within the reporting period, including patents.

Comment: 26 Federal, four university, and two association commenters questioned the distinction between the mandatory and optional sections of the form.

Response: Only the "Accomplishments" component of the RPPR format is mandatory, while the other components are for optional use at the discretion of the agencies. The Federal awarding agency determines which categories are mandatory or optional for the award recipient to complete. This should be determined as early as possible, preferably at the time the funding opportunity is issued. As information required can vary between agencies and programs, the combination of mandatory and optional sections provides agencies the maximum flexibility to collect only the information they specifically require.

Comment: One Federal commenter asked whether the RPPR would be required in addition to the PHS 2590.

Response: The RPPR would replace the PHS 2590. Information not collected as part of the RPPR could be requested through the optional agency-specific categories.

Comment: Three Federal commenters asked for a clear definition of research—which programs are considered research or research-related programs?

Response: It is up to the agencies to determine which programs are research or research-related programs.

Comment: Four Federal and one university commenters requested language stating that the RPPR should not be used as the vehicle for seeking prior approvals and/or fulfilling invention reporting requirements.

Response: Agree. Appropriate language was added to the RPPR.

Comment: 25 Federal, five university, and one association commenters offered suggestions regarding the development of a Final Report format.

Response: These comments will be considered after the development and implementation of the RPPR has been completed.

III. Paperwork Reduction Act

In furtherance of the goals of the National Science and Technology Council's Research Business Models Subcommittee, this proposed format aims to reduce the burden on recipients currently expending time and effort on a variety of agency-specific forms. Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. The PRA also requires agencies to estimate the burden for each collection of information. It should be noted that burden estimates associated with forms currently in use range from a minimum of 2 hours to a maximum of 16 hours, depending on the type of research project being supported.

The following table provides the estimated numbers of annual progress reports, hours per report, and total annual burden hours by agency:

Department/agency name	Number of annual progress reports	Number of annual burden hours	Total annual burden hours
DHHS (including NIH)	37,900	14.862	563,275
DHS	411	12	4,932
DoC/NIST	100	4	400
DoC/NOAA	1,105	2	2,210
DoD	11,000	6	66,000
DoE	16,000	5	80,000
DoEd/IES	500	16	8,000
EPA	150	4	600
NASA	4,000	4	16,000
NEH	55	2	1,100
NSF	28,030	5	140,150
USDA/NIFA	12,658	2.7	34,177
Totals	116,404	6.6	916,844

IV. Final Administrative Requirements and Future Steps

The final version of the uniform Research Performance Progress Report format that incorporates the changes discussed in the preceding Sections I and II of Supplementary Information, may be viewed at: *http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp.*

Each Federal research agency that supports research and research-related activities must post their policy or an implementation plan on the NSF and RBM Web sites within nine months after issuance of OSTP/OMB policy direction. Each implementation plan will address whether the agency plans to implement the RPPR in paper or electronic format, and include an anticipated implementation date.

Dated: January 8, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–469 Filed 1–12–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7016; CLI–10–04]

GE-Hitachi Global Laser Enrichment LLC; (GLE Commercial Facility); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order; and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

Commissioners: Gregory B. Jaczko, Chairman; Dale E. Klein; Kristine L. Svinicki.

I. Receipt of Application and Availability of Documents

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) received on June 26, 2009, an application from GE-Hitachi Global Laser Enrichment LLC (GLE), for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 8 percent U–235 by a laser-based enrichment process. The plant, to be known as the GLE Commercial Facility (GLE–CF), would be located approximately six miles north of the City of Wilmington in New Hanover County, North Carolina and would have a nominal capacity of six million separative work units (SWU) per year.

GLE is a Delaware limited liability company and is a subsidiary of majority owner and Delaware limited liability company GE-Hitachi Nuclear Energy Americas LLC (GEH), which is a wholly owned subsidiary of GE-Hitachi Nuclear Energy Holdings LLC (GEH-Holdings). GEH-Holdings is a subsidiary of majority owner GENE Holding LLC (GENE) and minority owner Hitachi America, Ltd. GENE, also a Delaware limited liability company, is wholly owned by General Electric Company (GE), a United States corporation incorporated in New York. Hitachi America is a wholly owned subsidiary of Hitachi Ltd., a Japanese corporation. GLE also has two minority owners, GENE and Cameco Enrichment Holdings, LLC, a Delaware limited liability company wholly owned by Cameco US Holdings, Inc., a Nevada corporation, which is in turn wholly owned by Cameco Corporation, a Canadian corporation. GE, through its wholly owned and majority owned subsidiaries, has a 51% indirect interest in GLE. GLE's minority owners Hitachi and Cameco have indirect interests of 25% and 24%, respectively.

On January 13, 2009, GLE was granted an exemption to file its environmental report in advance of its license application. GLE submitted its environmental report on January 30, 2009; and on July 13, 2009, GLE submitted a supplement to its environment report, GLE Environmental Report Supplement 1—Early Construction. On April 9, 2009, the NRC published notice of its intent to prepare an Environmental Impact Statement (EIS) on the proposed action and the opportunity for public comment on the appropriate scope of issues to be considered in the EIS. See 74 FR 16237 (April 9, 2009). By notice published in the **Federal Register** on July 24, 2009, the NRC extended the public comment period to allow members of the public to review the publicly available portions of the license application filed after June 26, 2009. See 74 FR 36781 (July 24, 2009). On August 6, 2009, the NRC staff notified GLE by letter that staff had completed its acceptance review and had determined that the application was acceptable for formal review.

