

September 27, 2012

Mr. Gregory Smith
Louisiana Energy Services, LLC
P.O. Box 1789
Eunice, NM 88231

SUBJECT: PLANT EXPANSION CONSTRUCTION

Dear Mr. Smith:

In a meeting held at the U.S. Nuclear Regulatory Commission (NRC) Headquarters on August 9, 2012, Louisiana Energy Services (LES) notified the staff of its intent to submit a license amendment request (LAR) and an environmental report (ER) in support of an expansion of plant operations. The ER was submitted with a letter dated September 10, 2012. The LAR has not yet been submitted. At the August 9, 2012, meeting, LES stated its intent to proceed with construction before the staff will have completed either its safety or environmental reviews and reached a final decision on the LAR.

In light of these facts, the staff would like to bring to your attention the Agency position codified in Title 10 of the *Code of Federal Regulations* section 70.23(a)(7), which states:

“Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, uranium enrichment facility construction and operation, or any other activity which the NRC determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his/her designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial to possess and use special nuclear material in the plant or facility. Commencement of construction as defined in section 70.4 may include non-construction activities if the activity has a reasonable nexus to radiological safety and security.”

Construction is defined in 10 CFR 70.4 which states, in part:

”*Construction* means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the regulations in this part that are related to radiological safety or security.”

The construction you envision includes adding additional enrichment cascade hall buildings and increasing the plant’s Separative Work Unit output beyond what is contained in the current

license. This construction would have a reasonable nexus to both radiological safety and security and the staff has determined that these actions would be considered “construction” per 10 CFR 70.4. Therefore, if you perform these construction activities before the NRC has made the necessary determination under 10 CFR Part 51, the NRC would have grounds to deny your LAR. If you choose to go forward with this construction, you will be doing so at your own risk. This position is consistent with the following response to a comment on the 2011 rulemaking revising 10 CFR 70.23(a)(7):

“Any site preparation activities that an applicant chooses to engage in are done so at the applicant’s own risk. The NRC retains complete discretion to deny a license application or to impose licensing conditions, as needed. Previously expended resources do not enter into the NRC’s decision as to whether or not a license application meets regulatory requirements (76 FR 56951, at 56956 col.3 [Sept. 15, 2011]).”

Should you decide to proceed with any at risk activities, NRC inspectors will audit your construction activities as part of the LAR and ER review. The purpose of these audits is to ensure that the NRC staff has observed the key aspects of the building’s construction while the LAR and ER are under review. Careful consideration will be given to the adequacy of construction and the resolution of any identified deficiencies.

In order to keep our audits effective and efficient, and to assist us with our scheduling, we request that you supply, within 30 days of this letter, a detailed construction schedule for activities that will be covered by the ER and LAR. Further, we request that you supply a list of critical construction details, including the codes and standards, as well as quality assurance measures that you intend to follow during construction. The listing should include all deviations from those codes and standards. If you plan to deviate from the design of the separations building module 1003 in any of the future separations building modules, please include a discussion of these deviations. As the audit process will be taking place in parallel with the license amendment review, you will be required to track to resolution all of the findings and observations made by our inspectors, as each will have to be dispositioned to our satisfaction prior to the issuance of the amendment.

We remind you again that these construction activities at your facility, absent prior NRC approval of the LAR, are at your own risk. Our implementation of an audit process is only intended to verify that you are building in accordance with your proposed design requirements; it does not mean that the design itself or those requirements have been approved. You are reminded that you may not conduct any operations within any new buildings involving the use of source or special nuclear material unless the LAR is approved, audit deficiencies have been dispositioned to our satisfaction, Operational Readiness Reviews are completed, and you have received an NRC letter authorizing the commencement of operations.

For scheduling purposes, the NRC staff anticipates that your LAR will be classified as requiring a complex review, and our licensing metric for such actions is to complete the action within 540 days from the date we notify you that the LAR has been accepted for review.

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 Michael Raddatz at 301-492-3108, or via e-mail at Michael.Raddatz@nrc.gov.

Sincerely,

/RA/

Catherine Haney, Director
Office of Nuclear Material Safety
and Safeguards

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

If you have questions pertaining to the topic discussed above, please contact Michael Raddatz at 301-492-3108, or via e-mail at Michael.Raddatz@nrc.gov.

Sincerely,

/RA/

Catherine Haney, Director
Office of Nuclear Material Safety
and Safeguards

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

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