

Cover Letter

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LES-11-00131-NRC

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

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

Subject: UUSA Comments on Draft Regulatory Guide DG-3037, "Guidance for Fuel Cycle Facility Change Processes" issued July 2011 (Docket No. ID NRC-2009-0262)

Dear Ms. Bladey:

The Nuclear Regulatory Commission ("NRC") published the subject draft guide on July 14, 2011 (76 Fed. Reg. 48919), requesting comments. In response, Louisiana Energy Services, LLC (dba "UUSA") respectfully submits, and requests the Commission's consideration of, the following comments even though the response deadline has passed:

**Section C. Regulatory Position**

- Section C.2.3.a(3). Clarification should be added that defines under what conditions this type of shift in preferred hierarchy would be approved by the NRC.
- The guide makes no mention of 10 CFR 70.72(c)(4). This subsection is not self-evident since the NRC sometimes interprets "section" to mean "part".
- Section C.5. LES has concerns with portions of Section C.5, "Other Changes," of DG-3037. The NRC explains that this section "discusses changes that are outside the provisions of [the] 10 CFR 70.72" change control process. However, with the exception of Section C.5.a, the NRC does not explain the regulatory basis for the agency's positions set forth in Sections C.5 – in particular, C.5.b through e. In our view, this section would set forth new regulatory staff positions that go beyond existing regulations.

Section C.5.b states in part that "the NRC would consider a license condition to allow changes to licensing documents, such as the license application or supporting documents referenced in the license, without prior NRC approval." The draft Regulatory Guide does not explain this provision or the regulatory basis. Current NRC regulations in Part 70 do not prescribe a specific mechanism to control changes to licensing documents including "supporting documents referenced in the license." Section 70.72 establishes the process for controlling facility changes for Part 70 licensees. Accordingly, because position C.5.b appears to go beyond existing regulatory requirements, LES suggests that it not be adopted as part of DG-3037 without further industry discussion.

- **Section D. Implementation**
- First paragraph under "Applicant and Licensees' Use", last sentence. Both here and under "NRC Staff Use" the NRC is taking the position that the staff may require the use of this regulatory guide (RG) if seeking a license amendment or change and that this guidance may also be used if a rule is issued. This implies the NRC may impose this RG for licensee submitted requests. Since the RG is only guidance, further clarification should be provided that explains how this decision will be made.

In addition, and relevant to UUSA's comments on the earlier (June 2009) version of DG-3037, the following statements should be considered:

- Comments 3037-4 and 12. UUSA notes that, changes that increase margin or are positive should not require NRC prior approval. The NRC's response to this comment states: "...we want to know any changes, because it would only take one mistake for you to exceed the performance criteria." If such a concern exists, the NRC could request such changes be communicated sooner – but not for approval.
- Comment 3037-21. UUSA requests that the term "implementation" be clarified, as this defines when prior approval is required. Further, UUSA suggests this term be defined as: "the point in time when the IROFS, design feature or other control must be in operation/operable to perform a required function to prevent or mitigate a hazard".

UUSA appreciates this opportunity to comment on the subject guide. Should there be any questions related to this response, please contact Perry Robinson, VP Regulatory Affairs & General Counsel, at 575-394-6598.

Respectfully,



David E. Sexton  
Chief Nuclear Officer and Vice President of Operations