

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 10/07/04**

COMMISSIONERS:

Nils J. Diaz, Chairman  
Edward McGaffigan, Jr.  
Jeffrey S. Merrifield

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In the Matter of )  
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USEC, Inc. )  
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(American Centrifuge Plant) )  
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Docket No. 70-7004

**CLI-04-30**

**NOTICE OF RECEIPT OF APPLICATION FOR LICENSE; NOTICE OF AVAILABILITY OF APPLICANT'S ENVIRONMENTAL REPORT; NOTICE OF CONSIDERATION OF ISSUANCE OF LICENSE; AND NOTICE OF HEARING AND COMMISSION ORDER**

**I. Receipt of Application and Availability of Documents**

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC or the Commission) received on August 23, 2004, an application, safety analysis report, and environmental report from USEC, Inc. (hereinafter USEC), for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 10 percent U-235 by the gas centrifuge process. The plant, to be known as the American Centrifuge Plant, would be located in Piketon, Ohio. USEC, Inc. is a Delaware corporation.

Copies of USEC's application, safety analysis report, and environmental report (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390, Availability of Public Records) are available for public inspection at the Commission's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for review and copying using

any of the following methods: (1) enter the NRC's Gas Centrifuge Enrichment Facility Licensing Web site at <http://www.nrc.gov/materials/fuel-cycle-fac/gas-centrifuge.html#correspondence>; (2) enter the NRC's Agency wide Document Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html>, where the accession numbers for USEC's application (including USEC's safety analysis report and USEC's environmental report) is ML042800551 (3) contact the PDR by calling (800) 397-4209, faxing a request to (301) 415-3548, or sending a request by electronic mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). Hard copies of the documents are available from the PDR for a fee.

The NRC has now accepted USEC's application for docketing and accordingly is providing this notice of hearing and notice of opportunity to intervene on USEC's application for a license to construct and operate a centrifuge enrichment facility. Pursuant to the Atomic Energy Act of 1954, as amended, (Act) the NRC staff will prepare a safety evaluation report (SER) after reviewing the application and making findings concerning the public health and safety and common defense and security. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR Part 51, NRC will complete an environmental evaluation and prepare an environmental impact statement (EIS) before the hearing on the issuance of a license is completed. The preparation of the EIS will be the subject of a separate notice in the Federal Register.

When available, the NRC staff's safety evaluation and its EIS (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) will also be placed in the PDR and in ADAMS. Copies of correspondence between the NRC and USEC, and transcripts of prehearing conferences and hearings (except for portions thereof subject to withholding from public inspection in accordance with 10 CFR 2.390) similarly will be made available to the public.

If following the hearing, the Commission is satisfied that USEC has complied with the Commission's regulations and the requirements of this Notice and Commission Order and the Commission finds that the application satisfies the applicable standards set forth in 10 CFR 30.33, 40.32, and 70.23, a single license will be issued authorizing (1) the receipt, possession, use, delivery, and transfer of byproduct (e.g., calibration sources), source and special nuclear material in the American Centrifuge Plant; and (2) the construction and operation of the American Centrifuge Plant. Prior to commencement of operations of the American Centrifuge Plant, if it is licensed, in accordance with section 193(c) of the Act and 10 CFR 70.32(k), NRC will verify through inspection that the facility has been constructed in accordance with the requirements of the license for such construction and operation. The inspection findings will be published in the Federal Register.

## **II. Notice of Hearing**

A. Pursuant to 10 CFR 70.23a and Section 193 of the Act, as amended by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101 -575), a hearing will be conducted according to the rules of procedure in 10 CFR Part 2, Subparts A, C, G, and to the extent that classified information becomes involved, Subpart I. The hearing will be held under the authority of sections 53, 63, 189, 191, and 193 of the Act. The applicant and NRC staff shall be parties to the proceeding.

B. Pursuant to 10 CFR Part 2, Subpart C, the hearing shall be conducted by an Atomic Safety and Licensing Board (Board) appointed by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel. Notice as to the membership of the Board will be published in the Federal Register at a later date.

