

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

September 9, 2011

NOTICE TO THE COMMISSION
(Expected Date for Initial Decision)

Pursuant to the January 7, 2010 Notice of Hearing¹ and 10 C.F.R. § 2.334(c), the Licensing Board informs the Commission that—because of repeated delays in the NRC Staff's expected issuance of the Safety Evaluation Report (SER) and Final Environmental Impact Statement (FEIS)—the Board's initial decision with respect to this uncontested, mandatory hearing will likely not be issued within 28 ½ months from the date of that Notice (that is, by mid-May, 2012).²

On September 6, 2011—one day before the SER and FEIS were promised—the Staff notified the Board that they would not issue on September 7, 2011, but rather on February 29, 2012.³ This abrupt notice was the fifth announcement of delay, by which the Staff has extended

¹ CLI-10-04, 71 NRC __ (Jan. 7, 2010) published 75 Fed. Reg. 1819 (Jan. 13, 2010).

² See id. at __ (slip op. at 13) published 75 Fed. Reg. at 1823.

³ Letter from Carrie M. Safford, Counsel for NRC Staff, to Licensing Board (Sept. 6, 2011).

expected issuance of the SER and FEIS more than a year:

On May 27, 2010, the Staff advised that the SER would issue in December 2010, and the FEIS in February 2011.⁴ NRC Staff counsel described those estimates as “pretty firm.”⁵

On November 23, 2010, the Staff advised that both the SER and FEIS would issue in February 2011.⁶

On January 14, 2011, the Staff advised that the SER and FEIS would issue in April 2011.⁷ NRC Staff counsel described those estimates as “reasonably firm.”⁸

On April 14, 2011, the Staff advised that the SER and FEIS would issue in June 2011.⁹

On May 31, 2011, the Staff advised that the SER and FEIS would issue on September 7, 2011.¹⁰

The Staff’s most recent delay—extending estimated issuance of the SER and FEIS by nearly six months (until February 29, 2012)—makes compliance with the Commission’s mid-May 2012 deadline problematic. It would require the Board to review the SER and FEIS, conduct a mandatory hearing, and issue our initial decision approximately ten weeks after the Staff documents first become available. While recognizing that we do not review the Staff’s analysis de novo, we are mindful of the Commission’s direction that the Board take “an independent ‘hard look’ at NRC Staff safety and environmental findings”¹¹ and thereby

⁴ Letter from Carrie M. Safford, Counsel for NRC Staff, to Licensing Board (May 27, 2010).

⁵ Tr. at 6 (Aug. 19, 2010).

⁶ Letter from Carrie M. Safford, Counsel for NRC Staff, to Licensing Board (Nov. 23, 2010).

⁷ Letter from Molly Barkman Marsh, Counsel for NRC Staff, to Licensing Board (Jan. 14, 2011).

⁸ Tr. at 5 (Jan. 20, 2011).

⁹ Letter from Marcia J. Simon, Counsel for the NRC Staff, to Licensing Board (Apr. 14, 2011).

¹⁰ Letter from Marcia J. Simon, Counsel for the NRC Staff, to Licensing Board (May 31, 2011).

¹¹ Louisiana Energy Services, L.P. (National Enrichment Facility), et al., CLI-05-17, 62 NRC 5, 34 (2005).

undertake “the kind of ‘truly independent review’ that Congress anticipated when it established the mandatory hearing requirement.”¹² In particular, the Board’s safety review of this first of a kind facility, which will employ a laser-based uranium enrichment process, should not be unreasonably truncated.

To mitigate the NRC Staff’s delay, the Board intends to consult with the parties and issue a revised scheduling order that will facilitate proceeding with the mandatory hearing as expeditiously as possible, consistent with the Board’s responsibility to conduct a meaningful review of the adequacy of the Staff’s findings and conclusions.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

/RA/

Dr. James F. Jackson
ADMINISTRATIVE JUDGE

/RA/

Dr. Michael O. Garcia
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 9, 2011

¹² *Id.* at 40.

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NUCLEAR REGULATORY COMMISSION

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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 NOTICE TO THE COMMISSION (EXPECTED DATE FOR INITIAL DECISION) 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 NOTICE TO THE COMMISSION (EXPECTED DATE FOR INITIAL DECISION)

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

Dated at Rockville, Maryland
this 9th day of September 2011