

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

June 6, 2011

THIRD REVISED SCHEDULING ORDER

This proceeding concerns an application by GE-Hitachi Global Laser Enrichment LLC (GLE) 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 enrichment facility to be located in New Hanover County, North Carolina. The Board was established to conduct an uncontested hearing mandated by Section 193(b)(1) of the Atomic Energy Act, 42 U.S.C. § 2243(b)(1), and 10 C.F.R. § 70.23a.¹ As directed by the Commission, this Third Revised Scheduling Order sets a hearing schedule that contemplates an Initial Decision by the Board “no later than 28½ months (855 days)” from the date of the Notice of Hearing.²

I. BACKGROUND

Following an initial scheduling conference,³ in which GLE and the NRC Staff participated,

¹ Establishment of Atomic Safety and Licensing Board, 75 Fed. Reg. 21,680 (Apr. 26, 2010).

² CLI-10-04, 71 NRC __, __ (slip op. at 13) (Jan. 7, 2010) published 75 Fed. Reg. 1819, 1823 (Jan. 13, 2010).

³ Tr. at 1-26 (Aug. 19, 2010).

the Board issued an Initial Scheduling Order on September 13, 2010.⁴ The initial schedule was premised on the NRC Staff's estimate that it would issue the final safety evaluation report (FSER) on GLE's application in December 2010 and the final environmental impact statement (FEIS) in February 2011.⁵

On January 14, 2011, the Staff notified the Board that it expected to issue both the FSER and the FEIS in April 2011.⁶ On January 20, 2011, the Board conducted a second scheduling conference by telephone,⁷ in which GLE and the NRC Staff again participated, to consider necessary modifications to the schedule. On January 26, 2010, GLE submitted a revised proposed hearing schedule for the Board's consideration.⁸ On February 2, 2011, the NRC Staff submitted comments, stating that "NRC Staff has no objection to GLE's revised proposed hearing schedule."⁹ On February 9, 2011, the Board issued a First Revised Scheduling Order that adopted GLE's proposal with minor modifications.¹⁰

On April 14, 2011, the Staff notified the Board that it expected to issue both the FSER and the FEIS in June 2011.¹¹ On May 4, 2011, the Board issued a Second Revised Scheduling

⁴ Licensing Board Order (Initial Scheduling Order) (Sept. 13, 2010) (unpublished).

⁵ Tr. at 5-6 (Aug. 19, 2010).

⁶ Letter from Molly Barkman Marsh, Counsel for NRC Staff, to Licensing Board (Jan. 14, 2011).

⁷ Tr. at 1-15 (Jan. 20, 2011).

⁸ Applicant's Revised Proposed Hearing Schedule (Jan. 26, 2011).

⁹ NRC Staff's Comments on Applicant's Revised Proposed Hearing Schedule (Feb. 2, 2011) at 1.

¹⁰ Licensing Board Order (First Revised Scheduling Order) (Feb. 9, 2011) (unpublished).

¹¹ Letter from Marcia J. Simon, Counsel for the NRC Staff, to Licensing Board (Apr. 14, 2011).

Order, stating that the dates for all activities, as set forth in the First Revised Scheduling Order, would each be extended by approximately two months.¹²

On May 31, 2011, the NRC Staff notified the Board that it now expects to issue the FSER and the FEIS on September 7, 2011.¹³ To comply with the Commission's 28½ month deadline for an Initial Decision by the Board, this Third Revised Scheduling Order reduces the time periods for several interim milestones by five days each, but otherwise preserves the structure of the schedule to which the parties previously agreed.

II. ADMINISTRATIVE MATTERS

A. Staff Documents. The Board will not require periodic status reports, but expects the NRC Staff to promptly advise if its estimate of the issuance date for the FSER or the FEIS should again change.¹⁴ When these documents are available, the Staff shall provide the Board with four paper copies of each report at or shortly after the time that electronic copies are submitted.¹⁵

B. Synopsis of Mandatory Determinations. During the initial prehearing conference call, the parties agreed that Attachment A hereto is an accurate synopsis of five mandatory decisions or determinations that the Board must make in this uncontested proceeding.¹⁶ Accordingly, the Board adopts Attachment A as a synopsis of the five mandatory decisions or determinations that it must make.

¹² Licensing Board Order (Second Revised Scheduling Order (May 4, 2011) at 1 (unpublished).

¹³ Letter from Marcia J. Simon, Counsel for the NRC Staff, to Licensing Board (May 31, 2011).

¹⁴ See Tr. at 6 (Aug. 19, 2010).

¹⁵ See id. at 7.

¹⁶ Id. at 14-15.

C. No Bifurcation. During the initial prehearing conference call, the parties agreed that, based on the NRC Staff's estimates of the dates for issuing the FSER and FEIS, it would not be efficient to bifurcate hearings on safety and environmental issues.¹⁷ Accordingly, the Board intends to conduct a single hearing on all issues.

D. Classified and Other Protected Information. GLE recommends that the Board "ensure that an agreed-upon and compliant process or set of procedures has been established for the introduction/handling of classified information and other protected forms of information."¹⁸ On September 10, 2010, in response to the Board's request,¹⁹ the Commission designated Douglas Hase, of the Office of Nuclear Security and Incident Response, Division of Security Operations, to advise and assist the Board with respect to protecting and handling classified, safeguards, or other security-related information in this uncontested proceeding.²⁰ As necessary, the Board will handle any such information in accordance with 10 C.F.R. Part 2, Subpart I and other applicable requirements. When the Board issues questions and guidelines for the submittal of testimony and exhibits, it will also issue instructions for the submission of such classified or sensitive information as the parties may deem necessary. The Applicant and the NRC Staff will be afforded an opportunity to comment on such instructions and may, if they wish, submit recommendations in this regard at any time.

