

January 28, 2014

Mr. Michael P. Thomas
Vice President Regulatory Affairs
Uranerz Energy Corporation
P.O. Box 50850
1701 East E Street
Casper WY 82605-0850

SUBJECT: URANERZ ENERGY CORPORATION, NICHOLS RANCH PROJECT, SOURCE MATERIALS LICENSE SUA-1597 - APPROVAL OF ANNUAL SURETY UPDATE (TAC NO. J00692)

Dear Mr. Thomas:

The U.S. Nuclear Regulatory Commission (NRC) received the Uranerz Energy Corporation (Uranerz), Nichols Ranch Project, Semi-Annual Report dated July 30, 2012. Contained within the report was a request to administratively amend NRC license SUA-1597, License Condition 9.5 to align the surety reviews for the State of Wyoming and the NRC to occur annually in December. Subsequently, Uranerz submitted its annual surety update in a letter dated December 20, 2012. The NRC staff combined its reviews of the license amendment request and the annual surety update because they both pertained to the surety arrangement. The NRC staff responded with a request for additional information (RAI) in a letter dated April 2, 2013. Uranerz responded to NRC's RAI in a letter dated June 13, 2013.

The financial assurance update seeks to maintain the financial assurance amount for the Nichols Ranch Project of \$6,800,000. This surety amount was originally approved in the Nichols Ranch Safety Evaluation Report for the licensing of the Nichols Ranch Project. The costs in the current surety include restoration and decommissioning of wellfield 1, including 12 header houses, as well as costs including, but not limited to, decommissioning the Nichols Ranch processing plant, wellfield plugging and restoration, and disposal of 11e.(2) byproduct material.

The staff has reviewed the financial assurance update in accordance with License Condition 9.5, consistent with Criterion 9 of Appendix A to Part 40 of Title 10 of the Code of Federal Regulations (10 CFR Part 40, Appendix A) and the guidance in NUREG – 1569, "Standard Review Plan For In Situ Leach Uranium Extraction License Applications." Based on this review, the staff has reasonable assurance that the current financial assurance estimate of \$6,800,000 will be adequate to complete groundwater restoration and decommissioning activities at the facility.

The current financial assurance instrument is a surety bond with a face value of \$6,800,000 in favor of the WDEQ. Because the licensee does not have a standby trust agreement (STA) in place at this time as required by 10 CFR Part 40, Appendix A, Criterion 9, in accordance with 10 CFR 40.14(a), NRC has elected to grant an exemption to the STA requirements in 10 CFR Part 40, Appendix A, Criterion 9, for the current surety arrangement and for this surety cycle.

M. Thomas

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The staff's review is documented in the enclosed Technical Evaluation Report (TER) (Enclosure 1). The TER concludes that sufficient information is available to support the reasonable assurance finding by the staff. License Amendment No. 1 is also enclosed (Enclosure 2) to reflect the annual surety submission date of December 29, which is the date the surety is due to the State of Wyoming for their review.

This licensing action meets the categorical exclusion provisions in 10 CFR Part 51.22(c)(10)(i). Therefore, no further environmental review is required for this action. If you have any questions regarding this action, please contact Mr. Ron Linton, the Project Manager for Source Material License SUA-1597, at 301-415-7777, or by e-mail at Ron.Linton@nrc.gov.

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

Sincerely,

/RA/

Andrew Persinko, Deputy Director
Decommissioning and Uranium Recovery
Licensing Directorate
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Docket No.: 040-09067

License No.: SUA-1597

Enclosures:

1. Technical Evaluation Report for Financial Assurance Review
2. Amendment No. 1 to Source Materials License SUA-1597

cc: Luke McMahan, PG (WDEQ)

M. Thomas

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Andrew Persinko, Deputy Director
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cc: Luke McMahan, PG (WDEQ)

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TECHNICAL EVALUATION REPORT

DATE: December 24, 2013

DOCKET: 040-09067

LICENSEE: URANERZ ENERGY CORPORATION

SITE: Nichols Ranch ISR Uranium Project, Johnson and Campbell Counties, Wyoming

PROJECT MANAGER: Ron Linton

TECHNICAL REVIEWER: Reginald Augustus, Ron Linton

SUBJECT: Uranerz Energy Corporation's Nichols Ranch Annual Surety Update

BACKGROUND

In the Semi-Annual Report for the Nichols Ranch Project dated July 30, 2012, Uranerz Energy Corporation (Uranerz) requested that Nuclear Regulatory Commission (NRC) license SUA-1597, License Condition 9.5, be administratively amended to align the surety reviews between the State of Wyoming and the NRC to occur annually in December [December 29] (ADAMS Accession No ML12219A115). License Condition 9.5 currently requires Uranerz to propose annual updates to the financial assurance amount 90 days prior to the financial assurance instrument anniversary date.