Copies of GLE's application, safety analysis report, environmental report and supplement to its environmental report (except for portions subject to withholding from public inspection in accordance with 10 CFR 2.390, Availability of Public Records) are available for public inspection at the Commission's Public Document Room (PDR) at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for review and copying using any of the following methods: (1) Enter the NRC's GE Laser Enrichment Facility Licensing Web site at *http://www.nrc.gov/materials/fuel-cycle-fac/laser.html#2a;* (2) enter the NRC's Agencywide Document Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* where the accession number for GLE's Environmental Report is ML090910573; accession number for the license application is ML091871003, and the accession number for Supplement 1 to the Environmental Report is ML092100577; (3) contact the PDR by calling (800) 397–4209, faxing a request to (301) 415–3548, or sending a request by electronic mail to *pdr@nrc.gov.* Hard copies of the documents are available from the PDR for a fee.

As indicated above, GLE's initial application has been accepted for docketing and formal review (ADAMS accession number ML091960561) and, accordingly, the Commission is providing this notice of hearing and notice of opportunity to intervene in GLE's application for a license to construct and operate a laser enrichment facility. Pursuant to the Atomic Energy Act of 1954, as amended (AEA), the NRC staff will prepare a safety evaluation report (SER) after reviewing the application and make findings concerning the public health and safety and common defense and security. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR part 51, the NRC staff will complete an environmental evaluation and prepare an EIS before the hearing on the issuance of a license is completed. See Notice of Intent to Prepare an Environmental Impact Statement for the Proposed General Electric-Hitachi Global Laser Enrichment Uranium Enrichment Facility, 74 FR 16237 (April 9, 2009); and Extension of Public Scoping Period for the Environmental Impact Statement for the Proposed General Electric-Hitachi Global Laser Enrichment Facility, 74 FR 36781 (July 24, 2009).

When available, the NRC staff's SER and EIS (except for portions subject to withholding from public inspection in accordance with 10 CFR 2.390) will also be placed in the PDR and in ADAMS. Copies of correspondence between the NRC and GLE, and transcripts of prehearing conferences and hearings (except for portions subject to withholding from public inspection in accordance with 10 CFR 2.390) similarly will be made available to the public.

If, following the hearing, the Commission is satisfied that GLE has complied with the Commission's regulations and the requirements of this Notice and Commission Order and the Commission finds that the application satisfies the applicable standards set forth in 10 CFR Parts 30, 40, and 70, a single license will be issued authorizing: (1) The construction and operation of the GLE–CF; and (2) the receipt, possession, use, delivery, and transfer of byproduct (*e.g.*, calibration sources), source and special nuclear material at the GLE–CF. If the GLE–CF is licensed, prior to commencement of operations the NRC will verify through an inspection conducted in accordance with section 193(c) of the AEA and 10 CFR 70.32(k) that the facility meets the construction and operation requirements of the license. The inspection findings will be published in the **Federal Register.**

II. Notice of Hearing

A. Pursuant to 10 CFR 70.23a and Section 193 of the AEA, as amended by the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 Public Law 101–575, § 5, 104 Stat. 2834, 2835–36 (codified as amended at 42 U.S.C. 2243), a hearing will be conducted according to the rules of practice in 10 CFR part 2, subparts A, C, G, and to the extent that classified information becomes involved, Subpart I. The hearing will be held under the authority of sections 53, 63, 189, 191, and 193 of the AEA. The applicant and the NRC staff shall be parties to the proceeding.

B. Pursuant to 10 CFR part 2, Subparts C and G, a contested hearing shall be conducted by an Atomic Safety and Licensing Board (Licensing Board) appointed by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel. Notice as to the

membership of the Licensing Board will be published in the **Federal Register** at a later date.

C. The matters of fact and law to be considered are whether the application satisfies the standards set forth in this Notice and Commission Order and the applicable standards in 10 CFR parts 30, 40, and 70, and whether the requirements of NEPA and the NRC's implementing regulations in 10 CFR part 51 have been met.

D. If this proceeding is not a contested proceeding, as defined by 10 CFR 2.4, the Licensing Board will determine the following without conducting a de novo evaluation of the application: (1) Whether the application and record of the proceeding contain sufficient information to support license issuance and whether the NRC staff's review of the application has been adequate to support findings to be made by the Director of the Office of Nuclear Materials Safety and Safeguards with respect to the matters set forth in paragraph C of this section; and (2) whether the review conducted by the NRC staff pursuant to 10 CFR part 51 has been adequate.

E. Regardless of whether the proceeding is contested or uncontested, the Licensing Board will, in the initial decision, in accordance with Subpart A of 10 CFR part 51: Determine whether the requirements of sections 102(2)(A), (C), and (E) of NEPA and subpart A of 10 CFR part 51 have been complied with in the proceeding; independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and determine, after weighing the environmental, economic, technical, and other benefits against the environmental and other costs, and considering reasonable alternatives, whether a license should be issued, denied, or appropriately conditioned to protect environmental values.

