

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSIONBEFORE THE COMMISSION

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

NRC STAFF RESPONSE TO USEC, INC. MOTIONS FOR
CORRECTIONS TO CLI-04-30 AND FOR LEAVE TO SUBMIT VIEWS
ON MATTERS OF LAW POTENTIALLY DISPOSITIVE TO THIS PROCEEDING

INTRODUCTION

On August 23, 2004, USEC, Inc. (USEC) submitted to the NRC Staff (Staff) an application for a license to construct and operate a proposed uranium enrichment facility, the American Centrifuge Plant (ACP), and to possess and use byproduct, source, and special nuclear material in the ACP.¹ The Commission issued a notice of receipt of the application, a notice of hearing,² a notice of opportunity to intervene and an accompanying Order, CLI-04-30, on October 7, 2004, which was published in the *Federal Register* on October 18, 2004.³ Also on October 18, 2004, USEC filed Motions for corrections to CLI-04-30, and for leave to submit its views on certain

¹ See Submittal of the License Application for the American Centrifuge Plant in Piketon, OH (Aug. 23, 2004) (ML042800551).

² As provided by section 193b. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2243(b), and 10 C.F.R. § 70.23a, the NRC conducts a mandatory hearing for the licensing of the construction and operation of a uranium enrichment facility, governed by 10 C.F.R. Part 2, Subparts A, C, G, and I of the NRC's Rules of Practice.

³ See USEC, Inc. (American Centrifuge Plant), CLI-04-30, 60 NRC __ (Oct. 7, 2004) (slip op.) (69 Fed. Reg. 61,411 (Oct. 18, 2004)) (ML042820601).

matters identified in the Order.⁴ For the reasons set forth below, the USEC Motions should be denied.

DISCUSSION

USEC's Motions should be denied, as they raise issues that are either moot or premature. USEC first notes the existence of two administrative errors, and requests corrections to the name of the applicant ("USEC, Inc.," instead of "United States Enrichment Corporation, Inc.") and to a statement of the authority requested by the application (for a license to enrich uranium hexafluoride up to a maximum enrichment of 10 percent U-235, instead of 5 percent).⁵ The Staff notes that while these errors did appear in the slip opinion of CLI-04-30 issued on October 7, 2004, the Order as published in the *Federal Register* on October 18, 2004, already reflects the corrections requested.⁶ To this extent, USEC's Motion is thus moot, the relief sought having already been granted.

USEC also seeks leave to present its position on matters of law identified in the Commission's Order.⁷ USEC notes that in the section of the Order outlining the requirements applicable to this proceeding, the Commission makes the following statement about the issue of the treatment of depleted uranium hexafluoride tails: "The Commission is considering matters of law applicable to disposition of tails which may be dispositive of matters arising in a USEC proceeding[.]" referencing a matter pending before it in another proceeding related to a wholly

⁴ See USEC Inc. Motion for Corrections to CLI-04-30 and for Leave to Submit Views on Matters of Law Potentially Dispositive in this Proceeding (Oct. 18, 2004) (USEC Motions). USEC also filed a Brief presenting arguments should the Commission grant its Motion. See USEC Inc. Brief on the Proper Classification of Depleted Uranium Tails (Oct. 18, 2004) (USEC Brief).

⁵ See USEC Motions at 2-3.

⁶ See 69 Fed. Reg. at 61,411.

⁷ See USEC Motions at 3.

separate application for a license to construct and operate an enrichment facility.⁸ In CLI-04-25, the Commission directed the parties in the *LES* proceeding to file briefs on the issue of whether depleted uranium hexafluoride tails meet the definition in 10 C.F.R. Part 61 of low-level radioactive waste, in the context of an admitted *LES* intervenors' contention that the tails are not suitable for transfer to the Department of Energy under section 3113 of the USEC Privatization Act.⁹ While disclaiming any desire to participate as a party in the *LES* proceeding, USEC here asserts that it has "a fundamental and unique interest in the Commission's resolution of the issue regarding the appropriate classification of depleted uranium tails, since substantial quantities of such materials will be generated at the ACP and will require appropriate disposition."¹⁰ USEC further states that the costs of depleted uranium disposition affect USEC's plans for meeting applicable financial assurance requirements, as well as its basic funding plans.¹¹ Based on its belief that no party in *LES* effectively represents its interests, and because a decision on the classification of depleted uranium tails in *LES* may affect these interests, USEC believes that it should be permitted to be heard on this issue and presents its brief to the Commission.¹²

USEC's Motion should be denied. Despite USEC's claimed interests, the Staff notes that USEC's request is both premature and procedurally improper. With the exception of USEC and the Staff, other potential parties to the proceeding have not been identified, let alone admitted, as interested persons may submit petitions to intervene through December 17, 2004.¹³ In the context

⁸ See USEC Motions at 3; *American Centrifuge Plant*, CLI-04-30, 60 NRC at __ (slip op. at 15) (69 Fed. Reg. at 61,415) (citing *La. Energy Servs., L.P.* (National Enrichment Facility), CLI-04-25, 60 NRC __, __ (Aug. 18, 2004) (slip op. at 5) (*LES*)).

