

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

Before Administrative Judges:

G. Paul Bollwerk, III, 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

January 21, 2011

MEMORANDUM AND ORDER

(Additional Publicly-Available Question Regarding Safety Matters and
Identification of "Available" AES Witnesses)

In a December 17, 2010 issuance, among other things, the Licensing Board posed supplemental questions to the parties regarding financial assurance for decommissioning the proposed Eagle Rock Enrichment Facility (EREF) and dispositioning depleted uranium tails generated by operation of the facility. See Licensing Board Memorandum and Order (Providing Presentation Topics and Administrative Directives Associated with Mandatory Hearing on Safety Matters) (Dec. 17, 2010) at 5 (unpublished) [hereinafter Board Administrative Directives Order]. Based on the NRC staff responses received on January 14, we have several additional questions on this matter, which we posit below.

In the December 17 memorandum and order, as a supplement to Publicly-Available Question 9, the Board asked whether, in keeping with standard commercial practice, the letters of credit (LOC) to be provided by applicant AREVA Enrichment Services, LLC, (AES) to afford financial assurance for decommissioning and depleted uranium disposition costs would be issued by an entity having to meet minimally acceptable capitalization and credit rating

standards for an LOC issuer. See id. In a January 14 response, the staff indicated that although agency regulations do not specify capitalization or credit rating requirements, the staff nonetheless would ensure that the issuer of the LOC is either federally regulated or state regulated. See NRC Staff Prefiled Exhibit NRC0000027, at 1 (NRC Staff Responses to Licensing Board's Initial Publicly-Available Questions Regarding Safety Matters) [hereinafter NRC000027]. Relative to this response, the Board poses the following questions to AES and the staff:

- A. In this instance, the staff seeks to ensure that funding will be available to cover facility decommissioning costs by mandating that AES's LOC issuer be federally regulated or state regulated, rather than meeting specific capitalization or credit rating requirements. If AES and another entity were contemplating entering into a transaction involving costs on the order of those involved in the decommissioning of the EREF and AES wanted to ensure that other entity could cover those costs by procuring an LOC, would the fact that the LOC issuer is regulated by relevant federal or state agencies be sufficient in the opinion of relevant AES financial decisionmakers to provide the necessary assurance to AES regarding the LOC issuer's ability to satisfy its obligations under the LOC? If so, please explain why. If not, what other assurances would AES seek?
- B. As noted above, in its January 14 response the staff places significant reliance on regulation of a prospective LOC issuer by a federal or state agency. The staff states that it "defer[s] to the expertise of the appropriate federal or state financial regulatory bodies to set and monitor the qualifications that the issuer must meet." See NRC000027, at 1. Relative to this statement, we request that the staff

explain why it believes such federal or state regulatory oversight, in lieu of specific capitalization or credit rating requirements for an LOC issuer, is adequate to ensure that any AES-procured LOC will be sufficient to satisfy the issuer's obligations to the NRC to provide drawings that will be adequate to cover the total cost of decommissioning and depleted uranium disposition.

- C. Notwithstanding the staff's indication that it considers an LOC issued by an entity that is regulated by a federal or state agency to be adequate without any inquiry into the LOC issuer's specific capitalization or credit rating, are there any other requirements that will be placed on a LOC issuer by either AES or the staff to ensure the LOC issuer ultimately can pay AES's decommissioning and depleted uranium disposition costs?

The responses to these items should be filed within seven days of the date of the last mandatory hearing evidentiary session on safety-related issues and should conform to the protocols set forth in section C.14 of the Licensing Board's December 17, 2010 memorandum regarding the resubmission of the parties' answers to the Board's prehearing questions, and supporting material.

Also, relative to the Board's December 17 order, we request that on or before noon Eastern Standard Time on Monday, January 24, 2011, as the non-lead party, AES provide the

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (Additional Publicly-Available Question Regarding Safety Matters and Identification of "Available" AES Witnesses) dated January 21, 2011, 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
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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 21st day of January 2011