F. If the proceeding becomes a contested proceeding, the Licensing Board shall make findings of fact and conclusions of law on admitted contentions. With respect to matters set forth in paragraph C of this section, but not covered by admitted contentions, the Licensing Board will make the determinations set forth in paragraph D without conducting a *de novo* evaluation of the application.

III. Intervention

A. By March 15, 2010, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Petitions for leave to intervene shall be filed in accordance with the provisions of 10 CFR 2.309. Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to GLE's application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that 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 petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

B. A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 15, 2010. The petition must be filed in accordance with the filing instructions in section IV, and should meet the requirements for petitions for leave to intervene set forth in section III.A, except that State and Federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

C. Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the

Secretary of the Commission by March 15, 2010.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a petition for leave to intervene and proffered contentions, any motion or other document filed in the proceeding prior to the submission of a petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule. The E-Filing process requires participants to submit and serve all adjudicatory 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 ten (10) days prior to the filing deadline, the petitioner must contact the Office of the Secretary by e-mail at *Hearing.Docket@nrc.gov*, or by calling (301) 415–1677, to request: (1) A digital 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 (or its counsel or representative) already holds an NRC issued digital ID certificate). Each petitioner 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/sitehelp/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a petition for leave to intervene including proffered contentions. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site 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 petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-filing system may seek assistance through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk 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 an exemption request 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.

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, the Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. 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.

V. Commission Guidance

A. Licensing Board Determination of Contentions

The Licensing Board shall issue a decision on the admissibility of contentions no later than June 14, 2010.

B. Novel Legal Issues

If rulings on petitions, contention admissibility, or admitted contentions, raise novel legal or policy questions, the Commission will provide early guidance and direction on the treatment and resolution of such issues. Accordingly, the Commission directs the Licensing Board to promptly certify to the Commission in accordance with 10 CFR 2.319(l) and 2.323(f) all novel legal or policy issues that would benefit from early Commission consideration should such issues arise in this proceeding.

C. Discovery Management

(1) All parties, except the NRC staff, shall make the mandatory disclosures required by 10 CFR 2.704(a) and (b) within forty-five (45) days of the issuance of the Licensing Board order admitting contentions.

(2) The Licensing Board, consistent with fairness to all parties, should narrow the issues requiring discovery and limit discovery to no more than one round for admitted contentions.

(3) All discovery against the NRC staff shall be governed by 10 CFR 2.336(b) and 2.709. The NRC staff shall comply with 10 CFR 2.336(b) no later than 30 days after the Licensing Board order admitting contentions and shall update the information at the same time as the issuance of the SER or the Final Environmental Impact Statement (FEIS), and, subsequent to the publication of the SER and FEIS, as otherwise required by the Commission's regulations. Discovery under 10 CFR 2.709 shall not commence until the issuance of the particular document, *i.e.*, SER or EIS, unless the Licensing Board, in its discretion, finds that commencing discovery against the NRC staff on safety

issues before the SER is issued, or on environmental issues before the FEIS is issued will expedite the hearing without adversely affecting the Staff's ability to complete its evaluation in a timely manner.

(4) No later than 30 days before the commencement of the hearing at which an issue is to be presented, all parties other than the NRC staff shall make the pretrial disclosures required by 10 CFR 2.704(c).

D. Hearing Schedule

In the interest of providing a fair hearing, avoiding unnecessary delays in NRC's review and hearing process, and producing an informed adjudicatory record that supports the licensing determination to be made in this proceeding, the Commission expects that both the Licensing Board and NRC staff, as well as the applicant and other parties to this proceeding, will follow the applicable requirements contained in 10 CFR part 2 and guidance in the *Commission's Statement of Policy on Conduct of Adjudicatory Proceedings,* CLI–98–12, 48 NRC 18 (1998) (63 FR 41872 (August 5, 1998)) to the extent that such guidance is not inconsistent with specific guidance in this Order. The guidance in the Statement of Policy on Conduct of Adjudicatory Proceedings is intended to improve the management and the timely completion of the proceeding and addresses hearing schedules, parties' obligations, contentions and discovery management. In addition, the Commission is providing the following direction for this proceeding:

(1) The Commission directs the Licensing Board to set a schedule for the hearing in this proceeding consistent with this Order that establishes, as a goal, the issuance of a final Commission decision on the pending application within two-and-one-half years (30 months) from the date of this Order. Accordingly, the Licensing Board should issue its decision on either the contested or mandatory hearing, or both, held in this matter no later than 28½ months (855 days) from the date of this Order. Formal discovery against the Staff shall be suspended until after the Staff completes its final SER and EIS in accordance with the direction provided in paragraph C(3) above.

(2) The evidentiary hearing with respect to issues should commence promptly after completion of the final Staff documents (SER or EIS) unless the Licensing Board, in its discretion, finds that starting the hearing with respect to one or more safety issues prior to issuance of the final SER [1] (or one or more environmental contentions directed to the applicant's Environmental Report) will expedite the proceeding without adversely impacting the Staff's ability to complete its evaluations in a timely manner.

