



Energy Fuels Inc.  
225 Union Blvd. Suite 600  
Lakewood, CO, US, 80228  
303 974 2140  
www.energyfuels.com

September 29, 2016

The Honorable Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**RE: SEC Proposed Rule for Modernization of Property Disclosure Requirements for Mining Registrants**

Dear Mr. Fields:

Energy Fuels Inc. (“Energy Fuels”) appreciates the opportunity to submit comments on the Securities and Exchange Commission’s (“SEC’s”) proposed rule to modernize property disclosure requirements for mining registrants (81 Fed. Reg. 41652) (the “Proposed Rule”).

Energy Fuels is a leading integrated U.S.-based uranium mining company, supplying U<sub>3</sub>O<sub>8</sub> to major nuclear utilities. Energy Fuels holds three of America’s key uranium production centers, the White Mesa Mill in Utah, the Nichols Ranch Project in Wyoming, and the Alta Mesa Project in Texas. The White Mesa Mill is the only conventional uranium mill producing in the U.S. today. The Nichols Ranch Project is an *in situ* recovery (“ISR”) production center that is currently in production, and the Alta Mesa Project is an ISR production center currently on care and maintenance. Energy Fuels also has the largest Canadian National Instrument 43-101 (“NI 43-101”) compliant uranium resource portfolio in the U.S. among producers, and uranium mining projects located in a number of Western U.S. states, including one producing conventional mill, one producing ISR project, mines on standby, and mineral properties in various stages of permitting and development. The Company is incorporated under the Ontario Business Corporations Act, is a reporting issuer under Canadian securities laws, and is a U.S. domestic issuer under SEC rules. The Company’s common shares are listed on the NYSE MKT under the trading symbol “UUUU”, and on the Toronto Stock Exchange under the trading symbol “EFR”.

We have read and endorse the comments provided to you by the National Mining Association. We would like to take this opportunity to add a few additional comments of our own.

**1. General Comments**

The SEC indicates that one of the main purposes of the Proposed Rule is to modernize the SEC’s disclosure requirements and policies for mining properties by aligning them with current industry and global regulatory practices and standards. Unfortunately, as currently written, the Proposed Rule is unlikely to achieve that objective, and in fact we believe that the Proposed Rule would have the opposite effect.

## 2. Resource Definition and Calculation

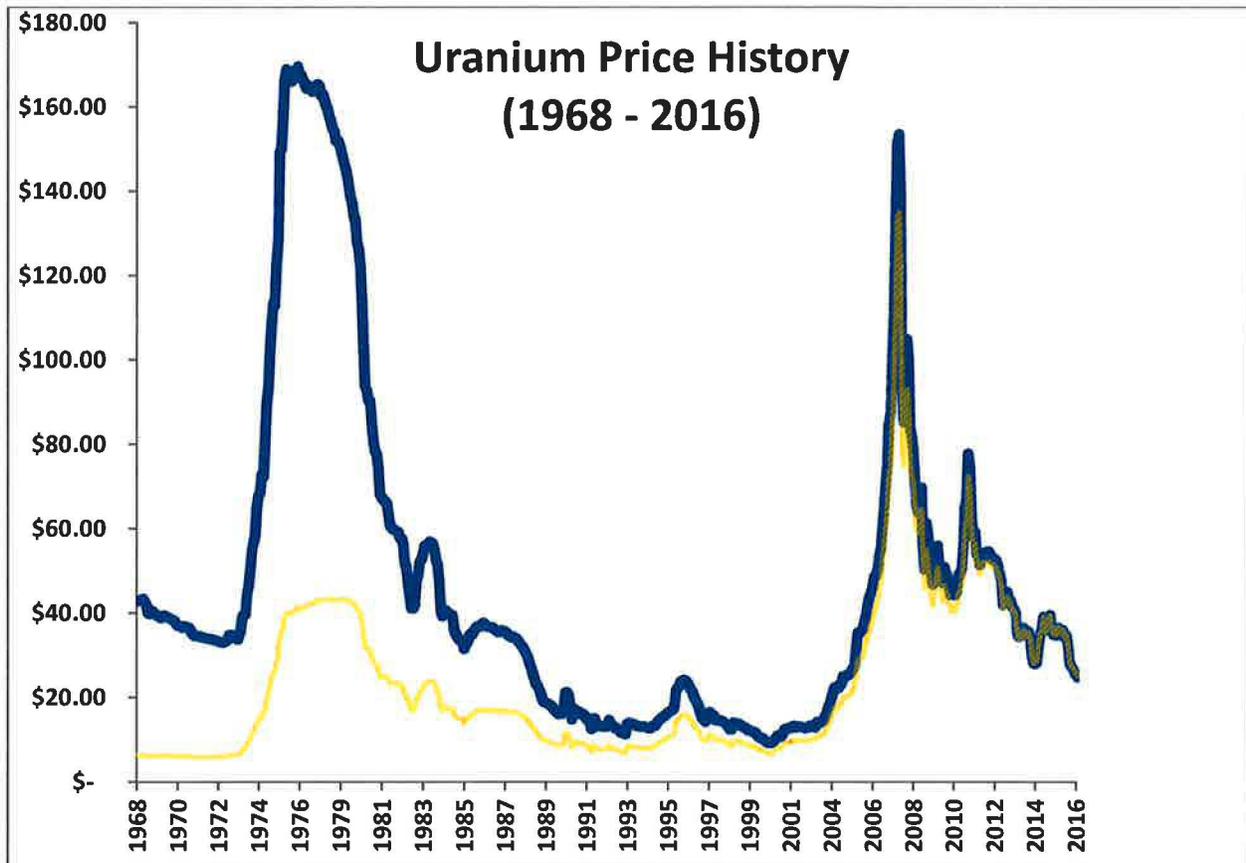
- a) *The Proposed Rule creates a new concept of Mineral Resources which is not in line with current industry and global regulatory practices and standards*

