

January 24, 2011

Mr. David Sexton
Chief Operating Officer and Chief Nuclear Officer
Louisiana Energy Services, LLC
P.O. Box 1789
Eunice, NM 88231

SUBJECT: CHANGES DURING CONSTRUCTION AT THE NATIONAL ENRICHMENT
FACILITY

Dear Mr. Sexton:

In Gregory Smith's letter to the Executive Director for Operations dated October 16, 2009, Louisiana Energy Services (LES) expressed concerns regarding whether the NRC staff might restrict "at risk" construction at the National Enrichment Facility (NEF). As set forth below, generally, the facility should be constructed in accordance with its license authorizing construction and operation and those changes requiring license amendments should be approved before changes are implemented. Nonetheless, the staff recognizes that in some circumstances it may be acceptable to permit the changes to be implemented prior to formal NRC approval and is prepared to work with you on developing a process for doing so.

You will recall that on April 3, 2009, LES submitted License Amendment Request (LAR-09-07), requesting to change the applicability of Items Relied on For Safety (IROFS) for the Cylinder Receipt and Dispatch Building (CRDB). Without waiting to see if LAR-09-07 would be approved, LES began constructing the CRDB. During its review of LAR-09-07, the NRC staff questioned LES about its moving forward in this fashion without prior NRC approval. The revised CRDB's design significantly differed from the one the NRC had approved in June of 2006 as part of the NEF's licensing basis.

The NRC has in place a regulatory regime, codified in 10 C.F.R. 70.72, that contemplates that design changes affecting structures that require license amendments will be approved prior to the time the changes are implemented. This allows the NRC to schedule inspections and determine whether additional safety or environmental analyses need to be performed. There may be some circumstances where if the work is performed without the required prior NRC notice and affirmative response, it would be extremely difficult, if not impossible, for the NRC to conduct inspections as the work is performed (e.g., to determine whether there is adequate rebar in poured concrete).

The NRC is facing a similar issue of the circumstances when "changes during construction" can take place under combined licenses for new reactors issued pursuant to 10 C.F.R. Part 52. The NRC Office of New Reactors is actively discussing this important issue with the nuclear industry. The NRC staff is ready to engage in a discourse with the uranium enrichment industry to determine the appropriate circumstances where changes to site structures, processes, systems, equipment, components, computer programs, and activities of personnel can be made, pending final NRC approval of a submitted license amendment request.

In the meantime, until there is agreement with LES on that issue, the only changes to NEF structures, systems, or processes under construction that may proceed prior to NRC review of the changes are those that are consistent with the previously approved license, and for which pre-approval is not required under 10 CFR 70.72. Failure to construct in compliance with the terms of its license and applicable regulations could subject LES to enforcement sanctions.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web Site at <http://www.nrc.gov/reading-rm/adams.html>.

If you have questions pertaining to the topic discussed above, please contact Ty Naquin at 301-492-3187 or via email at Tyrone.Naquin@nrc.gov.

Sincerely,

/RA/

Catherine Haney
Director, Office of Nuclear Material Safety
and Safeguards

Docket No.: 70-3103
License No.: SNM-2010

cc:
Gregory Smith, LES
Clint Williamson, LES

In the meantime, until there is agreement with LES on that issue, the only changes to NEF structures under construction that may proceed prior to NRC review of the changes are those that are consistent with the previously approved license, and for which pre-approval is not required under 10 CFR 70.72. Failure to construct in compliance with the terms of its license and applicable regulations could subject LES to enforcement sanctions.

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