

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

DOCKETED
USNRC

October 19, 2005 (4:24pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Before Administrative Judges:
Lawrence G. McDade, Chairman
Paul B. Abramson
Richard E. Wardwell

| | | |
|-----------------------------|---|------------------------|
| In the Matter of |) | October 19, 2005 |
| |) | |
| USEC Inc. |) | Docket No. 70-7004 |
| (American Centrifuge Plant) |) | |
| |) | ASLBP No. 05-838-01-ML |

**USEC INC.'S MEMORANDUM ON THE BOARD'S JURISDICTION TO ENTERTAIN
PROPOSED NEW CONTENTIONS**

This memorandum is submitted by USEC Inc. (USEC) in response to the October 18, 2005 Order of the Atomic Safety and Licensing Board (Board), which directed the NRC Staff and USEC to submit memoranda on whether jurisdiction to entertain new late-filed contentions resides with the Board or the Commission. USEC believes that this Board would have jurisdiction to consider such proposed contentions.

The Commission, at the outset of this licensing proceeding, directed that "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." *USEC, Inc. (American Centrifuge Plant)*, CLI-04-30, 60 NRC 426, 427 (October 7, 2004). The Board has been designated to preside over the conduct of this hearing, including consideration of proposed contentions. *See USEC, Inc. (American Centrifuge Plant)*, CLI-05-11, 61 NRC 309, 310 (2005).

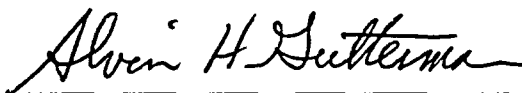
NRC regulations direct that "the Commission, the presiding officer or the Atomic Safety and

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Licensing Board designated to rule” consider certain factors in ruling on non-timely filings. 10 C.F.R. § 2.309(c).¹ Finally, “[t]he presiding officer’s jurisdiction in each proceeding terminates when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case upon considering himself or herself disqualified, whichever is earliest.” 10 C.F.R. § 2.318 (a) (2005). Nothing in the regulations suggests that the Board would lose jurisdiction to consider a late-filed petition simply because the Commission may be reviewing the Board’s earlier decision concerning contentions that were proffered in an earlier petition. In fact, the Commission’s order and the regulations clearly indicate that the Board retains jurisdiction to consider proposed late-filed contentions.

Respectfully submitted,



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Dated October 19, 2005

Counsel for USEC Inc.

¹ Of course, such contentions must also meet the requirements in 10 CFR § 2.309 (f).

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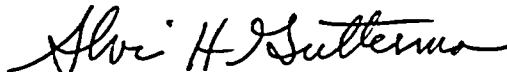
) Docket No. 70-7004

) ASLBP No. 05-838-01-ML
)

NOTICE OF APPEARANCE

The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance as counsel on behalf of Applicant, USEC Inc., in any proceeding related to the above-captioned matter.

Respectfully submitted,



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Dated October 19, 2004

Counsel for USEC Inc.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "USEC Inc.'s Memorandum on the Board's Jurisdiction to Entertain Proposed New Contentions" and Notice of Appearance of Alvin H. Gutterman were served upon the persons listed below by U.S. mail, first-class, postage prepaid, and by electronic mail, on this 19th day of October, 2005.

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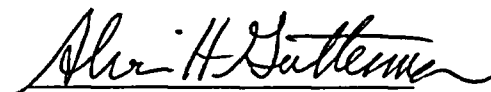
* E-mail, original and two copies

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