NRC license SUA-1597, License Condition 9.5, requires Uranerz to submit to NRC for review and approval, annual updates of the financial surety to cover third-party costs for decommissioning and decontamination at the Nichols Ranch facility located in Johnson and Campbell Counties, Wyoming. By letter dated December 20, 2012, Uranerz submitted to the NRC, for review and approval, its Nichols Ranch annual surety update for 2012-2013 (ADAMS Accession No ML13004A100).

The previous year's (2011-2012) approved surety amount of \$6,800,000 at the Nichols Ranch Project has remained unchanged for the current operating year's (2012-2013) surety amount. The current year's surety estimate submission to NRC has previously been approved by Wyoming's Department of Environmental Quality by letter dated March 11, 2013. NRC staff combined the annual financial surety review and the request by Uranerz to align the surety reviews for the State of Wyoming and the NRC to occur annually in December.

REGULATORY REQUIREMENTS

The NRC staff reviewed Uranerz Nichols Ranch surety update in accordance with requirements in 10 CFR Part 40, Appendix A, Criterion 9, "Financial Criteria" and in License Condition 9.5 of Materials License SUA-1597. The staff used NUREG-1569, "Standard Review Plan for In Situ Leach Uranium Extraction License Applications" (SRP) as guidance in determining elements to be included in a surety review. Specifically, staff used the review procedures and acceptance criteria in Section 6.5, and guidance in Appendix C of the SRP. Staff used Wyoming Department of Environmental Quality (WDEQ) Land Quality Division Guideline 12 "Standardized Reclamation Performance Bond Format and Cost Calculation Methods" (Guideline 12) when applicable, to verify that reasonable unit costs were included in the surety calculations.

DISCUSSION

On April 2, 2013, NRC staff sent requests for additional information (RAIs) to the licensee. By letter dated June 13, 2013, Uranerz provided responses to the RAIs to NRC staff. The staff found those responses to be sufficient.

Sufficiency of the Cost Estimate

In the surety calculations, the licensee includes costs for decommissioning and decontamination (D&D), reclamation of sites, structures, and equipment used in conjunction with facility operation. The unit costs for D&D are consistent with WDEQ Guideline 12.

Uranerz Nichols Ranch estimates the cost to decommission and decontaminate the facility by an independent party at \$6,720,136. This constitutes an increase of \$781,270 above the previous year's surety estimate of \$5,938,866 to account generally for unit cost revisions. The cost estimate is based on costs of a third party contractor, does not take credit for any salvage value, and includes a 25 percent contingency factor.

NRC staff has completed its review of the surety update estimate for the Uranerz Nichols Ranch in situ leach uranium facility and finds that the licensee has included in the update all activities listed in the reclamation plan or in Sections 6.1-6.4 of the standard review plan in NUREG-1569 and to be conducted during the period covered by the update. Staff finds the licensee has based the assumptions for the financial surety analysis on site conditions, including experiences with generally accepted industry practices, and research and development at the site.

NRC staff finds the values used in the financial surety update are based on current dollars and reasonable costs for the required reclamation activities are defined. Therefore, staff finds that the licensee has established an acceptable financial assurance cost estimate based on the requirements in 10 CFR Part 40, Appendix A, Criterion 9.

Appropriateness of the Financial Instrument

The instrument to be used by the licensee for the financial assurance update is a reclamation performance bond. The surety bond has a face value of \$6,800,000 in favor of the WDEQ. The original copy of the financial instrument remains with WDEQ for uranium recovery licensing

activities based on an agreement between the State and the NRC. NRC maintains a copy on file of the instrument.

As of December 17, 2012, NRC surety instruments are required to have a Standby Trust Agreement (STA) in place, pursuant to criteria in 10 CFR Part 40, Appendix A, Criterion 9, which states, “[I]f a trust is not used, then a standby trust fund must be set up to receive funds in the event the Commission or State regulatory agency exercises its right to collect the surety.” The purpose of an STA is to provide a separate account to hold decommissioning funds in the event of a default. The STA is a new requirement in 10 CFR 40, Appendix A, Criterion 9, that went into effect as of December 17, 2012. An STA has been required for other NRC licensees prior to December 17, 2012. The STA is required by NRC because the NRC cannot receive funds for any reason, except from Congress. For example, if a NRC licensee’s bond was forfeited and an STA was not set up to receive funds, the funds would have to be deposited into the U.S. Treasury and be appropriated back to NRC by Congress for their decommissioning use. With an STA, the funds are deposited into the STA with specific guidelines as to how they can be administered by the trustee for their decommissioning use¹.