The effect of the Proposed Rule is to require Mineral Resources to have a reasonable prospect of economic extraction *at the time of the resource determination*, whereas under the Committee for Mineral Reserves International Reporting Standards (“CRIRSCO”), such as NI 43-101, Mineral Resources must only have a reasonable prospect of *eventual* extraction. By eliminating the word “eventual” from the definition of “resources”, the SEC is creating an entirely different concept of Mineral Resources than contemplated by CRIRSCO standards. Under CRIRSCO standards, a Mineral Reserve must be economically mineable at the time of the determination, whereas a Mineral Resource must have a reasonable prospect of *eventual* extraction. However, the Proposed Rule requires the use of the same pricing assumptions (a commodity price ceiling equal to the 24-month trailing average price) for the determination of Mineral Resources, as are required for Mineral Reserves. The proper pricing assumption for a Mineral Resource should be a reasonable price that supports eventual extraction, not the price at or near the time of the determination. By using a different definition for Mineral Resources than that contemplated by CRIRSCO, the Proposed Rule would not align U.S. disclosure requirements with current industry and global regulatory practices and standards.

- b) *The Proposed Definition of Mineral Resources would not recognize many existing Mineral Resources*

If only commodity price levels over the previous 24 months can be used to determine whether or not there is a reasonable prospect for extraction, then many Mineral Resources that currently exist under CRIRSCO standards would not exist under the Proposed Rule, particularly for commodities whose prices fluctuate widely or over longer cycles.

Below is a graph that shows uranium ( $U_3O_8$ ) prices in US\$ since 1968. The actual prices are shown in yellow, and the prices restated in today’s dollars are shown in blue.



