

February 8, 2013

Mr. Peter J. Miner, Director
Nuclear Safety and Safeguards
USEC Inc.
6903 Rockledge Dr.
Bethesda, MD 20817-1818

SUBJECT: DIRECT TRANSFER OF MATERIALS LICENSES FOR AMERICAN CENTRIFUGE
LEAD CASCADE FACILITY AND AMERICAN CENTRIFUGE PLANT AND
CONFORMING CONDITIONS

Dear Mr. Miner:

By letter dated September 10, 2010 (AET 10-0039), USEC Inc. (USEC) submitted its “Request for Written Consent to Transfer of Licenses” (Agencywide Documents Access and Management System [ADAMS] accession number ML102650185). In its submittal, USEC requested the U.S. Nuclear Regulatory Commission (NRC) written consent to transfer control of materials licenses SNM-7003 for the American Centrifuge Lead Cascade (Lead Cascade) and SNM-2011 for the American Centrifuge Plant (ACP) from USEC to the wholly owned subsidiary limited liability company (LLC), American Centrifuge Operating, LLC (ACO).

Pursuant to Title 10 *Code of Federal Regulations* (10 CFR) Part 2.1301, on November 17, 2010, the NRC published in the *Federal Register* a “Notice of Receipt of a License Transfer Application and Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Conforming Amendment and Opportunity to Provide Comments and Request a Hearing” (75 FR 70300) (ADAMS accession number ML102930507). In the Notice, the NRC requested that, within 20 days from the date of publication of the notice (i.e., December 7, 2010), any person(s) whose interest may be affected, and who desires to participate as a party, must file a request for a hearing. In addition, the Notice stated that, in accordance with 10 CFR 2.1305, as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding this action. The NRC did not receive any requests for hearings or comments. However, by letter dated December 5, 2010, the Ohio Sierra Club submitted a request for a public discussion of USEC’s application. In response, on January 4, 2011, the NRC staff held a Category 2 public meeting in Piketon, Ohio, to discuss the NRC’s process for reviewing USEC’s request to transfer their material licenses for the Lead Cascade and the ACP from USEC to ACO. During the meeting, the NRC staff received written comments from Mr. Geoffrey Sea, on behalf of the Southern Ohio Neighbors Group. The NRC staff explained that, although the comment period had already been closed, the NRC would accept any additional comments and would consider these to the maximum extent possible. No decisions were made at this meeting. The public meeting summary can be found under ADAMS accession number ML110280305. Mr. Sea’s comments can be found under ADAMS accession number ML110250361. The NRC’s response to Mr. Sea’s comments can be found under ADAMS accession number ML110190360.

The NRC staff conducted its review of USEC's request and, based on its review of the information provided, the NRC staff determined that the proposed transfer of licenses would not have any adverse impact on the public health and safety, or be inimical to the common defense and security, as the licensed facilities and materials would continue to be used and operated in accordance with the NRC's regulations (ADAMS accession number ML103630744). In addition, the NRC staff determined that the proposed transfer of USEC's licenses SNM-7003 and SNM-2011 was acceptable, consistent with the requirements of the Atomic Energy Act and 10 CFR 30.34(b), 40.46, and 70.36, and therefore, should be approved (ADAMS accession number ML103630748). Subsequently, on February 10, 2011, the NRC issued Order EA-11-013 (ADAMS accession number ML103630745) documenting the NRC's approval of the direct transfer of the licenses. The NRC approved the transfer of USEC's licenses subject to the following Order conditions:

- 1) USEC will obtain NRC approval on the revised financial assurance instruments for decommissioning of the Lead Cascade facility;
- 2) ACO, as stated in the request, will abide by all commitments and representations previously made by USEC with respect to the licenses; and
- 3) USEC will provide to the NRC, a copy of the executed facilities subleasing agreement(s) naming ACO as the tenant and clarifying DOE indemnification, before the transfers are completed.

The Order also stated that, if the direct transfer of the licenses and all conforming conditions had not been completed within 180 days from the date of the issuance of the Order, the Order shall become null and void. The Order also stated that, on written application and for good cause shown, such date may be extended by order.

By letter dated July 22, 2011 (AET 11-0038) (ADAMS accession number ML11210B497), as supplemented by electronic communication dated August 1, 2011 (ADAMS accession number ML11213A282), USEC submitted an "Extension Request for Implementation of Order Relating to Consent to Transfer Materials Licenses," from August 9, 2011, to February 9, 2012. The extension was requested to allow USEC additional time to fully implement the conditions of Order EA-11-013. In its submittal, USEC stated that it had been working diligently with the U.S. Department of Energy (DOE) over the past several months to conclude the review process for USEC's loan guarantee application, but would not be able to complete the process within the 180 day implementation period (i.e., by August 9, 2011), established in the Order.

