

Cover Letter

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Ms. Cindy Bladey
Chief, Rules, Announcements
& Directives Branch (RADB)
Office of Administration
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Louisiana Energy Services, LLC
NRC Docket No. 70-3103

Subject: UUSA Comments on Proposed Enforcement Policy Revisions
(Docket No. ID NRC-2011-0176)

Dear Ms. Bladey:

The Nuclear Regulatory Commission ("NRC") published proposed revisions to its Enforcement Policy on August 9, 2011 (76 Fed. Reg. 48919). Comments were requested by September 8, 2011.

The Proposed Revisions, among others, indicated that a new Section 2.2.6 would be added to the Enforcement Policy addressing Changes during Construction ("CdC") for 10 C.F.R. Part 52 applicants. In conjunction with this proposed revision, NRC has been working with the Nuclear Energy Institute ("NEI") on the development of Interim Staff Guidance (ISG)-025.

Louisiana Energy Services, LLC (dba "UUSA") is concerned because the proposed Enforcement Policy revisions appear not to extend the CdC (and thus ISG-025) concept to the fuel cycle industry. The proposed revision explicitly states that:

"in accordance with 10 CFR 70.23(b), failure to obtain Commission approval for the construction of the principal structures, systems, and components of a plutonium processing and fabrication plant before the commencement of construction may also be grounds for denial of a license to possess and use special nuclear material."

Although the quoted language specifically refers to plutonium processing and fabrication plants, UUSA is concerned that the ultimate intent is to include other fuel cycle applicants (and licensees who are constructing while operating), such as uranium enrichment facilities, in this language.

As the NRC is aware, UUSA submitted a letter (October 16, 2009 – NEF-09-00201-NRC) to the NRC Executive Director for Operations ("EDO") regarding the CdC concept (under this letter the concept was characterized as construction-at-risk). In that letter, UUSA indicated, among other things, that NRC's approach to CdC could raise significant policy issues and that the approach should be fully vetted with the nuclear industry, including the fuel cycle industry. In fact, in a subsequent letter from the NRC to UUSA (January 24, 2011 – IN-11-00008-NRC), the NRC staff stated in pertinent part:

"the staff recognizes that in some circumstances it may be acceptable to permit the changes [during construction] to be implemented prior to formal NRC approval and is prepared to work with you on developing a process for doing so.... [t]he 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."

As a follow up to this letter, UUSA met with the NRC staff, including representatives of the NRC's Office of General Counsel, to discuss the staff's apparent pledge to engage the fuel cycle industry. However, no further substantive interface has occurred directly with fuel cycle applicants/licensees. Moreover, we understand from the NRC staff that it is seeking in the near future to issue generic guidance to the fuel cycle that will incorporate a position similar to that stated above concerning 10 CFR 70.23(b).

UUSA is disappointed that the NRC appears to have focused on the new build reactor industry regarding the CdC concept, to the exclusion of the fuel cycle industry. We question the logic and efficiency of excluding the fuel cycle industry from a comprehensive CdC approach for all NRC applicants/licensees. Therefore, we recommend that the NRC reconsider changes to its Enforcement Policy that provide relief only to a segment of the overall nuclear industry.

UUSA respectfully submits these comments and, if relevant, would be very glad to answer any questions about its views. In addition, UUSA continues to stand ready to participate in meaningful interface on the CdC concept as it may impact the fuel cycle industry. Please contact Perry Robinson, VP Regulatory Affairs & General Counsel, at 575-394-6598 if the NRC staff has any questions.

Very truly yours,



David E. Sexton
Chief Nuclear Officer and VP of Operations