C. 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 30.33, 40.32, and 70.23, and whether the requirements of 10 CFR Part 51 have been met.

D. If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4, the 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 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, and (2) whether the review conducted by the NRC staff pursuant to 10 CFR Part 51 has been adequate.

E. Regardless of whether the proceeding is contested or uncontested, the Board will, in its 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; independently consider the final balance among conflicting factors contained in the record of proceeding with a view to determining the appropriate action to be taken; and determine whether a license should be issued, denied, or conditioned to protect the environment.

F. If the proceeding becomes a contested proceeding, the Board shall make findings of fact and conclusions of law on admitted contentions. With respect to matters set forth in paragraph C of this section but not covered by admitted contentions, the Board will make the determinations set forth in paragraph D without conducting a de novo evaluation of the application.

G. By **[60 days from the date of publication of this Federal Register notice]**, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Petitions for leave to intervene shall be filed in accordance with the provisions of 10 CFR 2.309. Interested persons should consult 10 CFR Part 2, section 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD (or call the PDR at (800) 397-4209 or (301) 415-4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Website at <http://www.nrc.gov>. If a petition for leave to intervene is filed by the above date, the Commission will issue an order determining standing and refer petitions from persons with the requisite standing to the Board for further processing in the proceeding.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to

the findings the NRC must make to support the granting of a license in response to USEC's application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Board will set the time and place for any prehearing conferences and evidentiary hearings, and the respective notices will be published in the Federal Register.

A petition for leave to intervene and proffered contentions must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear

Regulatory Commission, HEARINGDOCKET@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemaking and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the petition for leave to intervene and proffered contentions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the petition for leave to intervene and proffered contentions should also be sent to Donald J. Silverman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW, Washington, DC 20004, the attorney for the applicant.

Non-timely filings of petitions for leave to intervene, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission or the Board that the petition should be granted, based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

H. A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as an interested entity under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by **[60 days from the date of publication of this Federal Register notice]**. The petition must be filed in accordance with the filing instructions in paragraph G, above, for petitions submitted under 10 CFR 2.309, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

I. Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by **[60 days from the date of publication of this Federal Register notice]**.

### **III. Commission Guidance**

#### **A. Presiding Officer Determination of Contentions**

The presiding officer shall issue a decision on the admissibility of contentions no later than sixty (60) days after the petitions and contentions are referred to the Board.

#### **B. Novel Legal Issues**

If rulings on petitions, on admissibility of contentions or the admitted contentions themselves, raise novel legal or policy questions, the Commission will provide early guidance and direction on the treatment and resolution of such issues. Accordingly, the Commission directs the Board to promptly certify to the Commission in accordance with 10 CFR 2.319(l) and 2.323(f) all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in this proceeding.

#### **C. Discovery Management**

(1) All parties, except the NRC staff, shall make the mandatory disclosures required by 10 CFR 2.704 within forty-five (45) days of the issuance of the order admitting that contention.

(2) The presiding officer, consistent with fairness to all parties, should narrow the issues requiring discovery and limit discovery to no more than one round for admitted contentions.

(3) All discovery against the Staff shall be governed by 10 CFR 2.336(b) and 2.709. The Staff shall comply with 10 CFR 2.336(b) no later than 30 days after the Board order admitting contentions and shall update the information at the same time as the issuance of the SER or the Final Environmental Impact Statement (FEIS). Discovery under 10 CFR 2.709 shall not commence until the issuance of the particular document, i.e., SER or EIS, unless the Board, in its discretion, finds that commencing discovery against the Staff on safety issues before the SER is issued, or on environmental issues before the FEIS is issued will expedite the hearing without adversely impacting the Staff's ability to complete its evaluation in a timely manner.

(4) No later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the Staff shall make the pretrial disclosures required by 10 CFR 2.704(c).

