

SAFETY EVALUATION REPORT BY
THE OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
USEC INC. EXTENSION REQUEST FOR IMPLEMENTATION OF ORDER RELATING TO
CONSENT TO TRANSFER MATERIALS LICENSES
AMERICAN CENTRIFUGE LEAD CASCADE - DOCKET 70-7003
AMERICAN CENTRIFUGE PLANT - DOCKET 70-7004

1.0 **INTRODUCTION**

By letter dated July 22, 2011 (AET 11-0038) (Agencywide Documents Access and Management System (ADAMS) Accession Number ML11210B497), as supplemented by electronic communication dated August 1, 2011 (ADAMS Accession Number ML11213A282), USEC Inc. (USEC) submitted a request to the U.S. Nuclear Regulatory Commission (NRC) for an extension of the implementation date for the Order relating to the direct transfer of materials license numbers SNM-7003 and SNM-2011 from USEC to the subsidiary limited liability company, American Centrifuge Operating, LLC (ACO). In its letter, USEC requested an extension of time to February 9, 2012, to fully implement the conditions of Order EA-11-013.

2.0 **BACKGROUND**

By letter dated September 10, 2010 (AET 10-0039), USEC asked for NRC review and approval of a request for written consent to transfer materials licenses for the American Centrifuge Lead Cascade Facility (Lead Cascade) and the American Centrifuge Plant (ACP) from USEC to ACO. In its letter, USEC requested: (1) NRC consent to transfer control of license numbers SNM-7003 (for the Lead Cascade) and SNM-2011 (for the ACP) from USEC to ACO; and (2) NRC approval of changes to the Lead Cascade and ACP materials licenses and security program documents to reflect changes in USEC's corporate structure and the proposed change of licensee.

The NRC staff completed its review of USEC's request in February 2011 and issued a safety evaluation report (ADAMS Accession Number ML103630748). As noted in that report, based on its evaluation of the information provided, the NRC staff concluded that the proposed transfer of SNM-7003 and SNM-2011 and the corporate restructuring changes were consistent with applicable provisions of the law, regulations, and orders issued by the Commission and, as such, were acceptable. The NRC staff concluded that USEC's request should be approved pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(b), 10 CFR 40.46, "Inalienability of Licenses," and 10 CFR 70.36, "Inalienability of Licenses," subject to the following three 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 U.S. Department of

Energy (DOE) indemnification, before the transfers are completed.

The NRC issued Order EA-11-013, dated February 10, 2011 (ADAMS Accession Number ML103630745), documenting the NRC's approval of the license transfer requests. The Order provided the licensee 180 days for completing the direct transfer of the licenses and stated that in case the direct transfer of the licenses and all the conforming conditions had not been completed within the 180 day period (*i.e.*, by August 9, 2011), the Order shall become null and void. The Order further stated that on written application and for good cause shown, such date may be extended by further Order.

3.0 DISCUSSION AND EVALUATION

In its July 22, 2011, letter, USEC stated that it has been working diligently with DOE over the past several months to conclude the review process for USEC's loan guarantee application but would not be able to complete this process by August 9, 2011. Additionally, USEC provided the information summarized below on the status of the three conditions listed in Order EA-11-013:

Condition 1: USEC will obtain NRC approval on the revised financial assurance instruments for decommissioning of the Lead Cascade facility.

Status: In its July 22, 2011, letter, USEC stated that on May 17, 2011, the NRC staff completed its review of USEC letter AET 11-0017 dated April 12, 2011, which requested NRC review and approval of a draft surety bond rider for the Lead Cascade. The NRC staff provided comments on USEC's submittal (ADAMS Accession Number ML111250543). USEC also stated that it will provide a final draft surety bond addressing NRC's comments before the execution of the surety bond.

Condition 2: ACO, as stated in the request, will abide by all commitments and representations previously made by USEC with respect to the licenses.

Status: In its July 22, 2011, letter 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.

Condition 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.

Status: In its July 22, 2011, letter USEC stated that it plans to complete the sublease agreement(s) and satisfy this Order condition concurrent with

the closing on the DOE loan guarantee.

USEC stated that over the next 6-month period it plans to complete the necessary actions to satisfy the Order conditions, concurrent with the closing on the DOE loan guarantee. USEC also stated that there have been no changes in the information or technical and financial qualifications presented in its September 10, 2010, request for transferring the materials licenses.

The NRC staff reviewed the September 10, 2010, request for transferring the materials licenses and the request for extension of the February 10, 2011, Order to determine whether its previous findings (*i.e.*, that the proposed transfer of licenses would not have any adverse impact on the public health and safety, would not be inimical to the common defense and security, and would be in accordance with Sections 161(b), 161(i), 161(o), and 184 of the Atomic Energy Act of 1954, as amended, and the NRC's regulations) remain valid. Based on its review and evaluation of the information provided by USEC, the NRC staff determined that the basis for granting the September 10, 2010, transfer of licenses request has not changed and remains valid.

In addition, the NRC staff considered the information provided by USEC in its July 22, 2011, request, and the August 1, 2011, supplemental electronic communication, regarding why USEC would not be able to fully implement the three Order conditions and finish the proposed transfer of licenses by August 9, 2011. USEC stated that the review process of its loan guarantee application had not been completed and that condition #3 of the Order would be satisfied concurrent with the closing of the DOE loan guarantee. Since the review process of USEC's loan guarantee application has not yet been completed, the NRC staff determined that USEC would not be able to fully implement the conditions of Order EA-11-013 within the 180 day implementation period as directed by the February 10, 2011, Order. The NRC staff determined that this reason for delay establishes good cause for extending the implementation period of Order EA-11-013.

4.0 CONCLUSION

The NRC staff has considered the information presented in the July 22, 2011, USEC extension request, and the August 1, 2011, supplemental information and concludes that the licensee's submittal shows good cause for extending the effectiveness of the NRC's Order EA-11-013. In addition, the NRC staff has determined that the basis for originally approving the transfers of USEC's licenses for the Lead Cascade and the ACP from USEC to ACO remains valid and fully supports the NRC staff's previous findings. As such, USEC's request to extend the implementation date of Order EA-11-013, dated February 10, 2011, until February 9, 2012, should be approved.

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