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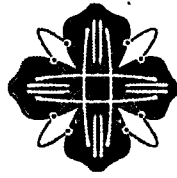
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Snake River Alliance

IDAHO'S NUCLEAR WATCHDOG & CLEAN ENERGY ADVOCATE

November 30, 2011

Chairman Gregory Jaczko
U.S. Nuclear Regulatory Commission
Mail Stop 0-16G4
Washington, DC 20555

Dear Chairman Jaczko:

I am writing on behalf of the Snake River Alliance, Idaho's nuclear watchdog and clean energy advocate. The Snake River Alliance has worked in Idaho for more than 32 years and is a member-based, non-profit organization. We are deeply troubled by the recent ASLB decision to grant Areva Enrichment Services a license to build the proposed Eagle Rock enrichment factory in eastern Idaho. Since 2008, we have consistently engaged the regulatory proceedings regarding this license and remain convinced that the project is not needed and that the granting of this license was a bad decision driven by industry interests rather than public interests.

Our primary concern is that the sole justification for the license as stated in the FEIS -- that there is a need for a domestic supply of enriched uranium -- is irreparably flawed. At a July 2011 evidentiary proceeding held by the ASLB in Idaho Falls, Idaho, the issue of need was examined by the ASLB panel. However, the evidence provided to answer the question of need was from an Areva consultant and the NRC staff. The NRC "evidence" relied entirely on the assumptions made in the February 2011 FEIS and the claim that no reactor license applications had been cancelled since the Fukushima Daiichi nuclear accident.

We expected more of the NRC staff and were disappointed to see federal regulators provide zero analytical data or evidence to support their claims. Moreover, they relied heavily on the AES consultant to justify their claims, demonstrating the problematic and unacceptable blurred line between private industry and the regulators.

We have read the license decision (Second and Final Partial Initial Decision, Docket Number: 70-7015-ML) that was released in October and we share our concerns here with the logic put forward by the ASLB. While we recognize that limited funding has handicapped our ability to formally intervene in this case, we believe our consistent participation in this process and the fact that we represent such a large stake-holder presence in Idaho warrants serious consideration of our concerns.

- 1) The analysis in the ASLB decision assumes a nuclear renaissance. In the wake of the Fukushima nuclear accident that occurred in March 2011, the ASLB should have required a supplemental EIS that would have examined US requirements without a nuclear renaissance and possible early retirement of reactors due to new safety requirements.
- 2) A largely national analysis of supply and demand is not sensible since the market for enrichment services is global. Enriching uranium in the US does not make it “domestic” any more than refining oil in the US makes it “domestic.” Not once does the NRC or Areva justify the claim that there is a legitimate reason to create a domestic market for uranium enrichment.
- 3) While the ASLB acknowledges several times in its decision that the Fukushima Daiichi accident has potentially had a “significant” impact on the need for enriched uranium and acknowledges that in some forecasts production from the Eagle Rock factory would result in supply outstripping demand, it nevertheless ignores this point and chooses to base its decision on Areva’s own forecasts and vague DOE statements about need.
- 4) The ASLB decision makes a series of flawed assumptions about a lack of potential future supply of HEU coming from more surplus weapons. US surplus HEU will bring money into the US Treasury and HEU downblending costs are low compared to enrichment costs.

The Market for Enriched Uranium is Shrinking

To its credit, the ASLB decision on the Areva license does take the NRC staff to task for its blasé treatment of the impact of the Fukushima accident, saying, “...to conclude that nothing has changed post-Fukushima does not appear realistic” (ASLB Partial Decision, Section 4.2). The ASLB decision then goes on to cite numerous global and domestic nuclear projects that indicate a slow-down in the need for enriched uranium. This appears to be the main reason the ASLB looks so extensively at the question of need throughout the rest of the decision.

Unfortunately, the ASLB ultimately sides with the flawed logic of the NRC staff and does so by using the evidence provided by the applicant. It is not acceptable to base the need argument on a predicted growth in domestic nuclear production, a series of statements from the DOE from 2002 and earlier, and the market forecasts of an industry analyst who clearly benefits from the licensing of the project.

In fact, the NRC staff is cited as admitting that “if the PGDP ceases operation and if the NEF and all the other facilities still to be licensed or completed eventually reach their full rated capacity the total projected enrichment capacity in the United States would exceed the projected demand (approximately 16 million SWUs per year) by about 6 million SWUs per year” (ASLB Partial Decision, Section 4.12). The staff then goes on to claim that in spite of this excess supply, uncertainties about the development of these projects still make the EREF necessary. What about uncertainties about the existence of a domestic or global “nuclear renaissance”? The staff clearly biases its assessment to favor a license and bases its analysis on a hypothetical expansion of an industry that is provably shrinking.

Areva's "Three-Pronged" Justification Is Flawed

In section 4.14-4.17 of the ASLB decision, a "three-pronged" explanation of why the EREF is needed is provided by Areva. The first "prong" is the purported need for a domestic supply of enriched uranium. As we have stated above, this assertion is simply untenable. In spite of attempts by Areva to use DOE press releases and dated letters to bolster this claim, the DOE has not done an analysis that indicates US security is threatened by using what is already a globalized market for a supply of enriched uranium. As the ASLB decision admits, "Although the congressional, DOE, and State Department policy pronouncements cited by the parties as confirming this policy are not necessarily of the most recent vintage, we are aware of nothing that leads us to question that policy's continuing viability" (ASLB Partial Decision Section 4.26). Except, of course, that no formal policy of this type exists! The ASLB, Areva and the NRC cannot base such a critical decision on vague assertions made in informal correspondence and press materials, especially when the NRC staff has already acknowledged the potential excess supply of LEU that the EREF would create.

