

**SAFETY EVALUATION REPORT
CHANGE OF CONTROL FOR LICENSE SUA-1597**

DATE: June 18, 2015

DOCKET NUMBER: 040-09067

LICENSEE: Uranerz Energy Corporation

SITE: Nichols Ranch ISR Project, Wyoming
NRC Materials License SUA-1597
P.O. Box 50850, 1701 East "E" Street, Casper, WY 82605

PROJECT MANAGER: Ron C. Linton

TECHNICAL REVIEWERS: Reginald Augustus, Ron C. Linton

SUMMARY AND CONCLUSIONS

On July 19, 2011, the United States Nuclear Regulatory Commission (NRC) issued Source Materials License SUA-1597 to Uranerz Energy Corporation (Uranerz or licensee) for the Nichols Ranch ISR Project that allows for the *in situ* recovery¹ (ISR) of uranium in Wyoming. The Nichols Ranch ISR Project began operations on April 15, 2014, and remains in operating status.

By letter dated March 12, 2015, Uranerz submitted to the NRC an application requesting approval for an indirect change of control of Nichols Ranch ISR Project Source Materials License SUA-1597 (Agencywide Documents and Access Management System (ADAMS) accession number ML15084A286) to Energy Fuels, Inc. (Energy Fuels). Uranerz supplemented the application with additional information in a submission dated June 5, 2015 (ADAMS Accession No. ML15160A025).

NRC approval will allow for in an indirect change of control of the license from Uranerz (a United States Corporation) to Energy Fuels, Inc. (a Canadian corporation) and its subsidiaries. The March 12, 2015, and June 5, 2015, submittals were reviewed by NRC staff for an indirect change in control of a license issued under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40. The staff's review is guided by NUREG-1556, Volume 15, "Consolidated Guidance About Materials Licenses – Program-Specific Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source or Special Nuclear Material Licenses," dated November 2000, and Regulatory Issue Summary (RIS) 2008-19, "Lessons Learned from Recent 10 CFR 70 License-Transfer Application Reviews," dated August 28, 2008. NRC staff finds that the information submitted by Uranerz sufficiently describes and documents the transaction and Uranerz's and Energy Fuels' understanding of the commitments made in NRC License SUA-1597.

¹ One of the two primary recovery methods that are currently used to extract uranium from ore bodies where they are normally found underground (in other words, *in situ*), without physical excavation. Also known as "solution mining" or *in situ* leaching.

As required by 10 CFR 40.46, the NRC staff has reviewed the application and finds that the proposed change of control is in accordance with §184 of the Atomic Energy Act of 1954, as amended (the Act), "Inalienability of Licenses." The staff finds that, after the change of control, Uranerz will remain the licensee, will remain qualified to use radioactive material for the purpose requested, and will continue to have the equipment, facilities, and procedures necessary to protect public health and safety and to minimize danger to life or property. Because Uranerz will remain the licensee, a license amendment is not required for approval of this action.

INTRODUCTION

Uranerz submitted a request to the NRC for consent to the change of control of Source Materials License SUA-1597 in an application dated March 12, 2015. Uranerz operates the Nichols Ranch ISR Project commercial uranium ISR facility, which is located in Johnson and Campbell Counties, Wyoming. The Nichols Ranch ISR Project facility is in operating status and is currently producing uranium.

The proposed change of control is described by Uranerz in its application submitted to the NRC dated March 12, 2015 (ADAMS Accession No. ML15084A286). The March 12, 2015, submittal includes: a description of the transaction; a discussion of changes in personnel; a discussion of equipment and procedures; a discussion of surveillance records; a discussion of decommissioning records. The application contains appendices containing the current license; Energy Fuels U.S. properties map; Energy Fuels pre- and post-closing Organizational Chart; consolidated financial statements for 2012 and 2013; Uranerz post-closing chart; and the current financial assurance reclamation performance bond held by the Wyoming Department of Environmental Quality.