In its submittal, USEC also provided a status of their actions to address the three Conditions listed in the Order. With regard to Condition 1, USEC stated that, on May 17, 2011, the NRC staff completed a review of USEC's letter AET 11-0017 (ADAMS accession number ML11110A110) dated April 12, 2011, requesting NRC's review and approval of a draft surety bond rider for the Lead Cascade. The NRC staff reviewed USEC's submittal and provided comments for USEC's consideration (ADAMS accession number ML111250543). By letter dated July 22, 2011 (AET 11-0039) (ADAMS accession number ML11216A035), USEC provided revised, draft financial assurance instruments for the Lead Cascade for NRC's review and approval. The revised, draft financial assurance instruments addressed the May 17, 2011, NRC comments. The NRC staff completed its review of the revised financial assurance instruments on November 9, 2011, and concluded that the revised instruments were acceptable (ADAMS Accession number ML113081356). Following the NRC's approval, by letter dated January 6, 2012 (AET 12-0001) (ADAMS accession number ML12025A212), USEC submitted

the final executed financial assurance instruments associated with the Lead Cascade. With regard to Condition 2, USEC stated that, as committed to in USEC's letter AET 10-0039 dated September 10, 2010, ACO will abide by all constraints, conditions, requirements, and commitments of USEC's present licenses. USEC further stated that, with regard to any open inspection items, ACO will assume full responsibility for such items and any resulting NRC actions. With regard to Condition 3, USEC stated that it planned to complete the sublease agreement(s) and satisfy this Order condition concurrent with the closing on the DOE loan guarantee.

The NRC staff reviewed the information provided and concluded that USEC's submittal showed good cause for extending the effectiveness of the NRC's Order (ADAMS accession number ML112140076). The NRC staff also concluded that the basis for originally approving the transfers of USEC's licenses remained valid and fully supported the NRC staff's previous findings (ADAMS accession number ML112140088). In addition, the NRC staff determined that USEC had satisfied Conditions 1 and 2 and, therefore, these should be closed. However, the NRC staff determined that USEC had not satisfied Condition 3 and, as such, it should remain open. As a result of its review of USEC's request, the NRC issued Order EA-11-180 (ADAMS accession number ML112140086) extending the implementation date of Order EA-11-013 to February 9, 2012. The Order stated that, if the direct transfer of the licenses and all conforming conditions had not been completed by February 9, 2012, Orders EA-11-013 and EA-11-180 shall become null and void. The Order also stated that, on written application and for good cause shown, the February 9, 2012, date may be extended by Order.

By letter dated January 6, 2012 (AET 12-0004) (ADAMS accession number ML12012A215), USEC submitted a second "Extension Request for Implementation of Orders Relating to Consent to Transfer Materials Licenses," from February 9, 2012, to May 18, 2012. By letter dated January 27, 2012 (AET 12-0012) (ADAMS accession number ML12032A279), USEC provided supplemental information requesting a change for the implementation of the Order from May 18, 2012, to February 8, 2013. In its submittals, USEC stated that, although it has been working diligently with DOE to achieve conditional commitment (the next step of the loan guarantee process), this process had not been concluded such that implementation of the Order conditions would be met by the due date (i.e., August 9, 2011). USEC also stated that it appeared that the date for completion of activities associated with the sub-lease will extend beyond May 18, 2012 and it will not be able to fully satisfy this Condition by February 9, 2012, as required by Order EA-11-180. USEC further stated that this condition will be satisfied following completion of actions with the DOE, without any linkage to the loan guarantee. In its letter, USEC also stated that it had recently announced plans to work jointly with the DOE in a Research, Development and Demonstration (RD&D) program to reduce the technology and financial risk of commercialization of the American Centrifuge technology. USEC also stated that the RD&D program was expected to involve manufacturing and operating additional production-design machines so that key systems can be tested as they would actually operate at the scale necessary for full commercialization. During further discussions with USEC on this second extension request, USEC noted that the RD&D Program was part of their efforts to enhance, and better facilitate the final approval of, its loan guarantee application to DOE.

The NRC staff reviewed the information provided in the January 6 and 27, 2012, letters, including the current status of the three Conditions listed in Order EA-11-013. With regard to Condition 1, the NRC staff determined that there has been no change on the status of USEC's actions (described by USEC in its previous Order extension request) to address this Condition. The NRC staff had previously concluded that USEC had already satisfied this Condition and, as such, this Condition is closed. With regard to Condition 2, the NRC staff determined that there

has been no change on the status of USEC's actions (described by USEC in its previous Order extension request) to address this Condition. The NRC staff had previously concluded that USEC has already satisfied this Condition and, as such, this Condition is also closed. With regard to Condition 3, the NRC staff determined, based on the information provided by USEC in its January 6 and 27, 2012, letters and further discussions with DOE, that the date for completion of activities associated with the sub-lease will extend beyond May 18, 2012. Based on this information, the NRC staff determined that USEC was not going to be able to satisfy this Condition by February 9, 2012, as required by Order EA-11-180. As such, the NRC staff concluded that Condition 3 should remain open. Based on its review of the information provided, the NRC staff concluded that USEC's submittal showed good cause for extending the effectiveness of Order EA-11-013 (ADAMS accession number ML12027A032). The NRC also determined that the basis for originally approving the transfers of USEC's licenses for the Lead Cascade and the ACP from USEC to ACO remained valid (ADAMS accession number ML12027A034). The NRC staff had previously determined that USEC had satisfied Conditions 1 and 2, and, therefore, are closed (see discussion above). As a result of its review of USEC's request, the NRC issued Order EA-12-027 (ADAMS accession number ML12027A033) extending the implementation date of Orders EA-11-013 and EA-11-180 to February 8, 2013. The Order also stated that, if the proposed direct transfer of licenses is not completed by February 8, 2013, this Order and the February 10, 2011, Order shall become null and void. However, upon written application and for good cause shown, the February 8, 2013, date may be extended by further Order.