It is evident from this graph that the price of uranium has fluctuated significantly, and over long cycles. The simple average price over the last 24 months is approximately US\$33.75 per pound of U<sub>3</sub>O<sub>8</sub>. Many of the Mineral Resources currently reported by uranium companies are calculated at prices that are considerably higher than today's levels. However, these levels have existed several times in the past, and the reported Mineral Resources are in many cases associated with actual mines that were mined or developed in those previous periods which are now on standby, or are in districts where similar deposits were developed and mined in previous periods. However, at a price of US\$33.75 per pound, most of those Mineral Resources would not have a reasonable prospect of economic extraction today under the Proposed Rule. Many industry and market analysts forecast future prices to return to those higher historic price levels, which would justify eventual production at those higher prices. That is why those Mineral Resources are still considered to be resources under CRIRSCO standards. In fact, many of the Mineral Resources that were determined based on prevailing prices in the 1974-1980 time period, were maintained on the books as Mineral Resources for many years, and were eventually mined in the 2006-2012 time period when prices returned to their previous levels. However, *most, if not all Mineral Resources held by junior uranium companies today under CRIRSCO standards would not qualify as "resources" under the Proposed Rule despite their having a reasonable prospect of eventual economic extraction at forecasted higher prices.* This is because they do not have a reasonable prospect of economic extraction if US\$33.75 per pound U<sub>3</sub>O<sub>8</sub> is used for the Mineral Resource determination.

*c) Recommended Price Assumptions*

We believe the appropriate pricing to be used for determining Mineral Resources should be left to the discretion of the Qualified Person ("QP"), and can be based on consensus pricing, forecasts from industry

sources, historic prices, or any other reasonable estimate, provided that the basis of the pricing assumption is disclosed in the technical report summary. For example, if a Mineral Resource existed in the past, because it had reasonable prospects of extraction based on past commodity prices, the property had undergone significant development activities, or the property had been mined in the past at those prices, and there is a reasonable prospect that those past commodity price levels may occur again, then there can be a reasonable prospect of eventual extraction of the Mineral Resource.

*d) Eliminate Requirement to Re-calculate Mineral Resources Annually*

Because Mineral Resources should be defined as materials that have a reasonable prospect of eventual economic extraction, and should not necessarily be based on the average price for the previous two years, there should be no requirement to recalculate Mineral Resources every year. Mineral Resources should only be required to be recalculated if there is a material change in scientific or technical information since the last determination, or if there is a reason to change the pricing assumption.

*e) Increased Economic Analysis for Mineral Resource Determinations Inappropriate*

Energy Fuels is also concerned that the SEC is attempting to place too much emphasis on determining the economics behind the conclusion that there is a reasonable prospect of eventual economic extraction, by requiring a more extensive initial assessment than is required under CRIRSCO standards. The Proposed Rule requires that the QP conduct a preliminary evaluation of the relevant modifying factors to establish the prospects of economic extraction in estimating Mineral Resources, which, for example, NI 43-101 does not. The purpose of a Mineral Resource estimate should be to estimate the material that has a reasonable prospect of eventual extraction. Requiring a level of economic analysis greater than CRIRSCO standards at the time of the determination is not necessary, and if anything gives the investor a false sense of security about what a Mineral Resource is intended to represent. A Mineral Resource may never become a Mineral Reserve. Attempting to treat a Mineral Resource as a “Mineral Reserve currently in the making” sends the wrong message to investors. We believe the standards required by NI 43-101 as to the analysis to be performed by a QP to determine a reasonable prospect of extraction are adequate. Additional disclaimers to the effect that Mineral Resources may never become Mineral Reserves can be required. The SEC should not attempt to elevate Mineral Resources to a status close to Mineral Reserves.

### **3. Definitions of Exploration, Development, and Production Stage**

Whether a company is a “production company” should be based on whether or not it is in production, not whether or not it has Mineral Reserves.

As mentioned above, Energy Fuels operates the White Mesa Mill, which is the only operating conventional uranium mill in the United States. It also operates the Nichols Ranch and Alta Mesa ISR Projects. From its original commissioning in 1980 through December 31, 2015, the White Mesa Mill has produced a total of approximately 36 million pounds of U<sub>3</sub>O<sub>8</sub> and 46 million pounds of vanadium. The White Mesa Mill was the largest producer of uranium in the United States for most of the 1980s. Since 2007, the White Mesa Mill and the Nichols Ranch project have together produced on average approximately 1,000,000 lbs. of uranium per year, which ranks that combined production second in the United States during that time period. Despite being the second largest producer of uranium in the United States, Energy Fuels does not have and has never owned or extracted any Mineral Reserves under Industry Guide 7. In fact, most of the production at the White Mesa Mill since 2007 has been from ore that was classified as Inferred Mineral Resources under NI 43-101.

