

**SAFETY EVALUATION REPORT**  
**USEC INC. SECOND 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 January 6, 2012 (AET 12-0004) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12012A215), USEC Inc. (USEC) submitted a request to the U.S. Nuclear Regulatory Commission (NRC) for a second extension of the implementation date for the Order relating to the direct transfer of materials license numbers SNM-7003, for the American Centrifuge Lead Cascade Facility (Lead Cascade), and SNM-2011, for the American Centrifuge Plant (ACP), from USEC to its subsidiary limited liability company, American Centrifuge Operating, LLC (ACO). In its letter, USEC requested an extension of the implementation date for Order EA-11-013 approving the transfer of the licenses until May 18, 2012. However, by supplemental letter dated January 27, 2012 (AET 12-0012) (ADAMS Accession No. ML12032A279), USEC requested that the implementation date in Order-11-013 be extended to February 8, 2013.

2.0 **BACKGROUND**

In a letter dated September 10, 2010 (AET 10-0039, ADAMS Accession No. ML102660371), USEC initially asked for NRC review and approval of a request for written consent to transfer materials licenses for the Lead Cascade and the ACP from USEC to ACO. In its letter, USEC requested: (1) NRC consent to transfer control of license numbers SNM-7003 and SNM-2011 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 purpose of the transfer of licenses, as stated in USEC's application, is to facilitate financing under the U.S. Department of Energy (DOE) loan guarantee program and to permit future expansion of the ACP. USEC stated that it expected DOE to complete the DOE loan guarantee process prior to the transfer of the licenses.

The NRC staff completed its review of USEC's request in February 2011 and issued a Safety Evaluation Report (SER, ADAMS Accession No. 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,

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“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.

Accordingly, the NRC issued Order EA-11-013, dated February 10, 2011 (ADAMS Accession No. ML103630745), documenting the NRC’s approval of the transfer of licenses request. 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.

By letter dated July 22, 2011 (AET 11-0038, ADAMS Accession No. ML11210B497), as supplemented by electronic communication dated August 1, 2011 (ADAMS Accession No. ML11213A282), USEC submitted a request to the NRC for an extension of the implementation date for Order EA-11-013. In its letter, USEC requested an extension from August 9, 2011, to February 9, 2012, to fully implement the Conditions of Order EA-11-013.

In its letter, USEC stated that it had been working diligently with DOE 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 No. ML11250543). USEC also stated that it will provide a final draft surety bond addressing NRC staff 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.

The NRC staff reviewed the information provided by USEC in its July 22, 2011, letter, as supplemented by electronic communication dated August 1, 2011, and the information provided in the September 10, 2010, request for transferring the materials licenses 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) remained 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 had not changed and remained valid (ADAMS Accession No. ML103630748). As a result, on August 8, 2011, the NRC staff issued Order EA-11-180, approving the extension of the effectiveness of Order EA-11-013, from August 9, 2011, to February 9, 2012. The Order included the provision that on written application and for good cause shown, such date may be extended by further Order.

### 3.0 DISCUSSION AND EVALUATION

USEC stated that it expected DOE to complete the loan guarantee process prior to the transfer of the licenses. However, in its January 6, 2012, letter, USEC noted that this process had not been concluded. In addition, USEC stated that Condition 3 will be satisfied following completion of actions with the DOE, without any linkage to the loan guarantee. In its January 27, 2012, letter, USEC stated that due to uncertainty, it appears that the date for completion of activities associated with the sub-lease will extend beyond May 18, 2012. Accordingly, USEC stated that it will not be able to fully implement the Conditions in Order EA-11-013 by February 9, 2012, and is requesting that the Order implementation date be extended to February 8, 2013.

In its January 6, 2012, letter USEC also stated that it recently announced plans to work jointly with 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 stated that the RD&D program is 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. In addition, USEC noted that during the RD&D program it does not initially plan to utilize the financial entity envisioned in the organizational structure change, American Centrifuge Enrichment, LLC (ACE), to finance the RD&D program. Rather, USEC stated that it will be providing the funding to ACO at the outset of the RD&D program and ACE may be utilized to finance portions of the RD&D program and construction activities in the future. However, USEC stated that it believes its decision regarding the source of ACO's funding does not affect NRC's basis for approving the transfer of licenses, as documented in the SERs supporting Orders EA-11-013 and EA-11-180.

The NRC staff evaluated the current status of the 3 Conditions listed in Order EA-11-013 and determined that the status of the three Conditions is as follows:

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 provided revised draft financial assurance instruments for the Lead Cascade for NRC's review and approval. The NRC staff completed its review of the revised financial assurance instruments on January 12, 2012, and concluded that the revised instruments were acceptable (ADAMS Accession No. ML120030181). By letter dated January 6, 2012 (AET 12-0001), USEC submitted the final, Executed Financial Assurance Instruments Associated with the American Centrifuge Lead Cascade Facility (ADAMS Accession No. ML120250397). Therefore, based on the information provided by USEC, and the NRC staff's January 12, 2012, approval of the revised financial assurance instruments, the NRC staff concludes that this Condition is satisfied.

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 ACO will abide by all constraints, conditions, requirements, and commitments of USEC's licenses and will assume full responsibility for such items and any resulting NRC actions. Based on this information, the NRC staff determined that ACO will abide by all commitments and representations previously made by USEC, and therefore concludes that this Condition is satisfied.

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 January 6, 2012, letter USEC stated that this process has not been completed. As noted above, USEC stated that it appears 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 implement this Condition by February 9, 2012. Therefore, because USEC stated that Condition 3 cannot be fully satisfied by February 9, 2012, as required by Order EA-11-180, the NRC staff concludes that Condition 3 remains open.

The NRC staff reviewed the September 10, 2010, request for transferring the materials licenses, the information provided by USEC in its July 22, 2011, request to extend the implementation date until February 9, 2012, as supplemented by electronic communication dated August 1, 2011, and the January 6, 2012, request, as supplemented by letter dated January 27, 2012, 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 January 6, 2012, request, and the January 27, 2012, supplemental letter, regarding why USEC would not be able to fully implement all three Order Conditions and finish the proposed transfer of licenses by February 9, 2012. In its January 6, 2012 letter, USEC stated that Condition 3 will be satisfied following completion of actions with the DOE, without any linkage to the loan guarantee. According to USEC's January 27, 2012, letter, the date for completion of activities associated with the sub-lease will likely extend beyond May 18, 2012. Therefore, USEC stated that it will not be able to fully implement the conditions in Order EA-11-013 by February 9, 2012. Based on uncertainty regarding activities related to the sub-lease transfer that are beyond the control of USEC, the NRC staff determined that USEC has shown good cause for extending the implementation period of Order EA-11-013 from February 9, 2012, to February 8, 2013.

#### 4.0 CONCLUSION

The NRC staff considered the information provided by USEC in its January 6, 2012 (AET 12-0004), second extension request, as supplemented by letter dated January 27, 2012, and concludes that the licensee's submittal shows good cause for extending the effectiveness of NRC Order EA-11-013. The NRC staff also concludes that USEC has satisfied Conditions 1 and 2 of the Order, but Condition 3 remains open. Finally, 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. Therefore, USEC's request to extend the implementation date of Order EA-11-013, from February 9, 2012 to February 8, 2013, should be approved.

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