(3) The Commission also believes that issuing a decision on the pending application within about two-and-one-half years may be reasonably achieved under the rules of practice contained in 10 CFR part 2 and the enhancements directed by this Order. We do not expect the Licensing Board to sacrifice fairness and sound decision-making to expedite any hearing granted on this application. We do expect the Licensing Board to use the applicable techniques specified in: this Order; 10 CFR 2.332, 2.333 and 2.334; and the Commission's policy statement on the conduct of adjudicatory proceedings (CLI–98–12, *supra*) to ensure prompt and efficient resolution of contested issues. *See also Statement of Policy on Conduct of Licensing Proceedings,* CLI–81–8, 13 NRC 452 (1981).

(4) If this is a contested proceeding, the Licensing Board should adopt the following milestones, in developing a schedule, for conclusion of significant steps in the adjudicatory proceeding.[2]

Within *March 15, 2010*	Deadline for Requests for Hearing; Petitions to Intervene and Contentions; and Requests for Limited Participation.
Within *April 13, 2010*	Answers to Requests for Hearing; Petitions to Intervene and Request for Limited Participation.
Within *April 23, 2010*	Replies to Answers regarding Requests for Hearing; Petitions to Intervene and Request for Limited Participation.
Within *May 13, 2010*	Licensing Board holds Pre-hearing Conference to hear arguments on petitions to intervene and contention admissibility.
Within *30 days* of pre-hearing conference	Licensing Board issues order determining intervention.
Within *10 days* of the Licensing Board order determining intervention:	Discovery commences, except against the Staff.
Within *20 days* of the Licensing Board order determining intervention:	Persons admitted or entities participating under 10 CFR 2.309(d) may submit a motion for reconsideration (*see* below, at Section VI.B).*
Within *30 days* of the Licensing Board decision determining intervention:	Persons admitted or entities participating under 10 CFR 2.309(d) may respond to any motion for reconsideration.
Date of issuance of final SER/EIS	Staff prepares hearing file.
Within *20 days* of the issuance of the final SER/EIS:	Staff updates hearing file.
Within *40 days* of the issuance of final SER/EIS:	Discovery commences against the Staff.
	Motions to amend contentions; motions for late-filed contentions.
Within *50 days* of the issuance of the final SER/EIS:	Completion of answers and replies to motions for amended and late-filed contentions.
	Completion of discovery on original contentions.
	Deadline for summary disposition motions on original contentions.**
	Licensing Board decision on admissibility of late-filed contentions.**

[1] The Commission believes that, in the appropriate circumstances, allowing discovery or an evidentiary hearing with respect to safety-related issues to proceed before the final SER is issued will serve to further the Commission's objective, as reflected in the Statement of Policy on Conduct of Adjudicatory Proceedings, CLI–98–12, *supra,* to ensure a fair, prompt, and efficient resolution of contested issues. For example, it may be appropriate for the Board to permit discovery against the staff and/or the commencement of an evidentiary hearing with respect to safety issues prior to the issuance of the final SER in cases where the applicant has responded to the Staff's "open items" and there is an appreciable lag time until the issuance of the final SER, or in cases where the initial SER identifies only a few open items.

[2] This schedule assumes that the SER and FEIS are issued essentially at the same time. If these documents are not to be issued very close in time, the Board should adopt separate schedules but concurrently running for the safety and environmental reviews consistent with the timeframes herein for each document.

Within *55 days* of the issuance of the final SER/EIS:	Licensing Board determination as to whether resolution of any motion for summary disposition will serve to expedite the proceedings.
Within *65 days* of the issuance of the final SER/EIS:	Answers to motions for summary disposition identified by Licensing Board.
Within *75 days* of the issuance of the final SER/EIS:	Replies to answers to motions for summary disposition.
Within *80 days* of the issuance of final SER/EIS:	Completion of discovery on late-filed contentions.
Within *105 days* of the issuance of the final SER/EIS:	Licensing Board decision on summary disposition motions on original contentions.
Within *115 days* of the issuance of final SER/EIS:	Direct testimony filed on original contentions and any amended or admitted late-filed contentions.
Within *125 days* of the issuance of final SER/EIS:	Cross-examination plans filed on original contentions and any amended or admitted late-filed contentions.
Within *135 days* of the issuance of final SER/EIS:	Evidentiary hearing begins on original contentions and any amended or admitted late-filed contentions.
Within *160 days* of the issuance of final SER/EIS:	Completion of evidentiary hearing on remaining contentions and any amended or admitted late-filed contentions.
Within *205 days* of the issuance of final SER/EIS:	Completion of findings and replies.
Within *245 days* of the issuance of final SER/EIS:	Licensing Board's initial decision.***

* Motions for reconsideration do not stay this schedule.
** No summary disposition motions on late-filed contentions are contemplated.
*** The Licensing Board's initial decision with respect to either a contested adjudicatory hearing or an uncontested, mandatory hearing should be issued no later than 28½ months from the date of this Order.

To avoid unnecessary delays in the proceeding, the Licensing Board should not routinely grant requests for extensions of time and should manage the schedule such that the overall hearing process is completed within 28½ months. Although summary disposition motions are included in the schedule above, the Licensing Board shall not entertain motions for summary disposition under 10 CFR 2.710, unless the Licensing Board finds that such motions, if granted, are likely to expedite the proceeding. Unless otherwise justified, the Licensing Board shall provide for the simultaneous filing of answers to proposed contentions, responsive pleadings, proposed findings of fact, and other similar submittals.