By letter dated June 4, 2015 (ADAMS Accession No. ML15152A365) the NRC provided Uranerz with its Requests for Additional Information (RAIs) with regard to its March 12, 2015, submittal. Uranerz responded to the RAIs by letter dated June 5, 2015 (ADAMS Accession No. ML15160A025). Uranerz's June 5, 2015, response contained additional information and commitments that the transferee will abide by all constraints, conditions, requirements and commitments of the transferor.

LICENSE HISTORY

On July 19, 2011, the NRC issued Source and Byproduct Materials License SUA-1597 to Uranerz for receiving, acquiring, possessing and transferring source and byproduct material as defined by 10 CFR Part 40 at the Nichols Ranch ISR Project in Johnson and Campbell Counties, Wyoming. The Nichols Ranch ISR Project contains two units known as the Nichols Ranch Unit and Hank Unit. The license permits Uranerz to operate a uranium ISR facility with a Central Processing Plant (CPP) at the Nichols Ranch Unit and a satellite plant to load uranium resins at the Hank Unit. It authorizes a maximum daily averaged throughput (i.e., circulation of fluids through the wellfield(s)) equivalent to 3500 gallons per minute (gpm) and a 2.0 million-pound annual production of yellowcake at the Nichols Ranch Unit, and a maximum daily averaged throughput equivalent to 2500 gpm at the Hank Unit.

On April 15, 2014, following completion of a pre-operational inspection, NRC authorized the licensee to begin ISR operations at the Nichols Ranch Unit. Although the license permits the installation and use of a dryer to produce dried uranium yellowcake at the Nichols Ranch Unit

CPP, Uranerz elected to construct the Nichols Ranch Unit plant that only loads uranium onto resins in ion exchange columns. The remaining processes (i.e., resin elution, precipitation and yellowcake drying) are performed at an off-site licensed facility.

Currently, the Licensee has operations in the first wellfield, Production Area 1 (PA1), with no wellfields in restoration. Based on the 2015 first quarter report, the current production consists of a daily averaged throughput of approximately 2100 gpm at the Nichols Ranch Unit. No operations are authorized at this time for the Hank Unit. The facility has two deep disposal wells for the disposal of liquid byproduct material by injection. Since the licensee began operations, 14 spills have occurred of which four (4) spills met the license reporting criteria (i.e., greater than 420 gallons or entered a stream channel). No excursions have been reported.

The current version of the license is Amendment 3 which was issued on August 28, 2014. The license requires the licensee to maintain financial assurance in an amount of no less than \$6,235,956, which is in the form of surety bond. The surety bond will cover the cost for decontamination and decommissioning of the facility by a third party if the licensee fails to perform decontamination and decommissioning.

On May 8, 2014, Uranerz submitted an amendment request for the Jane Dough Unit Expansion to the NRC for review and approval (ADAMS Accession No. ML14164A274). NRC's review of that request is ongoing.

REGULATORY FRAMEWORK

License SUA-1597 was issued under 10 CFR Part 40, "Domestic Licensing of Source Material." The Commission is required by 10 CFR 40.46 to determine if the change of control is in accordance with the provisions of the act and give its consent in writing.

10 CFR 40.46 states:

No license issued or granted pursuant to the regulations of this part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of this act, and shall give its consent in writing.

The staff's review is guided by NUREG-1556, Volume 15, "*Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses*," dated November 2000, RIS 2008-19, "*Lessons-Learned from Recent 10 CFR Part 70 License-Transfer Application Reviews*," dated August 2008, and regulations pertaining to specific licenses in 10 CFR Part 40.

As discussed in NUREG-1556, Volume 15, NRC is generally using the term "change of control" rather than the statutory term "transfer" to describe the variety of events that could require prior notification and written consent of the NRC.

The application was placed on NRC's public Web site found at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html#change>, under Notice of Ownership Change on April 9, 2015. No comments were received within the 30-day period after this posting as specified in 10 CFR 2.1305. In addition, notice of the application for indirect transfer of license, and opportunity to comment, request a hearing and petition for leave to intervene for Materials License SUA-1597 was published in the *Federal Register* on May 22, 2015 (80 FR 29753) with a deadline for submitting a request for hearing of June 11, 2015. No requests for hearing were received. Any comments received in response to the *Federal Register* notice will be addressed separately. The FR notice (80 FR 29753) was also referenced on the NRC's public Web site found at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html#change>, under Notice of Ownership Change on May 22, 2015.