Finally, in accordance with Order EA-11-013, by letter dated February 7, 2013 (ACO 13-0011) (ADAMS accession number ML13038A669), USEC informed the NRC of the completion of the Order requirements. In its letter, USEC noted that the transfer closing will become effective on Friday, February 8, 2013, and provided a description of their actions to satisfy the Order's conditions. In its letter, USEC stated that, for satisfying Condition 1, by letter dated January 31, 2013 (ACO 13-0010) (ADAMS accession number ML130380628), it provided executed financial assurance documentation for the Lead Cascade associated with the transfers. In its letter, USEC stated that the new instruments simply changed the principal's/grantor's name change from USEC to ACO. For satisfying Condition 2, as previously committed to in its September 10, 2010 (AET 10-0039), letter, USEC re-stated that ACO will abide by all constraints, conditions, requirements, and commitments of USEC's licenses, and that, with regard to any open inspection items, ACO will assume full responsibility for such items and any resulting NRC actions. For satisfying Condition 3, in Enclosure 1 of letter ACO 13-0011 USEC provided a copy of DOE's consent to the United States Enrichment Corporation (the Corporation) request for the sublease assignment to ACO under the Gas Centrifuge Enrichment Plant (GCEP) lease between DOE and the Corporation. In its letter, dated February 6, 2013, DOE confirmed that the DOE's consent to the assignment will be effective as of the date and time of the transfer of USEC's materials licenses from USEC Inc. to ACO, and that the Price-Anderson indemnification provided to the Corporation under the GCEP lease will apply to ACO's activities conducted under the sublease between the Corporation and ACO. Enclosure 2 of USEC's letter provided the unexecuted Assignment and Assumption Agreement between USEC and ACO, acknowledged and agreed to by the Corporation. By letter dated February 8, 2013 (ACO 13-0012) (ADAMS accession number ML13039A187) USEC provided the executed agreement effective February 8, 2013.

The NRC reviewed the information provided by USEC in its letters ACO 13-0010 and ACO 13-0011. With regard to Condition 1, the NRC staff evaluated the executed financial assurance documentation for the Lead Cascade as submitted in its January 31, 2013 (ACO 13-0010), and confirmed that the only change to the financial assurance instruments was the

principal's/grantor's name change from USEC to ACO. In addition, the NRC staff concluded that the executed financial instruments were acceptable and properly reflected the licensee's new name of American Centrifuge Operating, LLC (ADAMS accession number ML13036A098). The NRC staff also concluded that the change is acceptable and, as such, the executed financial assurance documentation for the Lead Cascade is approved. The NRC staff concluded that, with the approval of the executed financial assurance instruments, USEC has fully satisfied Condition 1 of Order EA-11-013. With regard to Condition 2, the NRC staff had previously determined that this Condition was already satisfied. With regard to Condition 3, the NRC staff concluded that the DOE's consent to the Corporation's request for the sublease assignment to ACO under the GCEP, as provided by USEC, satisfies Condition 3 of the Order and, therefore, this Condition is closed. Therefore, based on the information provided by USEC, the NRC staff concludes that USEC has satisfied the 3 conditions of Order EA-11-013 and, as such, the transfers of licenses, SNM-7003 for the Lead Cascade and SNM-2011 for the ACP to ACO, are completed.

Enclosures 1 and 2 of this letter provide the public and non-public versions, respectively, of amended materials license SNM-7003 for the Lead Cascade. Enclosures 3 and 4 provide the public and non-public versions, respectively, of amended materials license SNM-2011 for the ACP. These amendments effectuate the direct transfer of these licenses from USEC Inc. to ACO and will become effective at 6:00 PM, February 8, 2013.

In accordance to 10 CFR 2.390(d) of the NRC's "Rules of Practice," a copy of this letter, without Enclosures 2 and 4, will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's document system ADAMS. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

P. Miner

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If you have any questions regarding this matter, please contact Mr. Osiris Siurano-Perez at (301) 492-3117, or by e-mail at osiris.siurano-perez@nrc.gov.

Sincerely,

/RA/

Brian W. Smith, Chief
Uranium Enrichment Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket Nos. 70-7003, 70-7004
License Nos. SNM-7003, SNM-2011

Enclosures:

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cc: Randall DeVault, DOE Oak Ridge Office
Vernon Shanks, USEC Inc.

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P. Miner

If you have any questions regarding this matter, please contact Mr. Osiris Siurano-Perez at (301) 492-3117, or by e-mail at osiris.siurano-perez@nrc.gov.

Sincerely,

Brian W. Smith, Chief
Uranium Enrichment Branch
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

Docket Nos.: 70-7003, 70-7004
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