The second "prong" of Areva's argument is that it has "90 percent of the EREF's output through 2020 from the facility's initial 3.3 million SWU buildout already under contract. Two-thirds of this committed output is with fourteen United States utilities." (ASLB Partial Decision, Section 4.16). It is important to note that Areva has not necessarily signed those contracts, and it is also important to note that at least 40 percent of the 90 percent stated is for world-wide markets. This contradicts the notion that this facility's mission is to fill domestic need. Moreover, the financial risk-taking of the company and its clients should not be borne on the back of the people of Idaho or US taxpayers.

The third-prong addresses, at length, a "stress test" the ASLB asked Areva to apply to its forecasts of the need for domestic and global LEU. Our first point is that even with this stress test, Areva's original numbers were highly inflated. For example, the forecasts for domestic demand assumed that the USEC plant would stop operations in 2013, but that claim is never verified. In fact, the USEC plant could operate for another 10 to 15 years.

While the stress test results showed both domestic and global demand reductions, the results did not indicate that the reduction would eliminate the need for the EREF. Of course they didn't. The forecasts were provided by an Areva consultant, who claimed the forecasts were "conservative" but failed to cite other forecasts as reference cases. The NRC staff failed to do its own analysis. The DOE has not done an analysis of this issue. It is unacceptable to grant a license based on need solely on the merits of Areva's own forecasts, especially when its forecasting and the premise of the "stress test" assume a bright-line distinction between domestic and international supplies of LEU.

The NRC and the ASLB should not be willing to accept what is clearly a false premise about a need for "domestic" LEU. There is no evidence that producing LEU in Idaho is in the interest of US security. Furthermore, any such "interest" could not be served when a French corporation owns the project and nearly half of the contracts are for the international market. This license is a sham and was clearly offered based on corporate interests in a complete absence of facts and the current context surrounding the uranium enrichment *global* marketplace.

In our July testimony at the "limited appearance session" offered by the ASLB prior to the mandatory evidentiary hearing, the Snake River Alliance argued that,

"NRC regulations for the implementation of the National Environmental Policy Act (NEPA) require the NRC to prepare a supplemental EIS in the event of "changed circumstances bearing on environmental concerns and bearing

on the proposed action or its impacts” (See 10 CFR 51.92[a]). Three worldwide trends have combined to create just such changed circumstances with respect to the need for the proposed Areva uranium enrichment facility: a significant depression in the uranium market following the nuclear crisis in Japan, greatly increased cost estimates for new reactors, and a markedly reduced pace of new nuclear project construction. In light of these trends, the EIS’s assertion that there is a need for the proposed Areva uranium enrichment factory – i.e., that its environmental impacts are justified – is not supportable. Therefore, as required by 10 CFR 51.92(f)(1), the NRC must revise the EIS and publish it in draft for public comment. If the EIS is not revised and re-published, the application must be rejected.”

Our request was all but ignored by the ASLB, which saw fit to respond to our point and the 184 other requests our members sent in footnote number 13 of the ASLB Partial License Decision. The ASLB made clear that 1) it was not required to respond to us and 2) ultimately, Areva’s projections outweigh the reality of the Fukushima accident. The Alliance remains perplexed as to how the ASLB reached the conclusion that there is not a “seriously different picture of the environmental impacts of the proposed project from what was previously envisioned” without truly engaging in an independent analysis not done by Areva and after acknowledging a number of times the drastic affect the Fukushima accident has had on the nuclear industry. The ASLB certainly did not reach this conclusion based on a thorough analysis by the NRC or DOE. It does not cite any evidence for this conclusion except the forecasts made by Areva and it seems to ignore the reality that the projected supply of LEU could well exceed demand.

The Snake River Alliance is dissatisfied with the regulatory process that has led to the granting of a license for the EREF project. The NRC has done an inadequate job in analyzing the impact and need of the EREF and the ASLB has been complicit in this flawed process. We respectfully request that the NRC Commissioners intervene at this point and review the logic of the ASLB decision.

We request:

- 1) A supplemental EIS that reviews the actual need for the project using a variety of sources and forecasts, including, but not limited to, a thorough analysis by the NRC staff.
- 2) A shift in perspective that allows for acknowledgment that the uranium market is, in fact, a global market.
- 3) More substantial evidence and materials from the DOE or other federal sources to justify the claim that there is a need for a “domestic supply of enriched uranium.”

Without this approach, the NRC has simply failed at its mission to adequately regulate the nuclear industry. We sincerely hope the Commission can remedy this flawed process. Thank you for your time and consideration of our concerns. We hope to hear from you in the near future.

Sincerely,



Liz Woodruff

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cc: Judge G. Paul Bolwerk, ASLB
Jonathan Eser, ASLB Law Clerk
Mauri T. Lemoncelli, NRC, Esq.