#### D. Hearing Schedule

In the interest of providing a fair hearing, avoiding unnecessary delays in NRC's review and hearing process, and producing an informed adjudicatory record that supports the licensing determination to be made in this proceeding, the Commission expects that both the Board and NRC staff, as well as the applicant and other parties to this proceeding, will follow the applicable requirements contained in 10 CFR Part 2 and guidance in the Commission's Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18 (1998) [63 Fed. Reg. 41872 (August 5, 1998)] to the extent that such guidance is not inconsistent with specific guidance in this Order. The guidance in the Statement of Policy on Conduct of Adjudicatory Proceedings is intended to improve the management and the timely completion of the proceeding and addresses hearing schedules, parties' obligations, contentions and

discovery management. In addition, the Commission is providing the following direction for this proceeding:

1) The Commission directs the Board to set a schedule for the hearing in this proceeding consistent with this order that establishes as a goal the issuance of a final Commission decision on the pending application within two-and-one-half years (30 months) from the date that the application was received. Formal discovery against the Staff shall be suspended until after the Staff completes its final SER and EIS in accordance with the direction provided in paragraph C.(3) above.

2) The evidentiary hearing with respect to issues should commence promptly after completion of the final Staff documents (SER or EIS) unless the Board, in its discretion, finds that starting the hearing with respect to one or more safety issues prior to issuance of the final SER<sup>1</sup>(or one or more environmental contentions directed to the applicant's Environmental Report) will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

(3) The Commission also believes that issuing a decision on the pending application within about two-and-one-half years may be reasonably achieved under the rules of practice contained in 10 CFR Part 2 and the enhancements directed by this order. We do not expect the Board to sacrifice fairness and sound decision-making to expedite any hearing granted on this application. We do expect the Board to use the techniques specified in this order and in

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<sup>1</sup>The Commission believes that, in the appropriate circumstances, allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final SER is issued will serve to further the Commission's objective, as reflected in the Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, supra, to ensure a fair, prompt, and efficient resolution of contested issues. For example, it may be appropriate for the Board to permit discovery against the staff and/or the commencement of an evidentiary hearing with respect to safety issues prior to the issuance of the final SER in cases where the applicant has responded to the Staff's "open items" and there is an appreciable lag time until the issuance of the final SER, or in cases where the initial SER identifies only a few open items.

the Commission's policy statement on the conduct of adjudicatory proceedings (CLI-98-12, *supra*) to ensure prompt and efficient resolution of contested issues. See also Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981).

4) If this is a contested proceeding, the Board should adopt the following milestones, in developing a schedule, for conclusion of significant steps in the adjudicatory proceeding.<sup>2</sup>

Within <u>10 days</u> of Commission's order determining standing:	Persons found to have standing or entities participating under 10 CFR 2.309(d) may submit a motion for reconsideration (see below, at Section IV.B).*
Within <u>20 days</u> of the Commission's order determining standing:	Persons found to have standing or entities participating under 10 CFR 2.309(d) may respond to any motion for reconsideration.
Within <u>60 days</u> of the Commission's order determining standing and referring petitions and contentions to the ASLB:	ASLB decision on admissibility of contentions.
Within <u>30 days</u> of the ASLB decision determining admission of contentions:	Staff prepares hearing file.
Within <u>90 days</u> of the ASLB decision determining admission of contentions:	Completion of discovery on admitted contentions, except against the Staff (including contentions on environmental issues arising under NEPA).
Within <u>110 days</u> of the ASLB decision determining admission of contentions:	Deadline for summary disposition motions on admitted contentions.**
Within <u>150 days</u> of the ASLB decision determining admission of contentions:	ASLB decision on summary disposition motions on admitted contentions.
Date of issuance of final SER/EIS	Staff updates hearing file.
Within <u>20 days</u> of the issuance of the final SER/EIS:	Motions to amend contentions; motions for late-filed contentions.

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<sup>2</sup>This schedule assumes that the SER and FEIS are issued essentially at the same time. If these documents are not to be issued very close in time, the Board should adopt separate schedules but concurrently running for the safety and environmental reviews consistent with the timeframes herein for each document.

