commission is appropriate because it raises significant and novel legal and policy issues, the resolution of which would materially advance the orderly disposition of the proceeding. Under the Order, as written, the date for the actual hearing on uncontested environmental issues and the schedule for issuing an initial decision could range from June to November 2011. It is critically important to AREVA that there be greater certainty in the schedule than a six-month window provides. Without greater scheduling certainty AREVA cannot effectively plan for construction. For example, AREVA cannot hire workers or purchase equipment only to let them sit idle for several months. The six-month window is also the difference between beginning construction in the summer or in the winter. From a commercial perspective, the lack of certainty in the licensing schedule directly impacts the dates of expected delivery of enriched product to AREVA's customers. For these reasons, it is critically important to AREVA that an initial decision is issued at the earliest possible time and within the timeframe established by the Commission in CLI-06-20.

CONCLUSION

AREVA believes that Commission intended that the Licensing Board establish a specific hearing schedule designed to meet a goal of an initial decision on uncontested issues no later than four to six months, and perhaps significantly earlier, from issuance of the FEIS. Accordingly, AREVA respectfully requests that the Licensing Board clarify the hearing schedule and expected date of its initial decision to ensure that it meets the Commission's expectations established in CLI-06-20 or, alternatively, certify the schedule question to the Commission.

/s/ signed electronically by

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Dated at Washington, District of Columbia
this 1st day of June 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of “REQUEST FOR CLARIFICATION OR FOR CERTIFICATION” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 1st day of June 2010, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

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