In letters dated June 2, 2015, NRC staff notified 21 Tribal Historic Preservation Officers (THPO), and one Tribe for which no THPO was listed, of the *Federal Register* notice, opportunity to request a hearing, and opportunity to comment (ADAMS Accession No. ML15139A188).

DEFINITION OF A CHANGE OF CONTROL

NUREG-1556, Volume 15, Appendix F, defines control as:

Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.

Upon consummation of the financial transaction, described below, Energy Fuels – absent from the previous corporate lineage – will become the ultimate parent company of Uranerz and through its subsidiaries will have majority ownership of Uranerz thereby providing Energy Fuels with indirect control over NRC license SUA-1597. Although an indirect change of control, the proposed transaction still requires NRC consent under the Act and 10 CFR Part 40.

DESCRIPTION OF TRANSACTION

NUREG-1556, Volume 15 recommends that license transfer applications include:

- A clear description of the transaction to include, but not limited to, any transfer of stocks, assets, or mergers;
- New name of licensed organization or statement that no name change has occurred; and
- New licensee contact and telephone number (if applicable)

The submittal dated March 12, 2015, states that, EFR Nevada Corp. is “an indirect wholly owned subsidiary of Energy Fuels” and that there will be “a merger ... of EFR and Nevada Corp. with and into Uranerz.” The change of control submission's Appendix C “Energy Fuels Current Corporate Organizational Chart” and Appendix D “Post-Closing Corporate Organizational Chart” did not clearly identify EFR Nevada Corp.

By letter dated June 4, 2015, NRC staff submitted an RAI to Uranerz asking for clarification on the description of the transaction related to the Nevada Corporation that is not listed in the organizational chart. By letter dated June 5, 2015, Uranerz provided its response to the RAI, by submitting an updated "Energy Fuels Current Corporate Organizational Chart" that clearly identified EFR Nevada Corp.

Relying upon Uranerz' submittals, the staff finds that after the transaction, Uranerz will remain the NRC licensee for Materials License SUA-1597 and that the transaction will result in a change of the ultimate parent company of the licensee from Uranerz to Energy Fuels.

The NRC staff finds that Uranerz adequately provided a complete and clear description of the transaction, and that the information provided is consistent with the guidance in NUREG-1556.

CHANGES OF PERSONNEL

NUREG-1556, Volume 15 recommends that license transfer applications include documenting changes in personnel to include individuals having control over licensed activities.

The March 12, 2015, application states, "personnel currently operating the Nichols Ranch Project, Nichols Ranch Unit, Central Processing Plant ("CPP") and Production Area #1 ("PA#1") will remain the same. The site Radiation Safety Officer ("RSO"), Aaron Linard, will continue to be the RSO. All mine management, operations, wellfield, environment health and safety, and construction staff will also continue operating the CPP and PA#1 without interruption. Further, the current President and Chief Operating Officer of Uranerz is expected to continue as the Executive Vice President, ISR Operations for Uranerz post-Closing, and to be appointed an officer of Energy Fuels."

However, changes to the Board of Directors and Management will occur. As stated in the July 20, 2010, submittal, "In addition, the existing directors of Uranerz will resign and be replaced with new directors, all of whom will be existing officers of Energy Fuels and its subsidiaries. Further, certain officers of Energy Fuels, such as its Chief Financial Officer and Senior Vice President, General Counsel and Corporate Secretary will become officers of and assume those roles for Uranerz post-Closing."

The NRC staff finds that key personnel that have control over licensed material will not change as a result of the proposed transaction. The preservation of key facility and safety personnel at the Nichols Ranch ISR Project meets the requirements 10 CFR Part 40 and is consistent with the guidance in NUREG-1556, Volume 15.

CHANGES OF LOCATION, EQUIPMENT AND PROCEDURES

NUREG-1556, Volume 15 recommends that license transfer applications include a detailed description of any changes in the licensees' location(s) of use, facility description, equipment or procedures (i.e., changes in operating or emergency procedures) that would normally require a license amendment.