(5) Parties are obligated to comply with applicable requirements in 10 CFR part 2, unless directed otherwise by this Order or the Licensing Board. They are also obligated in their filings before the Licensing Board and the Commission to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citation to the record. Failure to do so may result in material being stricken from the record or, in extreme circumstances, a party being dismissed from the proceeding.

(6) The Commission directs the Licensing Board to inform the Commission promptly, in writing, if the Licensing Board determines that any single milestone could be missed by more than 30 days. The Licensing Board must include an explanation of why the milestone cannot be met and the measures the Licensing Board will take to mitigate the failure to achieve the milestone and restore the proceeding to the overall schedule.

E. Commission Oversight

As in any proceeding, the Commission retains its inherent supervisory authority over the proceeding to provide additional guidance to the Licensing Board and participants and to resolve any matter in controversy itself.

VI. Applicable Requirements

A. Licensing

The Commission will license and regulate byproduct, source, and special nuclear material at the GLE–CF in accordance with the Atomic Energy Act of 1954, as amended. Section 274c.(1) of the AEA was amended by Public Law 102–486 (October 24, 1992) to require the Commission to retain authority and responsibility for the regulation of uranium enrichment facilities. Therefore, in compliance with law, the Commission will be the sole licensing and regulatory authority with respect to byproduct, source, and special nuclear material for the GLE–CF and with respect to the control and use of any equipment or device in connection therewith.

Many rules and regulations in 10 CFR Chapter I are applicable to the licensing of a person to receive, possess, use, transfer, deliver, or process byproduct, source or special nuclear material in the quantities that would be possessed at the GLE–CF. These include 10 CFR parts 19, 20, 21, 25, 30, 40, 51, 70, 71, 73, 74, 95, 140, 170, and 171 for the licensing and regulation of byproduct, source, and special nuclear material, including requirements for notices to workers, reporting of defects, radiation protection, waste disposal, decommissioning funding, and insurance.

With respect to these regulations, the Commission notes that this is the fifth proceeding involving the licensing of an enrichment facility. The Commission issued a number of decisions in earlier proceedings regarding proposed sites in Homer, Louisiana (*Claiborne* Enrichment Center); Eunice, New Mexico (National Enrichment Facility); and Piketon, Ohio (American Centrifuge Plant). These final decisions—*Louisiana Energy Services* (*Claiborne Enrichment Center*), CLI–92–7, 35 NRC 93 (1992); *Louisiana Energy Services* (*Claiborne Enrichment Center*), CLI–97–15, 46 NRC 294 (1997); *Louisiana Energy Services* (*Claiborne Enrichment Center*), CLI–98–3, 47 NRC 77 (1998); *Louisiana Energy Services* (*National Enrichment Facility*), CLI–05–05, 61 NRC 22, 36 (2005); *Louisiana Energy Services* (*National Enrichment Facility*), *et al.,* CLI–05–17, 62 NRC 5 (2005); *USEC, Inc.* (*American Centrifuge Plant*), CLI–07–05, 65 NRC 109 (2007)—resolve a number of issues concerning uranium enrichment licensing and may be relied upon as precedent.

Consistent with the AEA, and the Commission's regulations, the Commission is providing the following direction for licensing uranium enrichment facilities:

1. Environmental Issues

(a) *General:* 10 CFR part 51 governs the preparation of an environmental report and an EIS for a materials license. GLE's environmental report and the NRC staff's associated EIS are to include a statement on the alternatives to the proposed action, including a discussion of the no-action alternative.

(b) *Treatment of depleted uranium hexafluoride tails:* As to the treatment of the disposition of depleted uranium hexafluoride tails (depleted tails) in

these environmental documents, unless GLE demonstrates a use for uranium in the depleted tails as a potential resource, the depleted tails will be considered waste. The Commission has previously concluded that depleted uranium from an enrichment facility is appropriately classified as low-level radioactive waste. *See Louisiana Energy Services* (National Enrichment Facility), CLI–05–05, 61 NRC 22, 36 (2005). An approach for disposition of tails that is consistent with the USEC Privatization Act, such as transfer to DOE for disposal, constitutes a "plausible strategy" for disposition of the GLE depleted tails. *Id.* The NRC staff may consider the Department of Energy's *Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexaflouride* (DOE/EIS–0269), 64 FR 43358 (Aug. 10, 1999), in preparing the staff's EIS. Alternatives for the disposition of depleted uranium tails will need to be addressed in these documents. As part of the licensing process, GLE must also address the health, safety, and security issues associated with the on-site storage of depleted uranium tails pending removal of the tails from the site for disposal or DOE disposition.

2. Financial Qualifications

Review of financial qualifications for enrichment facility license applications is governed by 10 CFR part 70. In *Louisiana Energy Services* (*Claiborne Enrichment Center*), CLI–97–15, 46 NRC 294, 309 (1997), the Commission held that the 10 CFR part 70 financial criteria, 10 CFR 70.22(a)(8) and 70.23(a)(5), could be met by conditioning the LES license to require funding commitments to be in place prior to construction and operation. The specific license condition imposed—providing one way to satisfy the requirements of 10 CFR part 70—required LES to have in place prior to commencement of construction or operation: a minimum equity contribution of 30% of project costs from the parents and affiliates of LES partners prior to construction of the associated capacity; firm funding commitments for the remaining project costs; and long term enrichment contracts with prices sufficient to cover both construction and operating costs, including a return on investment, for the entire term of the contracts.