Within <u>40 days</u> of the issuance of final SER/EIS:	Completion of answers and replies to motions for amended and late-filed contentions.
Within <u>50 days</u> of the issuance of the final SER/EIS:	ASLB decision on admissibility of late-filed contentions; deadline for summary disposition motions on remaining admitted contentions.***
Within <u>80 days</u> of the issuance of final SER/EIS:	Completion of discovery on late-filed contentions; ASLB decision on summary disposition motions on remaining contentions.
Within <u>90 days</u> of the issuance of final SER/EIS:	Direct testimony filed on remaining contentions and any amended or admitted late-filed contentions.
Within <u>100 days</u> of the issuance of final SER/EIS:	Cross-examination plans filed on remaining contentions and any amended or admitted late-filed contentions.
Within <u>105 days</u> of the issuance of final SER/EIS:	Evidentiary hearing begins on remaining contentions and any amended or admitted late-filed contentions.
Within <u>135 days</u> of the issuance of final SER/EIS:	Completions of evidentiary hearing on remaining contentions and any amended or admitted late-filed contentions.
Within <u>180 days</u> of the issuance of final SER/EIS:	Completion of findings and replies.
Within <u>240 days</u> of the issuance of final SER/EIS:	ASLB's initial decision.

- \* Motions for reconsideration do not stay this schedule.
- \*\* The schedule presumes that a prehearing conference order would establish the deadline for filing of summary disposition motions 20 days after close of discovery, consistent with 10 CFR 2.710(a), answers to be filed 10 days after filing of any motion, replies to be filed 10 days after any answer, and the Board to issue a decision on any summary disposition motion 20 days thereafter.
- \*\*\* No summary disposition motions on late-filed contentions are contemplated.

To meet these milestones, the Board should direct the participants to serve all filings by electronic mail (in order to be considered timely, such filings must be received by the Board and parties no later than midnight Eastern Time on the date due, unless otherwise designated by

the Board), followed by conforming hard copies that may be sent by regular mail. If participants do not have access to electronic mail, the Board should adopt other expedited methods of service, such as express mail, which would ensure receipt on the due date (“in-hand”). If pleadings are filed by electronic mail, or other expedited methods of service which would ensure receipt on the due date, the additional period provided in our regulations for responding to filings served by first-class mail or express delivery shall not be applicable. See 10 CFR 2.306.

In addition, to avoid unnecessary delays in the proceeding, the Board should not grant requests for extensions of time absent unavoidable and extreme circumstances. Although summary disposition motions are included in the schedule above, the Board shall not entertain motions for summary disposition under 10 CFR 2.710, unless the Board finds that such motions are likely to expedite the proceeding. Unless otherwise justified, the Board shall provide for the simultaneous filing of answers to proposed contentions, responsive pleadings, proposed findings of fact, and other similar submittals.

5) Parties are obligated in their filings before the Board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, in a party being dismissed from the proceeding.

6) The Commission directs the Board to inform the Commission promptly, in writing, if the Board determines that any single milestone could be missed by more than 30 days. The Board must include an explanation of why the milestone cannot be met and the measures the Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule.

F. Commission Oversight

As in any proceeding, the Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the Board and participants and to resolve any matter in controversy itself.

**IV. Applicable Requirements**

A. The Commission will license and regulate byproduct, source, and special nuclear material at the American Centrifuge Plant in accordance with the Atomic Energy Act of 1954, as amended. Section 274c.(1) of the Act was amended by Public Law 102-486 (October 24, 1992) to require the Commission to retain authority and responsibility for the regulation of uranium enrichment facilities. Therefore, in compliance with law, the Commission will be the sole licensing and regulatory authority with respect to byproduct, source, and special nuclear material for the American Centrifuge Plant, and with respect to the control and use of any equipment or device in connection therewith.