The March 12, 2015, application states, "Uranerz will not have any changes in location or place of use, including potentially affected adjacent areas, facilities, equipment, or procedures used

for the Nichols Ranch Project or the License. The current operation of the Nichols Ranch Unit CPP and PA#1 will continue as currently operated.”

The NRC staff finds that there are no proposed changes in the location, equipment, and procedures for the site and the documentation submitted meets the requirements in 10 CFR Part 40 and is consistent with the guidance in NUREG-1556, Volume 15.

SURVEILLANCE RECORDS

NUREG-1556, Volume 15 recommends that, prior to the approval of a change of control, license transfer applications should include a review of the status of all applicable surveillance requirements and records. This should include an indication of whether the surveillance program is current and if it will be current at the time of transfer.

The March 12, 2015, application states, “Uranerz, as the current Licensee, hereby states that all required surveillance for the Nichols Ranch Project and License, has been performed, documented, and reviewed and is current, and will continue to be current at the time of the change of control. All records associated with the required surveillance are maintained and kept at the Nichols Ranch Project, Nichols Ranch CPP mine site office. All such records are current, and will continue to be current at the time of the change of control. These records will remain at the facility. The Transaction will have no impact on the status of the surveillance systems at the Nichols Ranch Project.”

The staff finds that the application submitted contains a statement that all required surveillance has been performed, documented, and reviewed, as required by 10 CFR Part 40 and recommended by NUREG-1556, Volume 15.

DECOMMISSIONING AND RELATED RECORDS TRANSFERS

NUREG-1556, Volume 15 recommends that license transfer applications include: (1) information that ensures the proper transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities, and (2) a description of the status of the licensed facility with regard to ambient radiation levels and fixed and/or removable contamination as a result of NRC licensed activities. The application should confirm that the transferee accepts full responsibility for the decommissioning of the site, including any contaminated facilities and equipment.

Record Transfer

The March 12, 2015, application states, “As the Transaction will have no impact on the License, which will remain with Uranerz after completion of the Transaction, or on the operations at the Nichols Ranch Project, all of which will remain in Uranerz, and as Energy Fuels will be acquiring Uranerz, including all of its records, there will be no transfer of records concerning the safe and effective decommissioning of the Nichols Ranch Project. All records associated with the decommissioning of the Nichols Ranch Unit, CPP, and PA#1 will remain with Uranerz, the holder of the License, at the completion of the Transaction and will be available to Energy Fuels as the owner of Uranerz. These records are currently maintained and kept at the Nichols Ranch CPP and will continue to remain on site after the completion of the Transaction. These records

include, but are not limited to, unplanned release reports, building and equipment alpha and gamma surveys, well construction records including mechanical integrity testing, well plugging and abandonment records, and copies of all quarterly, semi-annual, and annual reports that have been submitted to the NRC.”

Relying upon Uranerz’ description of the proposed transaction, the staff finds that the licensee does not change as a result of the change of control, and therefore, the staff finds the response acceptable. The NRC staff finds that the application contains information on the maintenance of all records, consistent with the guidance in NUREG-1556, Volume 15.

Contamination Status

The March 12, 2015, application states, “Energy Fuels is knowledgeable of the extent and levels of contamination and applicable decommissioning requirements at the Nichols Ranch Project.”

Uranerz and Energy Fuels stated on June 5, 2015, in response to NRC RAI’s, “Prior to the Transaction, extensive due diligence was conducted by each of [Uranerz] and Energy Fuels. Based on this, [Uranerz] and Energy Fuels each acknowledges that: (1) it is familiar with the Quarterly Reports, Semi Annual Effluent and Environmental Monitoring Reports and other periodic reports filed with the NRC for the Project; (2) it is aware that descriptions of the Project facility, with regard to existing contamination and ambient radiation levels, are contained in those reports and other available documents; and (3) it is knowledgeable of the extent and levels of contamination and applicable decommissioning requirements at the Project.”

The NRC staff finds that the submitted information sufficiently demonstrates that Uranerz and Energy Fuels understands the current status of the contamination levels at the facilities, consistent with the guidance in NUREG-1556, Volume 15.

