

Commission, Washington, DC 20555–0001.

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Dated at Rockville, Maryland, this 30th day of January, 2014.

For the Nuclear Regulatory Commission.

**Kristen Benney,**

*Acting NRC Clearance Officer, Office of Information Services.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09067; NRC–2014–0020]

### License Exemption for Uranerz Energy Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption to the financial assurance requirements to Uranerz Energy Corporation (Uranerz) in response to their annual financial assurance update for the Nichols Ranch uranium in situ recovery (ISR) project.

**ADDRESSES:** Please refer to Docket ID NRC–2014–0020 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Ron Linton, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–7777; email: [Ron.Linton@nrc.gov](mailto:Ron.Linton@nrc.gov).

### I. Background

NRC materials license SUA–1597, License Condition 9.5, requires Uranerz to submit to NRC for review and approval an annual update of the financial surety to cover third-party costs for decommissioning and decontamination, pursuant to 10 CFR 40, Appendix A, Criterion 9, for the Nichols Ranch ISR project located in Johnson and Campbell Counties, Wyoming. By letter dated December 20, 2012, Uranerz submitted to the NRC its Nichols Ranch annual surety update for 2012–2013 (ADAMS Accession No ML13004A100). NRC staff reviewed the annual financial surety update and found the surety reclamation bond value reasonable for the required reclamation activities (See ADAMS Accession No ML13227A378). The Wyoming Department of Environmental Quality (WDEQ) holds the reclamation bond but does not have a standby trust agreement (STA) in place, as required by 10 CFR 40, Appendix A, Criterion 9.

### II. Description of Action

As of December 17, 2012, surety instruments for NRC uranium milling licensees regulated under 10 CFR 40, Appendix A, Criterion 9, are required to have a STA in place, pursuant to 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. Since an STA is not established, the NRC has to either require an STA or grant an exemption to the requirements of 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 an STA. 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. The 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.

### III. Discussion

#### A. The Exemption is Authorized by Law

The NRC staff concluded that 10 CFR 40.14(a) allows for an exemption to the requirements of the regulation in 10 CFR 40, Appendix A, Criterion 9.

#### B. The Exemption Presents no Undue Risk to Public Health and Safety

The exemption is related to the financial surety. The regulations in 10 CFR 40, Appendix A, Criterion 9(d), allows for the surety arrangements to be held by the State. NRC has determined that while the WDEQ does not require 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. Therefore, the exemption presents no undue risk to public health and safety.

#### C. The Exemption is Consistent With the Common Defense and Security

The exemption does not involve the common defense or security. Therefore, granting the exemption will have no effect on the common defense and security.

#### D. Environmental Considerations

The NRC staff has determined that granting of an exemption from the requirements of 10 CFR 40.14(a) belongs

to a category of regulatory actions that are eligible for categorical exclusion (i.e., that do not require an environmental assessment). 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.

#### IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 40.14(a) the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the NRC hereby grants Uranerz Energy Corporation an exemption from the requirements of 10 CFR 40, Appendix A, Criterion 9 for the current surety cycle that an STA must be set up to receive decommissioning funds.

Dated at Rockville, Maryland, this 28th day of January 2014.

For the Nuclear Regulatory Commission.

**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.*

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## NUCLEAR REGULATORY COMMISSION

[NRC-2014-0018; EA-13-241]

### Certain Panoramic and Underwater Irradiators Authorized To Possess Byproduct Material; Order Imposing Compensatory Measures (Effective Immediately)

#### I

The Licensee identified in Attachment 1 to this Order holds a license issued in accordance with the Atomic Energy Act of 1954 and 10 CFR part 36 by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing possession of greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources in panoramic irradiators that have dry or wet storage of the sealed

sources, or in underwater irradiators in which both the source and the product being irradiated are under water.

Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement State regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

#### II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and near Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing requirements, as set forth in Attachment 2<sup>1</sup> on the Licensee identified in Attachment 1<sup>2</sup> of this Order who currently possesses, or has near term plans to possess, greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources. These requirements, which supplement existing regulatory requirements, will provide the

<sup>1</sup> Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION are being released to the public.

<sup>2</sup> Attachment 1 contains sensitive information and will not be released to the public.

Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment.

Attachment 3 of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when the Licensee's reviewing official is determining access to Safeguards Information or unescorted access to the panoramic or underwater irradiator sealed sources. These requirements will remain in effect until the Commission determines otherwise.

The Commission concludes that these security measures must be embodied in an Order, consistent with the established regulatory framework. The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information. . . ." This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachment 2 to the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA-13-040). The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA-13-040), applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States.

Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-13-041). A need-to-know means a determination by a person having responsibility for