3. Antitrust Review

Section 105 of the AEA conferred on the NRC certain antitrust responsibilities with respect to applications for section 103 or 104b. licenses to construct or operate utilization or production facilities filed prior to August 8, 2005. The GLE enrichment facility, the application for which was filed after August 8, 2005, is subject to sections 53 and 63 of the AEA and is not a production or utilization facility within the meaning of section 105. Consequently, the NRC does not have antitrust responsibilities for GLE. The NRC will not entertain or consider antitrust issues in connection with the GLE application in this proceeding.

4. Foreign Ownership

The GLE application is governed by sections 53 and 63 of the AEA, and, consequently, issues of foreign involvement shall be determined pursuant to sections 57 and 69, not sections 103, 104 or 193(f). Sections 57 and 69 of the AEA require, among other things, an affirmative finding by the Commission that issuance of a license for the GLE–CF will not be "inimical to the common defense and security." The requirements of sections 57 and 69 are incorporated in 10 CFR 70.31 and 10 CFR 40.32, respectively.

5. Creditor Requirements

Pursuant to section 184 of the AEA, the creditor regulations in 10 CFR 50.81 shall apply to the creation of creditor interests in equipment, devices, or important parts thereof, capable of separating the isotopes of uranium or enriching uranium in the isotope U–235. In addition, the creditor regulations in 10 CFR 70.44 shall apply to the creation of creditor interests in special nuclear material. These creditor regulations may be augmented by license conditions as necessary to allow ownership arrangements (such as sale and leaseback) not covered by 10 CFR 50.81, provided it can be found that such arrangements are not inimical to the common defense and security of the United States.

6. Classified Information

All matters of classification of information related to the design, construction, operation, and safeguarding of the GLE–CF shall be governed by classification guidance in "DOE Classification Guide for Isotope Separation by the Gas Centrifuge Process," (June 2002); Change 1 (Sept. 2005); Change 2 (May 2007) (CG–ICG–1); "Joint NRC/DOE Classification Guide for Louisiana Energy Services Gas Centrifuge Plant (U)," Confidential RD (Jan 2008) (CG–LCP–3A); and "Joint NRC/DOE Class. Guide for Louisiana Energy Services Gas Centrifuge Plant Safeguards & Security (U)," OUO (Jan 2008) (CG–LCP–3B), and any later versions thereof. Any person producing such information must adhere to the criteria in CG–IGC–1, CG–LCP–3A and CG–LCP–3B. All decisions on questions of classification or declassification of information shall be made by appropriate classification officials in the NRC and are not subject to *de novo* review in this proceeding.

7. Access to Classified Information

Portions of GLE's application for a license are classified Restricted Data or National Security Information. Persons needing access to those portions of the application will be required to have the appropriate security clearance for the level of classified information to which access is required. Access requirements apply equally to intervenors, their witnesses and counsel, employees of the applicant, its witnesses and counsel, NRC personnel, and others. Any person who believes that he or she will have a need for access to classified information for the purpose of this licensing proceeding, including the hearing, should immediately contact the NRC, Division of Fuel Cycle Safety and Safeguards, Washington, DC 20555, for information on the clearance process. Telephone calls may be made to Timothy C. Johnson, Senior Project Manager, Uranium Enrichment Branch, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards. Telephone: (301) 492–3121.

8. Obtaining NRC Security Facility Approval for Safeguarding Classified Information Received or Developed Pursuant to 10 CFR Part 95

Any person who requires possession of classified information in connection with the licensing proceeding may process, store, reproduce, transmit, or handle classified information only in a location for which facility security approval has been obtained from the NRC's Division of Security Operations (NSIR), Washington, DC 20555. Telephone calls may be made to A. Lynn Silvious, Chief, Information Security Branch. Telephone: (301) 415–2214.

B. Reconsideration

The above guidance does not foreclose the applicant, any person admitted as a party to the hearing, or an entity participating under 10 CFR 2.315(c) from litigating material factual issues necessary for resolution of contentions in this proceeding. Persons permitted to intervene and entities participating under 10 CFR 2.315(c) as

of the date of the order on intervention may also move the Commission to reconsider any portion of section VI of this Notice and Commission Order where there is no clear Commission precedent or unambiguously governing statutes or regulations. Any motion to reconsider must be filed within 10 days after the order on intervention. The motion must contain all technical or other arguments to support the motion. Other persons granted intervention and entities participating under 10 CFR 2.315(c), including the applicant and the NRC staff, may respond to motions for reconsideration within 20 days of the order on intervention. Motions will be ruled upon by the Commission. A motion for reconsideration does not stay the schedule set out above in section V.D.(4). However, if the Commission grants a motion for reconsideration, it will, as necessary, provide direction on adjusting the hearing schedule.

VII. Notice of Intent Regarding Classified Information

As noted above, a hearing on this application will be governed by 10 CFR part 2, Subparts A, C, G, and to the extent classified material becomes involved, subpart I. Subpart I requires in accordance with 10 CFR 2.907 that the NRC staff file a notice of intent if, at the time of publication of Notice of Hearing, it appears that it will be impracticable for the staff to avoid the introduction of Restricted Data or National Security Information into a proceeding. The applicant has submitted portions of its application that are classified. The Commission notes that, since the entire application may become part of the record of the proceeding, the NRC staff has found it impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding.