Decommissioning Commitment

The March 12, 2015, application states, “There will be no transferee of the License. The License will remain with Uranerz. However, there will be an indirect change of control of Uranerz through the indirect acquisition by Energy Fuels of all of the shares of Uranerz. As the Transaction will not involve a transfer of the License to any person, there is no need to consider whether or not a transferee will abide by all constraints, conditions, requirements and commitments of Uranerz or whether or not a transferee will submit a complete description of the proposed licensed program.”

The March 12, 2015, application further states, “Uranerz, as Licensee, will continue to abide by all of the constraints, commitments, requirements, representations, and conditions of the License after the Closing, and confirms that it will continue to accept full responsibility, as Licensee, for the decommissioning of the Nichols Ranch Project site, including any contaminated facilities and equipment. Uranerz also confirms that it is knowledgeable of and accepts full responsibility for open inspection items and/or any resulting enforcement actions.”

The June 5, 2015, RAI responses were signed by Mike Thomas, Vice President Regulatory and Public Affairs of Uranerz and by David C. Frydenlund, Senior Vice President, General Counsel and Corporate Secretary Energy Fuels Inc. The June 5, 2015, response provided certification

from a duly authorized representative from Energy Fuels, Inc., that Energy Fuels, Inc., is knowledgeable of the extent and levels of contamination and applicable decommissioning requirements at the Nichols Ranch ISR Project.

The NRC staff finds that the application sufficiently describes Uranerz's and the parent company, EF's, commitment to decommissioning of the facilities, in accordance with NUREG-1556, Volume 15.

Financial Assurance

The March 12, 2015, application states, "The financial surety for the Nichols Ranch Project will continue to be provided by Uranerz, the holder of the License, and will be unaffected by the Transaction. A bond rider will be provided after the Closing of the Transaction if the name of Uranerz is changed, to reflect the change of name."

The March 12, 2015, application further states, "Per License Condition 9.5, the Licensee shall maintain an NRC approved financial surety arrangement, consistent with 10 CFR Part 40, Appendix A, Criterion 9, adequate to cover the estimated costs, if accomplished by a third party, for decommissioning and decontamination, which includes offsite disposal of radioactive solid process residues, and groundwater restoration as warranted. The surety shall also include the costs associated with all soil and water sampling analyses necessary to confirm the accomplishment of decontamination."

Uranerz financial assurance requirements for decommissioning, decontamination, and reclamation, consistent with 10 CFR Part 40, Appendix A, Criterion 9, are set forth in SUA-1597 License Condition (LC) 9.5. The indirect change of control will not affect Uranerz with regard to continued compliance with the requirements for financial assurance. Uranerz and their parent company Energy Fuels will remain responsible for the current status and future decommissioning of the licensed facility.

Uranerz financial assurance currently consists of a surety bond in favor of the Wyoming Department of Environmental Quality for \$6,800,000. Appendix 8 of the March 12, 2015, application contains a copy of the surety bond held by the Wyoming Department of Environmental Quality.

Pursuant to Criterion 9(d), the NRC, "[M]ay accept financial sureties ... consolidated with ... surety arrangements established to meet requirements for ... state agencies ... provided such arrangements are considered adequate ... and that the portion of the surety which covers the decommissioning ... is clearly identified and committed for use in accomplishing these activities." In accordance with this criterion, Uranerz has consolidated the NRC's financial assurance surety with the financial assurance surety required by the State of Wyoming. NRC staff has discussed the bond with the state and it is currently acceptable.

Relying upon Uranerz' submittals and the copy of the surety bond held by the Wyoming Department of Environmental Quality, the staff finds that the financial assurance will remain in place after consummation of the transaction.

TRANSFEEE'S COMMITMENT TO ABIDE BY THE TRANSFEROR'S COMMITMENTS

In the June 5, 2015, response to RAI's, the new parent company, Energy Fuels, acknowledged its commitment to abide by all of the constraints, license conditions, requirements, representations and commitments of the License after the closing of the Transaction. Response to RAI No. 3 stated, "As the ultimate parent company of [Uranerz] upon completion of the Transaction, Energy Fuels acknowledges the obligation of [Uranerz] to abide by all of the constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing License for the Project."