Energy Fuels produced its uranium from “ore” because the ore was mined and produced into uranium, and the uranium was sold. However, under Industry Guide 7 and under the Proposed Rule, Energy Fuels currently does not have and has never had any production, is not a producer and has never mined or processed ore from any of its mines. This outcome does not make sense, as *Energy Fuels is the second largest producer of uranium in the United States.*

The disclosure rules should recognize this and allow for the proper disclosure of those facts. If the policy concern is that this production may not be economic for some reason or may be risky, then disclosure of those risks can be added. We disagree completely with SEC’s statement that “prohibiting a registrant without any mineral reserves from characterizing itself as a production or development stage company would help eliminate the possibility that such a registrant, by definition a higher risk company, would incorrectly characterize itself as being in a lower risk stage, thereby potentially misleading or confusing investors.” (81 Fed. Reg. 41659).

Not all production companies have the same risk profiles. That does not make them any less of a production company. The SEC disclosure rules attempt to limit production companies to only those that fall within the risk band associated with large established mining companies. This does not align the United States with current industry and global regulatory practices and standards. *We believe there is a much higher risk of misleading or confusing investors by preventing companies such as Energy Fuels, which is and has been a major uranium producer, from correctly describing themselves as producers.*

#### **4. Qualified Persons**

##### *a) QPs Should be able to rely on Other QPs*

We recommend that the SEC expressly allow multiple QPs to take responsibility for various portions of technical report summaries. Requiring one QP to have expert liability over the entire report is unreasonable. A QP should not be expected to be qualified in every subject matter covered by a technical report summary.

##### *b) Limited Disclaimers of Responsibility Should be Permitted*

The SEC should allow QPs to include limited disclaimers of responsibility if relying on the report or opinion of a non-QP relating to legal, political, environmental, or tax matters relevant to the technical report summary, and the QP identifies the source of the information, the extent of reliance and the portions of the technical report summary to which the disclaimer applies, similar to NI 43-101. Those matters are not typically in the area of expertise of most QPs, and there is no need to have QPs assume expert liability for that disclosure.

##### *c) Acknowledgement that Company Indemnification of QPs is not Against Public Policy*

As many commenters have noted, the Proposed Rule regarding QPs is likely to result in independent QPs charging exorbitant fees for their services to compensate for the additional risk of liability that will be imposed under the Proposed Rule. As a result, many companies may be forced to bring the QP role in house and not engage independent QPs. We agree with other commenters that liability for QPs should be consistent with the liability regime in CRIRSCO jurisdictions, like Canada. However, if a QP is subject to Section 11 liability, we feel that the company has the responsibility to indemnify such internal QP who has undertaken his work on behalf of a company absent any gross negligence or intentional misstatements

or omissions. As such, notwithstanding the SEC's position that indemnification for liabilities under the Securities Act of 1933 violates public policy and is unenforceable, as set out in Items 510 and 512 of Regulation S-K, we believe that it is not counter to the interests of the public to permit indemnification of internal QPs preparing technical reports absent gross negligence or intentional misstatements or omissions. Failure to indemnify such persons would likely (i) further eliminate good quality QP options, (ii) lead to the degradation of the quality of disclosure available to mining investors, and (iii) unfairly expose employees to potential liability. We believe the SEC should expressly acknowledge that indemnification of QPs in these circumstances is not against public policy.

## **5. Reserve Calculations.**

### *a) Differences in Mineral Reserve Calculations*

Under the Proposed Rule, Mineral Reserves are to be calculated differently from Mineral Reserves under CRIRSCO standards, in that they must be net of allowances for diluting materials.

We believe it is preferable for the Proposed Rule to use the CRIRSCO definition of Mineral Reserves. However, to the extent the definition of Mineral Reserve is different in the Proposed Rule, we recommend that, as discussed in more detail in Section 7 below, parallel disclosure of Mineral Reserves calculated under both sets of definitions should be permitted.

