

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

Docket Nos.: 70-7003, 70-7004

**USEC, Inc.; American Centrifuge Plant; American Centrifuge Lead Cascade Facility;
Notice of Receipt of a License Transfer Application and Consideration of Approval of
Application Regarding Proposed Corporate Restructuring and Conforming Amendment
and Opportunity to Provide Comments and Request a Hearing**

[NRC-2009-0177]

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of request for written consent to transfer control of materials license and opportunity to request a hearing and provide written comments.

DATES: A request for a hearing must be filed by **May 14 2009**.

FOR FURTHER INFORMATION CONTACT: Osiris Siurano, Project Manager, Uranium Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC, 20555. Telephone: (301) 492-3117; Fax number: (301) 492-3359; email: Osiris.Siurano-Perez@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering an application for approval of a transfer of control regarding Special Nuclear Material License Nos. SNM-7003 and SNM-2011. These licenses were issued on February 24, 2004, and April 13, 2007, respectively, to USEC Inc., (the Licensee), for its American Centrifuge Lead Cascade

Facility (LCF) and American Centrifuge Plant (ACP), both located at the Portsmouth Gaseous Diffusion Plant site in Piketon, Ohio. The licenses authorize the Licensee to:

- 1) possess and use source and special nuclear material at the LCF; and,
- 2) construct and operate a gas centrifuge uranium enrichment facility, the ACP.

The application now being considered is dated February 10, 2009. The Licensee proposes to modify its existing corporate structure and has established a subsidiary limited liability corporation, American Centrifuge Holdings, LLC. American Centrifuge Holding, LLC consists of three additional subsidiaries: American Centrifuge Technology, LLC, American Centrifuge Enrichment, LLC, and American Centrifuge Operating, LLC. The Licensee requests NRC consent to transfer control of License Nos. SNM-7003 and SNM-2011 from USEC Inc. to the subsidiary limited liability company, American Centrifuge Operating, LLC. In addition, the Licensee requests NRC approval of changes to the LCF and the ACP Material Licenses, License Applications, and Security Program documents to reflect the changes in the Licensee's corporate structure. No physical or operational changes to the LCF or the ACP are being proposed. An NRC administrative review, documented in an e-mail sent to the Licensee on March 27, 2009, (ADAMS accession number ML090860886), found the application acceptable to begin a more detailed technical review. If the application is granted, the license would be amended for administrative purposes to reflect the transfer, by replacing references in the license to USEC Inc., with references to American Centrifuge Operating, LLC.

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 2.1301, the Commission is noticing in the *Federal Register* the receipt of the application for approval of the transfer of SNM-7003 and SNM-2001 because they involve major fuel cycle facilities licensed under 10 CFR Part 70. The NRC is considering the issuance of an order in accordance with 10 CFR 70.36, authorizing the transfer of control from USEC, Inc. to American Centrifuge

Operating, LLC. Pursuant to 10 CFR 70.36, no license granted under 10 CFR Part 70, and no right thereunder to possess or utilize special nuclear material granted by any license issued pursuant to the regulations in this Part, shall be transferred, assigned, or in any manner disposed of, either voluntary or involuntary, directly or indirectly, through transfer of control of any license to any person unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of Atomic Energy Act (AEA), and gives its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed restructuring and reorganization will not affect the qualifications of the Licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

If the February 10, 2009, application is granted, the licenses would be amended to reflect the Licensee's new status as an LLC and USEC Inc.'s reorganized ownership. Before such a license amendment is issued, the NRC will have made the findings required by the AEA and NRC's regulations. These findings will be documented in a Safety Evaluation Report (SER). An Environmental Assessment (EA) will not be performed because, pursuant to 10 CFR 51.22(c)(21), license transfer approvals and associated license amendments are categorically excluded from the requirement to perform an EA.

II. Opportunity to Request a Hearing

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected, and who desires to participate as a party, must file a request for a hearing. The hearing request must include a specification of the contentions that the person seeks to have litigated in the hearing, and must be filed in accordance with the NRC E-filing rule, which

the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing rule requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request: (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, confirms that a docket has been created, and downloads the EIE viewer, he or she can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF), in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a

transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the “Contact Us” link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>, or by calling the NRC electronic filing Help Desk, which is available between 8:00 a.m. and 8:00 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR. 2.302(g), file a motion with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted 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; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by

courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at: http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)-(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met. In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by **[INSERT DATE - 20 DAYS AFTER PUBLICATION]**.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the AEA to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes 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 requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information filed by the applicant or otherwise available to the petitioner at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical - primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.
2. Environmental - primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.
3. Emergency Planning - primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.
4. Physical Security - primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.
5. Miscellaneous - does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within 10 days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

As indicated below, pursuant to 10 CFR 2.310(g), any hearing would be subject to the procedures set forth in 10 CFR Part 2, Subpart M.

III. Opportunity to Provide Written Comments

In accordance with 10 CFR 2.1305, as an alternative to requests for hearings and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this *Federal*

Register notice. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

IV. Further Information

For further details with respect to this license transfer application, see the application dated February 10, 2009, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, <http://www.nrc.gov/reading-rm/adams.html>. The ADAMS accession numbers for the license transfer application are as follows: Incoming Request - ML090850065; Enclosure 1 - ML090850083; Enclosure 2 - Sensitive-Proprietary, Non Publically Available; Enclosure 3 - ML090850095; and, Enclosure 4 - ML090850098. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 15 day of April, 2009.

For the Nuclear Regulatory Commission.

/RA/

Brian W. Smith, Chief,
Uranium Enrichment Branch,
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