VIII. Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR Parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[3] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requester in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requester believes that the information is necessary to enable the requester to proffer and/or adjudicate a specific contention in this proceeding;[4] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requester to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions" for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart G and 10 CFR 73.22(b)(2), to determine the requester's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management. To obtain online access to the form, the requester should contact the NRC's Office of Administration at (301) 492–3524.[5]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–7232 or (301) 492–7311, or by e-mail to *Forms.Resource@nrc.gov*. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10

[3] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[4] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[5] The requester will be asked to provide his or her full name, Social Security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of $ 200.00[6] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requester or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requester should also provide a statement identifying which exemption the requester is invoking and explaining the requester's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requester may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop TWB–05–B32M, Washington, DC 20555–0001.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

D. To avoid delays in processing requests for access to SGI, the requester should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requester has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requester satisfies both E.(1) and E.(2) above, the NRC staff will notify the requester in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[7] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requester has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requester in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[8] by each individual who will be granted access to SGI.

H. *Release and Storage of SGI.* Prior to providing SGI to the requester, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. *Review of Denials of Access.*

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requester may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. *Review of Grants of Access.* A party other than the requester may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief

[6] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

[7] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[8] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[9]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 7th day of January 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Chairman Gregory B. Jaczko, Offering a Separate Statement

I support issuance of this notice and order in part. As I explained in my separate statement for the Areva notice, I welcome the opportunity for interested members of the public to participate in our hearing process and to have their concerns about the proposed facility heard. I have, however, the same concerns with this hearing notice as I expressed with regard to the Areva notice.

First, I am troubled by establishing a tight schedule that depends on superior applicant performance and therefore may turn out to be unrealistic. For example, the schedule reduces the time normally allowed for applicant responses to staff requests for additional information despite the fact that the agency has no control over the timeliness or quality of applicant submittals. Establishing timelines which may not be met, even through no fault of the staff, may result in unfounded claims that the agency's process is inefficient and decrease confidence in our licensing process.

I also believe that the numerous milestones set forth in the order are unnecessary and overly prescriptive. With the milestones and deadlines already provided in our regulations, the agency has the structure in place to ensure an efficient and effective hearing process. Importantly, those regulations allow the Boards flexibility in adapting the hearing schedule to accommodate the complexity of the issues and the circumstances unique to each adjudicatory proceeding. I believe this flexibility is important and should be retained for enrichment applications.

Recent developments highlight my concerns. Staff has informed the Commission that issuance of the final Environmental Impact Statements (EISs) will be delayed at least seven months in light of information only recently submitted by Areva concerning the need to construct additional transmission lines. Staff explained that its aggressive review schedule is predicated upon the submittal of complete information by Areva. Therefore, any deficiency in Areva's submittals, like this one, can delay the staff's review and, consequently, the hearing schedule. Events which can impact schedule are inevitable and unpredictable given the complexity and length of these adjudications. The schedule adjustments necessitated by these events are best handled by the Boards responsible for the hearings without rigid Commission deadlines which may compromise the fairness or thoroughness of the hearing process.

In addition, as I stated in regard to the Areva notice, I believe the order should state that the Commission, rather than the licensing board, should preside over the mandatory hearing. Gaining experience in this mandatory proceeding will aid the Commission in handling mandatory hearings on new reactor applications.

Unlike the Areva notice, this notice is silent on the question of whether the NEPA review should address terrorism. I believe that the Commission should direct the staff to consider terrorism in its environmental review, as we did in the Areva notice. I believe that the Commission should have a consistent, nationwide approach to NEPA and should discontinue the practice of addressing terrorism only for facilities within the jurisdiction of the Ninth Circuit. This practice creates a disparity in the public information we provide concerning the potential impacts of a terrorist attack on our nuclear facilities based on the arbitrary criteria of geographic location. This disparity is highlighted when, as here, the agency simultaneously conducts NEPA reviews for similar facilities within and outside the geographical boundaries of the Ninth Circuit. I believe the public is disserved when they are selectively and arbitrarily denied information on a matter of this importance to health and safety. As a policy matter, I believe that the Commission's commitment to transparency should no longer be compromised, particularly now that we know that the environmental impacts of terrorism can be analyzed and disclosed meaningfully to the public, while appropriately protecting classified information.

Lastly, I am troubled by a matter which is related to both the Areva and GE–Hitachi applications—the prospect of allowing applicants to conduct construction activities prohibited by our regulations through issuance of exemptions. In my view, the appropriate process for allowing construction activities before licensing is the one we used for reactor licensees—our rulemaking process. This process, which allows stakeholder input and, therefore, offers transparency in our decision-making process, should not be circumvented by the use of exemptions which I believe should be reserved for circumstances unique to a specific facility.

Commissioners Dale E. Klein and Kristine L. Svinicki, Offering a Further Statement

We support issuance of this order, in its entirety, as we did the AREVA notice of hearing. *Areva Enrichment Services, LLC* (Eagle Rock Enrichment Facility), CLI–09–15 (July 23, 2009). The U.S. NRC Strategic Plan recognizes that initiatives such as the Government Performance and Results Act challenge Federal agencies to become more effective and efficient and to justify their budget requests with demonstrated program results. The NRC must strive to become more effective and efficient in light of the increasing licensing workload and the drive to improve performance in government. With this in mind, the NRC has formally adopted strategic goals in the area of organizational excellence, including the following: "NRC actions are high quality, efficient, timely, and realistic, to enable the safe and beneficial use of radioactive materials."