Many rules and regulations in 10 CFR chapter I are applicable to the licensing of a person to receive, possess, use, transfer, deliver, and process byproduct, source and special nuclear material in the quantities that would be possessed at the American Centrifuge Plant. These include 10 CFR Parts 19, 20, 21, 30, 40, 51, 70, 71, 73, 74, 95, 140, 170, and 171 for the licensing and regulation of byproduct, source, and special nuclear material, including requirements for notices to workers, reporting of defects, radiation protection, waste disposal, decommissioning funding, and insurance.

With respect to these regulations, the Commission notes that this is the third proceeding involving the licensing of an enrichment facility. The Commission issued a number of decisions in an earlier proceeding regarding a proposed site in Homer, Louisiana. These final decisions, *Louisiana Energy Services* (Clairborne Enrichment Center), CLI-92-7, 35 NRC 93 (1992);

*Louisiana Energy Services* (Clairborne Enrichment Center), CLI-97-15, 46 NRC 294 (1997); and *Louisiana Energy Services* (Clairborne Enrichment Center), CLI-98-3, 47 NRC 77 (1998); resolve a number of issues concerning uranium enrichment licensing and may be relied upon as precedent.

Consistent with the Act, and the Commission's regulations, the Commission is providing the following direction for licensing uranium enrichment facilities:

1. Environmental Issues

a) General: 10 CFR Part 51 governs the preparation of an environmental report and an EIS for a materials license. USEC's environmental report and the NRC staff's associated EIS are to include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative.

b) Treatment of depleted uranium hexafluoride tails: As to the treatment of the disposition of depleted uranium hexafluoride tails (depleted tails) in these environmental documents, unless USEC demonstrates a use for uranium in the depleted tails as a potential resource, the depleted tails will be considered waste. An approach for disposition of tails that is consistent with section 3113 of the USEC Privatization Act constitutes a "plausible strategy" for disposition of the USEC depleted tails. The Commission is considering matters of law applicable to disposition of tails which may be dispositive of matters arising in a USEC proceeding. See *Louisiana Energy Services* (National Enrichment Facility), CLI-04-25, slip op. at 5 (Aug. 18, 2004). The NRC staff may consider the DOE EIS in preparing the staff's EIS. Alternatives for the disposition of depleted uranium tails will need to be addressed in these documents. As part of the licensing process, USEC must also address the health, safety, and security issues associated with the storage of depleted uranium tails on site pending removal of the tails from the site for disposal or DOE dispositioning.

## 2. Financial Qualifications

Review of financial qualifications for enrichment facility license applications is governed by 10 CFR Part 70. In *Louisiana Energy Services* (Clairborne Enrichment Center), CLI-97-15, 46 NRC 294, 309 (1997) the Commission held that the 10 CFR Part 70 financial criteria, 10 CFR 70.22(a)(8) and 70.23(a)(5), could be met by conditioning the LES license to require funding commitments to be in place prior to construction and operation. The specific license condition approved in that proceeding, which addressed a minimum equity contribution of 30% from the parents and affiliates of LES partners prior to construction of the associated capacity and having in place long term enrichment contracts with prices sufficient to cover both construction and operating costs, including a return on investment, for the entire term of the contracts prior to constructing or operating the facility is one way to satisfy the requirements of 10 CFR Part 70.

## 3. Antitrust Review

The USEC enrichment facility is subject to sections 53 and 63 of the Act, and is not a production and utilization facility licensed under section 103. Consequently, the NRC does not have antitrust responsibilities for USEC similar to the antitrust responsibilities under section 105 of the Act. The NRC will not entertain or consider antitrust issues in connection with the USEC application in this proceeding.

## 4. Foreign Ownership

Section 193(f) of the Act addresses foreign ownership, control and domination of enrichment facilities with regard to USEC and its successors. The requirements of section 193(f) are incorporated in 10 CFR 70.40.