⁹ See *LES*, CLI-04-25, 60 NRC at __ (slip op. at 4-6).

¹⁰ See USEC Motions at 3.

¹¹ *Id.* at 3-4.

¹² *Id.*; see also USEC Brief.

¹³ See 69 Fed. Reg. at 61,412.

of this proceeding, USEC might well be expected to submit its arguments in response to a proffered contention.¹⁴ This would further the purpose of the Commission's contention requirements, which is to "ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation."¹⁵ Although USEC disclaims any desire to become a party in the *LES* proceeding,¹⁶ USEC would be bound under principles of *stare decisis* by a decision with precedential effect in the *LES* proceeding on the treatment of depleted uranium tails.¹⁷ The proper course for USEC to ensure that its views would be considered would have been to file a motion for leave to file an amicus brief on the issue in the *LES* proceeding, where unlike this proceeding, the issue is currently being adjudicated in the context of an admitted contention.¹⁸ USEC's Motion should thus be denied. In the alternative, the Staff does not object if USEC's Motion is held in abeyance pending a determination of whether, in the end, the waste classification issue is in contention in this proceeding.

CONCLUSION

For the foregoing reasons, USEC's Motions should be denied.

Respectfully submitted,

/RA/

Michael A. Woods
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of October, 2004

¹⁴ See 10 C.F.R. § 2.309(h)(1).

¹⁵ See Changes to Adjudicatory Process, 69 Fed. Reg. 2,182, 2,202 (Jan. 14, 2004).

¹⁶ See USEC Motions at 3.

¹⁷ See *Va. Elec. & Power Co.* (North Anna Nuclear Power Station, Units 1 & 2), ALAB-584, 11 NRC 451, 465 (1980); *Duke Power Co.* (Cherokee Nuclear Station, Units 1, 2, & 3), ALAB-482, 7 NRC 979, 981 n.4 (1978).

¹⁸ See *LES*, CLI-04-25, 60 NRC at __ (slip op. at 5).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	Michael A. Woods
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Mail Stop: O-15 D21 Washington, D.C. 20555-0001
Telephone Number:	(301) 415-3629
Facsimile:	(301) 415-3725
E-mail Address:	maw2@nrc.gov
Admissions:	State of Georgia, Superior Court of Fulton County
Name of Party:	NRC Staff

Respectfully submitted,

/RA/

Michael A. Woods
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of October, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.314(b), the following information is provided:

Name:	Stephen H. Lewis
Address:	U.S. Nuclear Regulatory Commission Office of the General Counsel Mail Stop: O-15 D21 Washington, D.C. 20555-0001
Telephone:	301-415-1684
Facsimile:	301-415-3725
E-Mail Address:	shl@nrc.gov
Admissions:	Commonwealth of Massachusetts District of Columbia
Name of Party:	NRC Staff

Respectfully submitted,

/RA/

Stephen H. Lewis
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of October, 2004

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO USEC, INC. MOTIONS FOR CORRECTIONS TO CLI-04-30 AND FOR LEAVE TO SUBMIT VIEWS ON MATTERS OF LAW POTENTIALLY DISPOSITIVE TO THIS PROCEEDING," and "NOTICE[S] OF APPEARANCE" for Michael A. Woods and Stephen H. Lewis in the above-captioned proceeding have been served on the following by deposit in the Nuclear Regulatory Commission's internal mail system as indicated by an asterisk (*), or by U.S. Mail, first class, and electronic mail as indicated by a double asterisk (**) on this 28th day of October, 2004.

Office of the Secretary * **
ATTN: Rulemaking and Adjudications Staff
Mail Stop: O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate Adjudication *
Mail Stop: O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Donald J. Silverman, Esq. **
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20005
E-mail: dsilverman@morganlewis.com

Dennis J. Scott, Esq. **
Assistant General Counsel
USEC, Inc.
6903 Rockledge Drive
Bethesda, MD 20817
E-mail: scottd@usec.com

/RA/

Michael A. Woods
Counsel for NRC Staff