

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

April 19, 2011

MEMORANDUM AND ORDER
(Making Appendix A to LBP-11-11 Publicly-Available)

In this mandatory hearing proceeding regarding the pending application of AREVA Enrichment Services, LLC, (AES) for a license to enrich natural uranium at its proposed Eagle Rock Enrichment Facility, in a partial initial decision issued on April 8, 2011, the Licensing Board provided its findings and conclusions regarding the uncontested matters arising under the provisions of the Atomic Energy Act of 1954, i.e., those matters relating to the public health and safety and the common defense and security. See LBP-11-11, 73 NRC __ (April 8, 2011). As was noted in that issuance, Appendix A to the decision, which includes findings relating to information in AES or NRC staff licensing documents that had been marked as not subject to public disclosure, was (1) served only upon AES and the staff, as the parties to this proceeding, via the protective order file component of the agency's E-Filing System; and (2) placed in the nonpublic portion of the proceeding's official docket pending review by AES and the staff to determine whether all or any portion of the appendix could be publicly released. See id. at __ n.36, __ (slip op. at 81 n.36, 84).

By joint filing dated April 15, 2011, AES and the staff have advised the Licensing Board that, although the information in Appendix A to the Board's April 8 issuance was based on information that is not publicly available, Appendix A itself does not contain information that needs to be treated as nonpublic. As a result, the parties indicated that no redactions are necessary and Appendix A can be made publicly available in its entirety. See Joint Report on Public Disclosure of Appendix A to LBP-11-11 (Aug. 15, 2011) at 2.

In accord with the parties' review of the document, with this memorandum and order we place a copy of that appendix, which is attached to this issuance, into the public record, and direct that it be included as part of the version of LBP-11-11 that is published in volume 73 of Nuclear Regulatory Commission Issuances.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

G. Paul Bollwerk, III
CHAIRMAN

Rockville, Maryland

April 19, 2011

ATTACHMENT

APPENDIX A

7.1 In addition to reviewing the publicly available information regarding the application and the staff's SER review, as is noted in section IV above, the Board reviewed information submitted by the applicant and the staff that was marked as OOU or classified. Then, following issuance of the staff's SER, the Board posed questions to AES and the staff in a number of areas, some of which involved this non-public information. See supra note 7 and accompanying text. Those questions related to portions of the applicant's SAR and/or the staff's SER not encompassed by the hearing presentation topics. Below, we outline our findings and conclusions relative to those matters.

A. Board Nonpublic Safety Question Topics Not Warranting Further Discussion

7.2 Among the nonpublic question areas not covered by the presentation topics were (1) methods used to ensure that significant accident sequences have been analyzed, see Board Initial Nonpublicly-Available Safety Questions attach. A, at 1 (Nonpublic Safety Question 1); (2) calculating average enrichment for UF₆ dump; see id. (Nonpublic Safety Question 2); Board Additional Nonpublicly-Available Safety Questions at 3 (Supplement to Nonpublic Safety Question 2); (3) thirty-minute release assumption; see Board Initial Nonpublicly-Available Safety Questions at 2 (Nonpublic Safety Question 4); (4) "light-work" breathing rate assumption; see id. (Nonpublic Safety Question 5); (5) population distribution assumption, see id. (Nonpublic Safety Question 6); and (6) consequences of uranium accumulation in degreaser water collection tank, see id. (Nonpublic Safety Question 7).

7.3 The Board finds that the staff's and the applicant's written responses to these nonpublic questions, see supra note 8 and accompanying text, adequately addressed the Board's concerns in those areas. Accordingly, we consider these AEA-related safety issues resolved for this proceeding. See Clinton ESP, CLI-06-20, 64 NRC at 21-22.

B. Board Nonpublic Safety Question Topic Warranting Further Discussion

7.4 In addition to the subjects outlined in section IV.B.1.a above that were the subject of Board questions, there was one other area that was the subject of Board questions and party answers that was not covered by the presentation topics but which merits some additional discussion. This item concerns the frequency of the drills and exercises conducted to demonstrate effectiveness of the AES EP.

7.5 In its nonpublic question 3 regarding the AES EP, noting the EP requirement that drills and exercises must be conducted to ensure that all major elements of the EP and preparedness program are demonstrated at least once in each six-year period, the Board asked whether this exercise frequency was adequate to maintain personnel knowledge and skill to implement emergency responsibilities given the SER statement that the EP provides adequate provisions for drills and biennial exercises. The staff answered:

The applicant's [EP] contains provisions to conduct a biennial exercise as required by 10 CFR § 70[.22](i)(3)(xii) with the additional provision to ensure that all of the major elements are demonstrated at least once in a six-year period. Current guidance and regulations for Part 70 licensees do not provide any specific time requirements for demonstration of the major elements. The applicant's approach for the demonstration of the major elements is consistent with the regulations and guidance for nuclear power reactors (i.e., NUREG-0654 and Appendix E to 10 CFR Part 50.)

Staff Response to Initial Nonpublicly-Available Safety Questions at 3.

7.6 Drills and exercises are essential to demonstrating the effectiveness of any plan that involves the time-critical coordinated response of groups of individuals to situations, particularly emergency situations. Putting aside the perplexing absence of any specification in the Part 70 regulations of a particular time within which the major EP elements should be demonstrated, it is not apparent why the specific time period required should not be determined by reference to the industry or facility turnover rate applicable to the employees involved in EP

implementation. As perhaps an extreme example, if the average EP employee turnover rate at a facility is two years and if the major EP element demonstration requirement is six years, it seems quite possible that some number of the current EP personnel at the facility would not have participated in a major element drill or exercise (and might not for several more years, depending on the timing of the major element drill/exercise).

7.7 Be that as it may, the Board finds that the staff's written response to this nonpublic question, as discussed above, adequate and we consider this AEA-related safety issue resolved for this proceeding. See Clinton ESP, CLI-06-20, 64 NRC at 21-22.

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 "**MEMORANDUM AND ORDER (Making Appendix A to LBP-11-11 Publicly-Available)**," dated April 19, 2011, 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

G. Paul Bollwerk, Chair
Administrative Judge
paul.bollwerk@nrc.gov

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

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

Anthony C. Eitrem, Esq.
Chief Counsel
ace1@nrc.gov
Jonathan Eser, Law Clerk
jonathan.eser@nrc.gov

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

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555-0001
Christine J. Boote, Esq.
christine.boote@nrc.gov
Mauri T. Lemoncelli, Esq.
mauri.lemoncelli@nrc.gov
Carrie M. Safford, Esq.
carrie.safford@nrc.gov
Catherine Scott, Esq.
clm@nrc.gov
Marcia J. Simon, Esq.
marcia.simon@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

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

AREVA ENRICHMENT SERVICES, LLC (Eagle Rock Enrichment Facility) – 70-7015-ML
MEMORANDUM AND ORDER (Making Appendix A to LBP-11-11 Publicly-Available)

Counsel for Applicant

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

Winston & Strawn, LLP
101 California Street
San Francisco, CA 94111
Tyson Smith, Esq.
trsmith@winston.com

Curtiss Law
P.O. Box 153
Brookeville, MD 20833
James Curtiss, Esq.
curtisslaw@gmail.com

Applicant

AREVA Enrichment Services LLC
Eagle Rock Enrichment Facility
400 Donald Lynch Boulevard
Marlborough, MA 01752
Jim Kay, Licensing Manager
jim.kay@areva.com

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

Dated at Rockville, Maryland
this 19th day of April 2011