5. Creditor Requirements

Pursuant to section 184 of the Act, the creditor regulations in 10 CFR 50.81 shall apply to the creation of creditor interests in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U-235. In addition, the creditor regulations in 10 CFR 70.44 shall apply to the creation of creditor interests in special nuclear material. These creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements (such as sale and leaseback) not covered by 10 CFR 50.81, provided it can be found that such arrangements are not inimical to the common defense and security of the United States.

6. Classified Information

All matters of classification of information related to the design, construction, operation, and safeguarding of the American Centrifuge Plant shall be governed by classification guidance in "DOE Classification Guide for Isotope Separation by the Gas Centrifuge Process (CG-IGC-1)" (June 2002) and any later versions. Any person producing such information must adhere to the criteria in CG-IGC-1. All decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC and are not subject to de novo review in this proceeding.

7. Access to Classified Information

Portions of USEC's application for a license are classified Restricted Data or National Security Information. Persons needing access to those portions of the application will be required to have the appropriate security clearance for the level of classified information to which access is required. Access requirements apply equally to intervenors, their witnesses and counsel, employees of the applicant, its witnesses and counsel, NRC personnel, and others. Any person who believes that he or she will have a need for access to classified

information for the purpose of this licensing proceeding, including the hearing, should immediately contact the NRC, Division of Fuel Cycle Safety and Safeguards, Washington, D.C., 20555, for information on the clearance process. Telephone calls may be made to Linda Marshall, Licensing Assistant, Special Projects Branch. Telephone: (301) 415-8129.

8. Obtaining NRC Security Facility Approval and for Safeguarding Classified Information Received or Developed Pursuant to 10 CFR Part 95

Any person who requires possession of classified information in connection with the licensing proceeding may process, store, reproduce, transmit, or handle classified information only in a location for which facility security approval has been obtained from the NRC's Division of Nuclear Security (NSIR), Washington, D.C., 20555. Telephone calls may be made to A. Lynn Silvious, Chief, Information Security Section. Telephone: (301) 415-2214.

B. Reconsideration

The above guidance does not foreclose the applicant, any person admitted as a party to the hearing, or an entity participating under 10 CFR 2.315(c) from litigating material factual issues necessary for resolution of contentions in this proceeding. Persons found by the Commission to have standing and entities participating under 10 CFR 2.315(c) as of the date of the Commission's order on standing may also move the Commission to reconsider any portion of Section IV of this Notice and Commission Order where there is no clear Commission precedent or unambiguously governing statutes or regulations. Any motion to reconsider must be filed within 10 days after the Commission's order on standing. The motion must contain all technical or other arguments to support the motion. Other persons granted standing and entities participating under 10 CFR 2.315(c), including the applicant and the NRC staff, may respond to motions for reconsideration within 20 days of the Commission's Order. Motions will be ruled upon by the Commission. A motion for reconsideration does not stay the schedule set

out above in section III.D.(4). However, if the Commission grants a motion for reconsideration, it will, as necessary, provide direction on adjusting the hearing schedule.

#### **V. Pending Energy Legislation**

The Energy Policy Act of 2003, H.R. 6, is currently pending in Congress. H.R. 6, as currently constituted, contains provisions that address the manner in which certain issues are to be dealt with and a schedule for overall Commission consideration of an application for licensing an uranium enrichment facility. In the event that H.R. 6 is enacted, the Commission may need to issue an additional order to conform guidance and schedules for the USEC application to any new statutory requirements.

#### **VI. Notice of Intent Regarding Classified Information**

As noted above, a hearing on this application will be governed by 10 CFR Part 2, Subparts A, C, G, and to the extent classified material becomes involved, Subpart I. Subpart I requires in accordance with 10 CFR 2.907 that the NRC staff file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the staff to avoid the introduction of Restricted Data or National Security Information into a proceeding. The applicant has submitted portions of its application that are classified. The Commission notes that, since the entire application becomes part of the record of the proceeding, the NRC staff has found it impracticable for it to avoid the introduction of Restricted Data of National Security Information into the proceeding.

IT IS SO ORDERED.

For the Commission

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 7<sup>th</sup> day of October, 2004