### *b) Feasibility Study Should not be Required in "High Risk Situations"*

The Proposed Rule mandates that a Preliminary Feasibility Study cannot be used to determine Mineral Reserves in "high risk situations", such as "where the project is the first in a particular mining district with substantially different conditions than existing company projects, such as environmental and permitting restrictions, labor availability and skills, remoteness, and unique mineralization and recovery methods". (See Instruction 7 to proposed Item 1302(d) of Regulation S-K). Many junior mining companies have projects that are in those types of "high risk situations". Often non-risky mining projects are held by more senior companies and are not within reach of junior mining companies.

We believe that the QP should be able to make a determination, based on professional standards, whether or not a Feasibility Study, instead of a Preliminary Feasibility Study, is required before Mineral Resources can be converted to Mineral Reserves due to uncertainties in the modifying factors, as contemplated by the SME Guide (2014) pt.50.

Mandating a Feasibility Study in circumstances where existing professional standards would not require a Feasibility Study can be expected to result in companies calculating Mineral Reserves in "high risk situations" based on a Preliminary Feasibility Study under CRIRSCO standards, but those Mineral Reserves would not be considered reserves under the Proposed Rule because they were not based on a Feasibility Study. This does not align the United States with current industry and global regulatory practices and standards.

## **6. Inability to Include Inferred Resources in a Scoping Study**

Many junior mining companies base production decisions or scoping decisions on Inferred Mineral Resources. As mentioned in Section 3 above, most of the production from Energy Fuels' White Mesa Mill since 2007 has been based on Inferred Mineral Resources only. Similarly, the decision to place Energy Fuels' Nichols Ranch project into production was based on a Preliminary Economic Assessment

under NI 43-101, which relied in part on Inferred Mineral Resources. Under NI 43-101, a company is able to explain such production decisions and include the economic analysis that the company is relying upon in its disclosure documents, based on a scoping study (a Preliminary Economic Assessment under NI 43-101 terms), which can be based on Inferred Mineral Resources. Such disclosure must be accompanied by appropriate cautionary language, including a statement that the Inferred Mineral Resources are considered too speculative geologically to have economic considerations applied to them that would enable them to be categorized as Mineral Reserves, and that there is no certainty that the Preliminary Economic Assessment will be realized.

Under the Proposed Rule, this type of disclosure would not be permissible. That makes it difficult, if not impossible, for a junior mining company that is planning to go into production based on Inferred Mineral Resources to provide proper disclosure to investors about what it is doing.

Whether or not it is prudent for a company to proceed into production based on Inferred Mineral Resources or on a scoping study or Preliminary Economic Assessment that is based on Inferred Mineral Resources, should be left to the discretion of the company, taking all factors into consideration. The ability of the company to exercise this discretion should not be fettered by prohibitive disclosure rules, particularly when those disclosure rules may be more appropriate for senior mining companies than junior mining companies. The disclosure should follow the company's management decisions, not vice versa.

Under the Proposed Rule, scoping studies should be able to include Inferred Mineral Resources. Additional disclaimers about the risks associated with the assessment can be included in the disclosure.

## **7. The Proposed Rule Would Require the Filing of Two Sets of Documents**

### *a) Inability to Provide a Level Playing Field for all Investors*

Under the Proposed Rule, disclosure prepared by a company that is subject to disclosure obligations in both the United States and a second CRIRSCO jurisdiction, such as Canada, would be significantly different, with the result that U.S. and non-U.S. investors would be making simultaneous decisions on the same matter, but based on materially different disclosure. As currently proposed, a dual listed company, like Energy Fuels, would be required, in connection with financings, to prepare prospectuses for Canadian and United States investors that would likely have materially different mineral property disclosure. Under the current rules of the SEC, Energy Fuels, as a Canadian incorporated entity, is able to prepare a single set of mineral disclosure for both jurisdictions by including appropriate disclaimers regarding its Mineral Reserves and Resources. As a result, all investors receive the same information when making their investment decisions, resulting in a level-playing field for all investors and enabling a company to communicate consistently and comprehensively to all of its investors.