¹⁷ Id. at 7-8.

¹⁸ Applicant's Revised Proposed Hearing Schedule at 2-3.

¹⁹ Licensing Board Request to Commission (Seeking Designation of Representative to Advise and Assist Licensing Board with Respect to Classification of Information and Safeguards to Be Observed) (Aug. 25, 2010) (unpublished).

²⁰ Commission Order (Sept. 10, 2010) (unpublished).

E. Site Visit. GLE has expressed its belief that a visit to the site of the proposed facility would be useful to the Board, and the NRC Staff has no objection.²¹ In light of the NRC Staff's revised estimated issuance date for the FSER and FEIS, the Board's visit to the proposed site on July 26, 2011 is cancelled. Instead, the Board will conduct a visit to the proposed site for the GLE commercial facility and the GE-Hitachi nuclear fuel fabrication facility near Wilmington, North Carolina, beginning at 9:00 AM EDT on Wednesday, September 28, 2011. The purpose of the visit is to allow the Board to view the technology, the test loop, and the site area set aside for the commercial facility. The visit, in which the NRC Staff may also participate, will be conducted in accordance with GE-Hitachi's normal site security and safety procedures and will not be recorded or transcribed.

F. Limited Appearances. The Notice of Hearing requested persons desiring to make a limited appearance, pursuant to 10 C.F.R. § 2.315(a), to inform the Secretary of the Commission by March 15, 2010.²² If limited appearance requests are submitted at a later time, the Board will determine whether to grant them, after allowing the parties an opportunity to comment.

G. Board Written Questions. The schedule contemplates two sets of written questions from the Board to the parties. The Board will endeavor to ask all of its FEIS-related questions in the first set. It is possible, however, that the Board might ask some additional FEIS-related questions in the second set, which will primarily address the FSER. The parties' written answers shall, for each question, identify the responding subject matter expert(s) or individual(s), and shall 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. The

²¹ Tr. at 21-23 (Aug. 19, 2010).

²² CLI-10-04, 71 NRC at __ (slip op. at 8), published 75 Fed. Reg. at 1821-22.

parties are reminded that the need for written or oral testimony during the evidentiary hearing may be reduced if the parties' answers to the Board's written questions resolve the Board's concerns and establish an adequate record.

H. Prefiled Testimony. As contemplated by GLE's proposed schedule,²³ before the evidentiary hearing the Board will specify the topics to be covered and the written testimony and exhibits to be filed. The prefilled written testimony shall identify the responding subject matter expert(s) or individual(s), and shall 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 witness. After reviewing the prefilled testimony and exhibits, the Board may advise a party that oral testimony from a particular expert or individual is not needed and that witness need not appear. Unless so advised, however, each party shall ensure that each person for whom it submits written testimony personally attends the evidentiary hearing and is available to testify and respond to questions. Additionally, as appropriate, the Board encourages the parties to supplement formal prefilled written testimony with PowerPoint-type summaries at the oral hearing. Such summaries should be submitted as far in advance of the hearing as practicable, and preferably at the same time as prefilled testimony.

I. Hearing Date and Location. The Board will confirm the date and specify the location of the evidentiary hearing in a subsequent order. Consistent with the views expressed by the parties,²⁴ the Board prefers to conduct the hearing in North Carolina, if possible, but may conduct some or all of the hearing at NRC headquarters in Rockville, Maryland, if necessary to protect Restricted Data or National Security Information.

²³ See Applicant's Revised Proposed Hearing Schedule at 2.

²⁴ See Tr. at 17-19 (Aug. 19, 2010).

III. SCHEDULE

Meeting the schedule set forth below of course depends upon the NRC Staff's issuance of the FSER and FEIS when estimated and upon many other factors, including but not limited to the quality of the parties' responses to the Board's questions and whether complications arise from the potential need for the Board to address classified materials. Conversely, if, as GLE suggests, it might not be necessary for the parties to submit proposed findings of fact and conclusions of law in this uncontested proceeding²⁵ (or for the parties necessarily to take all allocated time to prepare them), then the Board may be able to issue its Initial Decision before the target date.

Subject to these qualifications and the Board's further orders, the schedule for this proceeding shall be as follows:

September 7, 2011	FSER and FEIS issued
September 28, 2011	Site visit
October 3, 2011	Board issues first set of questions (on FEIS)
October 28, 2011	Board issues second set of questions (primarily on FSER)
November 22, 2011	Parties submit responses to Board questions
December 16, 2011	Board identifies areas for prefiled testimony
January 23, 2012	Parties submit prefiled testimony and PowerPoint summaries
February 13, 2012	Mandatory hearing commences
February 15, 2012	Mandatory hearing concluded
March 26, 2012	Proposed findings of fact and conclusions of law
May 10, 2012	Board Initial Decision

²⁵ Applicant's Proposed Hearing Schedule (Aug. 24, 2010) at 4 n.2. The NRC Staff, however, favors providing the parties an opportunity to file proposed findings of fact and conclusions of law at the conclusion of the mandatory hearing. NRC Staff's Comments on Applicant's Proposed Hearing Schedule (Sept. 2, 2010) at 1.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 6, 2011

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.

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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 THIRD REVISED SCHEDULING ORDER have been served upon the following persons by Electronic Information Exchange.

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DOCKET NO. 70-7016-ML
LB THIRD REVISED SCHEDULING ORDER

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

Dated at Rockville, Maryland
this 6th day of June 2011