

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Paul S. Ryerson, Chairman
Dr. James F. Jackson
Dr. Michael O. Garcia

In the Matter of

GE-HITACHI GLOBAL LASER ENRICHMENT
LLC

(GLE Commercial Facility)

Docket No. 70-7016-ML

ASLBP No. 10-901-03-ML-BD01

July 12, 2010

ORDER

(Scheduling Initial Scheduling Conference)

In accordance with our order of May 11, 2010, the Board will hold an initial scheduling conference in this matter, by telephone, on Thursday, August 19, 2010 at 10:00 AM EDT. The purpose will be to assist in developing a scheduling order that will satisfy the requirements of the Notice of Hearing and Commission Order, 75 Fed. Reg. 1819 (Jan. 13, 2010) (Hearing Notice), and facilitate the fair and efficient resolution of this uncontested proceeding.

On or before Thursday, August 12, 2010, counsel for the Applicant and for the NRC Staff should contact Ms. SherVerne Cloyd at 301-415-6504 to obtain the telephone number and pass code for the August 19, 2010 conference call. Members of the public who wish to listen to the conference may do so, and should contact Ms. Cloyd at the above number for the necessary information.

The Applicant and the NRC Staff should be prepared to address the following questions:

1. On May 27, 2010, the Staff advised the Board that it expects to issue the final safety evaluation report (SER) in December 2010 and the final environmental impact statement (FEIS) in February 2011. What is the Staff's present sense of the likelihood that these estimates might change and, if so, by how much?
2. Assuming that the SER and FEIS are issued within approximately two months of each other, is there any reason to consider bifurcation of the mandatory hearing with respect to safety and NEPA issues?
3. Assuming that the SER precedes the FEIS, would it be efficient for the Board to propound written questions concerning the SER as soon as possible, regardless of whether the FEIS has been issued?
4. Of what relevance, if any, are the scheduling milestones in the Hearing Notice, see 75 Fed. Reg. at 1823-24, given that this is an uncontested proceeding? What is an appropriate target for issuance of the Board's initial decision in light of the schedule for the SER and FEIS?
5. Do the parties agree that Attachment A to this order is an accurate synopsis of the determinations that the Board must make in this uncontested proceeding, as mandated by the Hearing Notice? If not, why not? What additional questions or determinations, if any, must the Board address?
6. How (and where) should the Board conduct this mandatory hearing? Will the Applicant or the NRC Staff desire an opportunity to present evidence, separate and apart from responding to the Board's written or oral questions? If so, what would be the most efficient way for the Board to receive such evidence?
7. The Hearing Notice stated that persons desiring to make a limited appearance, pursuant to 10 C.F.R. § 2.315(a), were requested to inform the Secretary of the Commission by March 15, 2010. Should the Board allow limited appearances by persons who did not inform the Secretary of the Commission by this date?

8. Would a site visit be likely to assist the Board in understanding any of the relevant issues?
9. Is the SER or the FEIS likely to contain or refer to classified or other sensitive information in the application? How should such information be managed in this proceeding?
10. What other matters should be considered by the Board at this stage of the proceeding?

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 12, 2010

ATTACHMENT A

MANDATORY DETERMINATIONS THAT MUST BE MADE IN THE UNCONTESTED PROCEEDING ON GE-HITACHI APPLICATION FOR URANIUM ENRICHMENT LICENSE

GE-Hitachi Global Laser Enrichment LLC (GLE Commercial Facility) has applied to the NRC for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 8 percent U-235 by a laser-based enrichment process at a proposed facility to be located in New Hanover County, North Carolina. 75 Fed. Reg. 1819 (Jan. 13, 2010). 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. Id. at 1820-21. 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 Safety and Safeguards with respect to the matters 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 CFR part 51 has been adequate.” Notice of Hearing II.D(2).
3. NEPA Baseline Issue 1: “[T]he Licensing Board will, in the initial decision, in accordance with Subpart A of 10 CFR part 51: Determine whether the requirements of sections 102(2)(A), (C) and (E) of NEPA and subpart A of 10 CFR 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 CFR 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 CFR 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 CFR parts 30, 40, and 70, and whether the requirements of NEPA and the NRC’s implementing regulations in 10 CFR part 51 have been met.” 75 Fed. Reg. at 1821.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
GE-HITACHI GLOBAL LASER) Docket No. 70-7016-ML
ENRICHMENT FACILITY LLC)
(GLE Commercial Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SCHEDULING INITIAL SCHEDULING CONFERENCE) have been served upon the following persons by Electronic Information Exchange.

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GE-HITACHI GLOBAL LASER ENRICHMENT FACILITY LLC
DOCKET NO. 70-7016-ML
LB ORDER (SCHEDULING INITIAL SCHEDULING CONFERENCE)

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[Original signed by Evangeline S. Ngbea]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 12th day of July 2010.