The NRC has recognized, in setting its strategic goals and through its performance and accountability reporting, that the efficiency of the agency's regulatory processes is important to the regulated community and other stakeholders, including

[9] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

Federal, State, local, and Tribal authorities and the public. The NRC has committed itself to improving the timeliness of its application reviews without compromising safety and security, and acknowledges that this is possible provided industry submits complete, high-quality applications. Quoting again from the NRC Strategic Plan: "While the NRC will never compromise safety and security for increased efficiency, the agency works to improve the efficiency of its regulatory processes wherever possible."

High quality—on both the agency's and the applicant's parts—should be, and is, the NRC's goal. The proceeding at issue here is no exception. We believe that the schedule laid out in the order—while demanding the requisite quality in licensee submittals—has been demonstrated for similar applications, is achievable with no compromise to the agency's safety and security missions, and is representative of the performance expectations the NRC should set for itself. Our judgment is not altered by the Chairman's reliance on the recently-announced events in an entirely separate proceeding—the AREVA Eagle Rock enrichment facility application. There, NRC Staff announced a delay in issuing the final EIS as a result of AREVA's recent submission on the need to construct additional transmission lines. This is thin support at best for the Chairman's unwarranted conclusion that the Commission's deadlines "may compromise the fairness or thoroughness of the hearing process." A later date for the scheduled issuance of the final EIS may delay completion of the hearing, but it does not necessitate any change in the milestones since the milestones that follow the issuance of the final EIS are measured from the date of its issuance.

Further, we are not persuaded by the Chairman's argument regarding consideration of terrorism under NEPA. We have considered this issue in many proceedings,[1] and are not prepared to abandon our carefully-considered decisions without sufficient justification. Fundamentally, we cannot agree with the Chairman's assertion that our approach is at odds with the agency's commitment to transparency. At bottom, this ruling reflects our consistent position on the requirements of NEPA and their application.[2] Moreover, there is no dispute that the agency has devoted enormous resources and effort to ensure the adequate protection of public health and safety from the risks of terrorism after the events of September 11, 2001. Our differences with Chairman Jaczko on this issue should not obscure this fact.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv).
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.

[1] *See, e.g., AmerGen Energy Co., LLC* (Oyster Creek Nuclear Generating Station, CLI–07–8, 65 NRC 124 (2007), *aff'd N.J. Dep't of Envtl. Prot.* v. *NRC,* 561 F.3d 132 (3d Cir. 2009).

[2] We have complied with the Ninth Circuit's ruling for facilities within the Ninth Circuit, as we are required to do. That experience, however, is very limited, and does not demonstrate that conducting environmental analyses of terrorist scenarios for the licensing of all major facilities would be practicable or lead to meaningful additional information.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2010–485 Filed 1–12–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2010–0009]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide (RG) 5.71, "Cyber Security Programs for Nuclear Facilities."

FOR FURTHER INFORMATION CONTACT: Karl J. Sturzebecher, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7494 or e-mail *Karl.Sturzebecher@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a new guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

RG 5.71, "Cyber Security Programs for Nuclear Facilities," was issued with a temporary identification as Draft Regulatory Guide, DG–5022. This regulatory guide provides guidance to applicants and licensees on satisfying the requirements of 10 CFR 73.54. The information contained within this guide represents the results of research conducted by the NRC Office of Nuclear Regulatory Research concerning cyber security program development and the collective body of knowledge and experience that has been developed through all of the actions identified above. In addition, this guide embodies the findings by standards organizations and agencies, such as the International Society of Automation, the Institute of Electrical and Electronic Engineers, and the National Institute of Standard and Technology, as well as guidance from the U.S. Department of Homeland Security.

RG 5.71 provides a framework to aid in the identification of those digital assets that must be protected from cyber attacks. These identified digital assets are referred to as critical digital assets (CDAs). Licensees should address the potential cyber security risks of CDAs by applying the defensive architecture and the collection of security controls identified in this regulatory guide.

The RG 5.71 framework offers licensees and applicants the ability to address the specific needs of an existing or new system. The goal of this regulatory guide is to harmonize the well-known and well-understood set of security controls (based on NIST cyber security standards) that address potential cyber risks to CDAs to provide a flexible programmatic approach in which the licensee or applicant can establish, maintain, and successfully integrate these security controls into a site-specific cyber security program.

II. Further Information

The Agency released DG–5022, which contained safeguards information, directly to stakeholders, who provided comments on July 18, 2008, December 12, 2008, and January 14, 2009. The responses to stakeholder's comments are located in the NRC's Agencywide Documents Access and Management System under Accession Number ML090340185. Electronic copies of RG 5.71 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

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Dated at Rockville, Maryland, this 6th day of January, 2010.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Planning and Procedures Subcommittee Meeting; Notice of Meeting

The ACRS Planning and Procedures Subcommittee will hold a meeting on February 3, 2010, Room T2–B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 3, 2010, 12 p.m.–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated