

DEC 19 2019


ENERGYSOLUTIONS

DRC-2019-016955

December 19, 2019

CD19-0245

Mr. Ty Howard
Director
Utah Division of Waste Management and Radiation Control
195 North 1950 West
Salt Lake City, Utah 84114-4880

Subject: Federal Cell Facility Pre-Filing Process

Dear Mr. Howard:

As you are aware, *EnergySolutions* intends to seek licensing approval from the State of Utah's Division of Waste Management and Radiation Control ("DWMRC" or "Division") to dispose of concentrated depleted uranium owned or generated by the Federal government in a separate Federal Cell ("Cell"). The purpose of this letter is to clarify the administrative process that applies to the pre-filing review of the forthcoming Federal Cell Radioactive Material License Application.

Background

EnergySolutions operates a low-level radioactive waste disposal facility, the Clive Disposal Facility ("Facility") in Tooele County, Utah. The Facility is licensed by the DWMRC in accordance with State law and the State's authority ceded to it by the United States Nuclear Regulatory Commission. *EnergySolutions* currently has two radioactive materials licenses—one for its Class A West Cell (License #UT2300249) and one for its 11e.(2) Cell (License #UT2300478). Under these licenses, *EnergySolutions* receives commercial and Federal government low-level radioactive waste ("LLRW"), Mixed LLRW, and byproduct material as defined in section 11e.(2) of the Atomic Energy Act.

EnergySolutions seeks to dispose of concentrated depleted uranium owned or generated by the Federal government and transported to the Facility. Historically, *EnergySolutions* has sought approval to dispose of concentrated depleted uranium by meeting a condition in its Class A West Cell Radioactive Materials License—Condition 35. The DWMRC amended the Class A West Cell Radioactive Materials License to add Condition 35 in 2010. This condition requires, in part, that *EnergySolutions* submit a performance assessment that demonstrates disposal of concentrated depleted uranium is safe and complies with applicable law. Many of the requirements of Condition 35 were later codified into Utah Administrative Code R313-25-9(5)(a). Further, several of the same requirements were also codified in 2019 in Utah Code section 19-3-103.7, which requires an approved performance assessment (among other requirements) as a condition to the disposal of concentrated depleted uranium.

In 2011, EnergySolutions submitted a depleted uranium performance assessment (“DU PA”) to meet Condition 35 and requested approval of the DU PA from the DWMRC. EnergySolutions and the DWMRC have worked in good faith on the DU PA in the ensuing years. Since 2011, however, EnergySolutions and the DWMRC have determined the preferred disposal method requires EnergySolutions to segregate the concentrated depleted uranium from its other waste streams and dispose of it in a dedicated Federal Cell. Because EnergySolutions now proposes to dispose of the concentrated depleted uranium in a dedicated Federal Cell, EnergySolutions intends to submit a new Federal Cell Radioactive Material License Application (“Application”). This Application will be governed by Utah Administrative Code R313-25-9(5)(a), the applicable sections of Utah Administrative Code R313-22, et seq., and Utah Code section 19-3-103.7 (among other applicable law)—but not Condition 35.

As EnergySolutions intends to submit a new Application, it hereby withdraws its 2011 request for approval of the DU PA as satisfying Condition 35. The DU PA that has been in progress since 2011 will be finalized and submitted as part of the new Application. See U.C.A. § 19-3-103.7(3)(a).

Pre-filing Administrative Process

EnergySolutions and the DWMRC met on October 23, 2019 to discuss a pre-filing administrative process under which the DWMRC would consider draft components of the forthcoming Application. As discussed at the October 2019 meeting, EnergySolutions intends to submit a complete Application that meets or exceeds all legal requirements and fully demonstrates the safety and legality of its proposed disposal of concentrated depleted uranium. To do so, EnergySolutions is seeking pre-filing review from the DWMRC of several components of its Application in a preliminary draft format. Such review is similar to that commonly done by other state and federal agencies in various licensing and permitting processes, including the Utah Division of Air Quality for highly technical dispersion models submitted in support of air quality permits and is reasonable under the circumstances presented by the forthcoming Application. See Utah Admin. Code R307-410.

EnergySolutions does not seek approval of these component parts, instead it seeks only preliminary feedback and comments from the DWMRC regarding technical or legal gaps. The submission of these preliminary draft components is not the submission of the official Application and does not trigger any regulatory requirements for DWMRC review. As part of such submission, EnergySolutions and the DWMRC may have pre-filing meetings to facilitate the Division’s feedback on draft documents. EnergySolutions intends to submit for preliminary review the following Application components, among potential additional pre-filing submissions:

- (1) Preliminary Draft DU PA

The forthcoming DU PA will require highly technical analyses regarding the safe disposal of concentrated depleted uranium. As such, *EnergySolutions* will require input from the DWMRC on preliminary data and draft documents. The preliminary data and draft documents are not formal submissions by *EnergySolutions* and the company seeks only preliminary comments from the Division, not approval.

- (2) Preliminary Review of Draft Application Components under R313-25/NUREG-1199

The administrative process and regulatory framework for the disposal of concentrated depleted uranium is unique and complex. Thus, *EnergySolutions* intends to submit a preliminary draft of the components of its Application that address R313-25 and NUREG-1199 requirements for review. *EnergySolutions* intends to ask the DWMRC to review this submission for any regulatory gaps so *EnergySolutions* may address these gaps in its final Application submission.

- (3) Preliminary Review of Materials to Meet Utah Code § 19-3-103.7(3)(c)

The requirements of Utah Code section 19-3-103.7(3)(c) are newly enacted and have not been utilized in any prior licensing application. Thus, *EnergySolutions* intends to submit its preliminary documents to address this requirement, including without limitation the Land Transfer Agreement (“LTA”) and draft Memorandum of Agreement (“MOA”) with the United States Department of Energy (“DOE”), to the DWMRC to review for any regulatory gaps so *EnergySolutions* may address these gaps in its final Application submission.

EnergySolutions understands the DWMRC will not sign the draft MOA between itself and DOE until the Division determines the MOA meets the applicable legal requirements following the formal administrative licensing process, which will include public comment. *EnergySolutions* further understands the DWMRC will enter into a fully negotiated MOA contemporaneously with its granting of the Application, assuming the DWMRC finds the MOA and the larger Application meet the applicable legal requirements after the formal administrative process (as more fully described below).

By providing comments on regulatory or data gaps in preliminary draft documents, EnergySolutions understands the DWMRC is in no way expressing its approval of these preliminary documents or presupposing the outcome of the licensing administrative process.

Request for Guidance

EnergySolutions intends to submit a final Federal Cell Radioactive Licensing Application as soon as it has completed a final Application that meets or exceeds all legal requirements and fully demonstrates the safety and legality of its proposed disposal of concentrated depleted uranium. EnergySolutions anticipates it will submit its final Application in early 2020. This final Application will trigger the formal administrative licensing process as outlined in the DWMRC's rules, which includes formal public comment. Any resulting order will be subject to review under Utah Code section 19-1-301.5. EnergySolutions requests the DWMRC's feedback and guidance on the pre-filing administrative process outlined above so that the company can appropriately comply with the same.

Thank you for your attention to this issue. Please contact me at 801-649-2000 if there are any questions regarding this request for concurrence.

Sincerely,

 Vern C. Rogers
Dec 19 2019 2:09 PM
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Vern C. Rogers
Director, Regulatory Affairs

cc: Don Verbica, DWMRC
Bret Randall, UOAG
Helge Gabert, DWMRC