The WDEQ holds the reclamation bond but does not have an STA in place. Since an STA is not established, the NRC has to either require an STA, or grant an exemption to the regulation. The NRC has the discretion, under 10 CFR 40.14(a), to grant such exemptions from the requirements of a regulation in 10 CFR 40 if it determines the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

The NRC staff has reviewed WDEQ financial assurance requirements. Wyoming law requires that a separate account be set up to receive forfeited decommissioning funds, but does not specifically require a standby trust agreement. Section 35-11-424 of the Code of Wyoming states, “(a) All forfeitures collected under the provisions of this act shall be deposited with the State treasurer in a separate account for reclamation purposes.” WDEQ holds permit bonds in a fiduciary fund called an agency fund. If a bond is forfeited, the forfeited funds are moved to a special revenue account. Although the special revenue account is not an STA, the special revenue account serves a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for reclamation [decommissioning] purposes.

NRC has elected to grant an exemption to the STA requirements in 10 CFR 40, Appendix A, Criterion 9, for the current surety arrangement and for this surety cycle to allow time for further discussion with WDEQ. NRC staff will further explore the financial assurance standby trust requirements in the NRC regulations and the financial assurance requirements in Wyoming regulations to determine if the State of Wyoming separate account provision is equivalent to NRC’s requirement for a STA. NRC staff has determined that this exemption meets the criteria for an exemption in 10 CFR 40.14(a) because the exemption is authorized by law, will not endanger life or property or the common defense and security and is in the public interest.

¹ See NUREG – 1757, Vol. 3, Rev. 1, for explicit details of an STA.

Amendment of NRC license SUA-1597 to adjust the surety due date

Uranerz requested that NRC license SUA-1597, License Condition 9.5, be administratively amended to align the surety reviews between the State of Wyoming and the NRC to occur annually in December [December 29]. Several NRC licenses have specific surety submission dates, and an administrative amendment to add a specific date to NRC license SUA-1597 is acceptable. The license will be amended in the first sentence of the second paragraph of License Condition 9.5 to read:

Proposed annual updates to the financial assurance amount, consistent with 10 CFR Part 40, Appendix A, Criterion 9, shall be provided annually to the NRC by December 29.

ENVIRONMENTAL REVIEW

The staff has reviewed the licensee's request and finds that the proposed license amendment belongs to a category of regulatory actions that the NRC has determined are eligible for categorical exclusion (i.e., that do not require an environmental assessment) under 10 CFR 51.22(c)(10), which states:

Issuance of an amendment to a permit or license under parts 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 52, 60, 61, 63, 70, or part 72 of this chapter which—
(i) Changes surety, insurance and/or indemnity requirements; (ii) Changes recordkeeping, reporting, or administrative procedures or requirements; . . .

The staff finds that the revisions to the surety bond cost estimate constitute a change in surety, insurance and/or indemnity requirements and, therefore, an environmental assessment is not required. Staff finds that the addition of the specific surety submission date is a change in a reporting requirement and, therefore, an environmental assessment is not required.

Additionally, the exemption from the requirement to have an STA in place is eligible for categorical exclusion under 10 CFR 51.22(c)(25), which states:

Granting of an exemption from the requirements of any regulation of this chapter, provided that . . . (vi) The requirements from which an exemption is sought involve: . . . (H) Surety, insurance, or indemnity requirements . . .

The staff finds that the STA exemption involves surety, insurance and/or indemnity requirements and, therefore, an environmental assessment is not required.

CONCLUSION

Based on the information provided in the application, the RAIs and the detailed review conducted of the surety estimate for Uranerz Nichols Ranch in situ leach uranium facility, the NRC staff concludes that the current surety estimate reasonably includes funds sufficient to cover the estimated current costs of the facility. The surety arrangement does not include a STA agreement required in 10 CFR Part 40, Appendix A, Criterion 9. However, NRC is granting an exemption to the regulation that requires a STA for this surety arrangement. NRC is

administratively amending license condition 9.5 to state a specific date for submission of the annual surety.