The June 5, 2015, RAI responses were signed by Mike Thomas, Vice President Regulatory and Public Affairs of Uranerz and by David C. Frydenlund, Senior Vice President, General Counsel and Corporate Secretary Energy Fuels Inc.

The NRC staff finds the commitment made by Energy Fuels and signed by a corporate officer provides certification from an authorized representative of the transferee to abide by commitments made Uranerz in its NRC Materials License SUA-1597 and is consistent with the guidance in NUREG-1556, Volume 15.

INIMICALITY REVIEW

Neither the NRC's regulations nor the Act prohibit issuance of a materials license to a licensee that is wholly or majority owned by a foreign parent. Instead, the NRC must find that issuance of the license, among other things, will not be inimical to the common defense and security or to the health and safety of the public.² At the conclusion of the initial licensing proceedings for the Nichols Ranch ISR Project, the NRC determined that the issuance of a Part 40 license to the licensee, Uranerz Energy Corporation, would not be inimical to the common defense and security or to the health and safety of the public. For the reasons indicated herein, the NRC staff has determined that approval of the indirect transfer of control of the NRC license SUA-1597 from Uranerz to Energy Fuels would similarly not be inimical to the common defense and security or to the health and safety of the public.

In conducting this inimicality review, the NRC staff considered whether a Canadian corporation's indirect control of a uranium recovery facility in the United States would be inimical (adverse or hostile) to the common defense and security or the public health and safety. As an initial matter, the uranium recovery facilities at issue are only licensed to possess source material and byproduct material, specifically uranium and 11.e(2) byproduct material, at the licensed sites and may not receive, possess, or use special nuclear material without first obtaining a specific license for such purposes from the NRC. Simply stated, the uranium recovery and milling process utilized at the facilities result in a uranium concentrate powder commonly called yellowcake, which does not pose a high security risk, is of low strategic significance, and does not impact the availability of special nuclear material for military needs. The parties to the proposed transaction have committed to abide by the NRC's regulations (including all security requirements applicable to ISR facilities), license and previous commitments made by the licensee, and, as previously indicated, have confirmed that there will be no changes in personnel having control over licensed activities as a result of this change of control.

² See 10 CFR 40.32(d); Atomic Energy Act of 1954, as amended, § 69, 42 U.S.C. § 2099.

With respect to ensuring the public health and safety, as documented within this SER, the parties to the proposed transactions have committed to abide by all applicable laws and NRC regulations with respect to the construction and operation of the licensed facilities. Upon conclusion of this transaction, the direct licensee in charge of day-to-day operations at the licensed facilities will remain unchanged, as will the location of the ISR operations, equipment, and procedures. The NRC staff has verified that the parties to transaction have accepted full responsibility for decommissioning the licensed sites upon conclusion of licensed activities and have satisfied the NRC's financial assurance requirements.

For the reasons indicated herein, the NRC staff has determined that consent to the indirect transfer of the Nichols Ranch ISR Project license to Energy Fuels will not be inimical to the common defense and security or public health and safety.

ENVIRONMENTAL REVIEW

This NRC action is not subject to further environmental review. This action is categorically excluded from further environmental review pursuant to 10 CFR 51.22(c)(21), having been determined by the NRC to be within a category of actions that does not individually or cumulatively have a significant effect on the human environment.

CONCLUSIONS

The staff has reviewed the application submitted by Uranerz with regard to an indirect change of control of Materials License SUA-1597. The submitted information sufficiently describes the transaction; documents Uranerz understanding of the license and commitments; and, demonstrates that Uranerz and Energy Fuels will abide by all existing commitments to the license.

Therefore, the staff concludes that the proposed indirect change of control would not alter the previous findings, made pursuant to 10 CFR 40.32. The staff has determined that licensed operations will not be inimical to the common defense and security, or to the health and safety of the public, as the licensed facilities and materials will continue to be used and operated in accordance with the NRC's regulations and in a manner that ensures the common defense and security and the public health and safety.

Enclosure 2
Safety Evaluation Report