In addition, in a merger or acquisition context, a dual listed company would need to prepare two different proxy statements: one that complies with the Proposed Rule which would be filed with the SEC and mailed to U.S. shareholders, and a second proxy statement complying with NI 43-101 that would be filed in Canada and mailed to Canadian shareholders. As in the financing context, Energy Fuels' shareholders would be making an investment decision based on materially different disclosure documents depending on their jurisdiction of residence. We have great concerns regarding how we could communicate fairly and consistently to our shareholders, as required by both securities and corporate law, given the potential for largely different and simultaneous disclosure under the Proposed Rule and NI 43-101.

Furthermore, in the context of a business combination transaction where a Form F-4 or Form S-4 registration statement is required as a result of a share exchange, mining disclosure that complies with the Proposed Rule may cause a significant delay and add significant expense for a foreign party not already subject to the SEC mineral disclosure rules. The Proposed Rule would require foreign issuers to prepare a compliant technical report prior to filing a Form F-4 or S-4, as applicable, which would materially delay and add costs to business combination transactions in the mining sector. As a result, foreign entities may delay or avoid business combination transactions with U.S. companies, depriving U.S. investors of the returns and liquidity that are generated from such transactions. We note that this is a departure from the existing Instruction (3) to paragraph (b)(5) of Industry Guide 7, which allows shareholders to consider the same information considered by the board and management of a company, by permitting disclosure in a document filed with the SEC of non-Industry Guide 7 compliant information that has been provided to a counterparty in a business combination transaction. As proposed, shareholders in the U.S. could receive information which is materially different from that received by shareholders outside the U.S. and that received by the board and management of the respective entities involved in the business combination.

*b) Ways to Address the Problem*

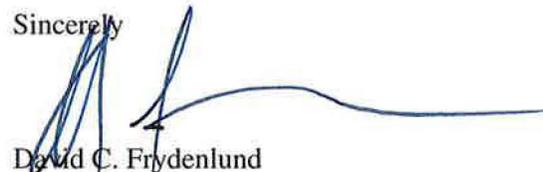
For the reasons stated above, the Proposed Rule will result in a number of disclosure problems for companies, some of which may not be capable of a satisfactory solution. The best way to address this is to change the key definitions, such as those for Mineral Resources and Mineral Reserves, to be the same as the CRIRSCO definitions. This would solve most of the problems, and would align U.S. disclosure rules with current industry and global regulatory practices and standards, as intended.

However, if the SEC is not prepared to conform the U.S. definitions to CRIRSCO standards, then we believe disclosure of Mineral Resources and Reserves, under both the Proposed Rule definitions and the applicable CRIRSCO standards, with a reconciliation if necessary, should be permitted in the SEC disclosure documents. While this would likely result in significant additional time and expense to the company, this would be consistent with the “third alternative” mentioned in Section 6 (81 Fed. Reg. 41708). Under this alternative, registrants would be required to estimate Mineral Resources and Reserves using a price no higher than the 24-month trailing average price, but registrants would be allowed to also disclose Mineral Resources and Reserves based on a reasonable higher price of their own choosing, to the extent that they include a description of the model and assumptions used to select the price. We agree that if the definitions in the Proposed Rule are not changed to conform to CRIRSCO standards, which is by far the preferred approach, this alternative would allow for the presentation of standardized estimates that are transparent and comparable across registrants, while letting managers present supplemental estimates based on an alternative price if they believe that the 24-month average may lead to inaccurate estimates, or if required by their home jurisdiction to report Resources or Reserves based on different pricing assumptions. We do not believe that there is a significant risk that this approach would lead to an overestimation of Mineral Resources and Mineral Reserves due to the use of overly optimistic prices. Similar approaches could be used to reconcile other different treatments, such as the different treatment of diluting materials in Mineral Reserve determinations under the Proposed Rule and CRIRSCO standards. Added disclaimers can be required for the disclosure to ensure that investors understand how the resources and reserves were calculated and warning that Mineral Resources are not Mineral Reserves and may never become Mineral Reserves.

Energy Fuels would be happy to answer any questions you might have and provide additional information to assist you in your review of these matters.

Letter to The Honorable Brent J. Fields  
September 29, 2016  
Page 9

Sincerely



David C. Frydenlund  
Senior Vice President and General Counsel

cc: Katie Sweeney, National Mining Association