



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

December 15, 1988

OFFICE OF THE  
COMMISSIONER

MEMORANDUM FOR: Chairman Zech  
FROM: James R. Curtiss *JRC*  
SUBJECT: OFFICE OF THE LICENSING SUPPORT SYSTEM  
ADMINISTRATOR

It is not yet clear to me why we are moving forward with the establishment of an office to administer the Licensing Support System (LSS) before the Commission decides on the scope and structure of the LSS itself. Because these two matters are inextricably linked, and for the reasons set forth below, I would defer action on SECY-88-321 until we have reached a decision on the scope and structure of the LSS.

The proposed LSS rule -- formally referred to by the somewhat innocuous title of the "Rule on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High Level Radioactive Waste" -- is, in my view, much more than simply a system for the computerized collection and dissemination of documents to assist us in the conduct of our repository licensing proceeding. Indeed, if the rule were limited to just this, I would have no objection to proceeding with action on SECY-88-321 at this time.

But the proposed rule is much broader. It will, if adopted, establish many of the procedures that will govern our repository proceeding -- including but not limited to those rule changes necessary to implement the LSS. For example, the proposed rule sets forth the procedures for determining who will have standing to participate in the repository proceeding; it includes a list of topics -- referred to as topical guidelines -- that will for the first time set forth the Commission's general views on the scope of litigable issues in the proceeding (Do we really intend to litigate alternatives to geologic disposal, such as subseabed disposal, or the nationwide routes for the transportation of spent nuclear fuel in a proceeding focused on the suitability of the Yucca Mountain Site?); and it establishes the standards for the admissibility of contentions. There are other examples, but these are the significant ones that, in my view, we need to reflect upon before we establish an office to administer the LSS, as well as before we select an individual to be the Administrator.

Moreover, it appears to me that there are other less obvious instances where the rule itself, once finalized, will establish the framework for how best to set up the office of the LSS Administrator. Under the rule, to take just one example, the Administrator's certification of "substantial compliance" is reviewable by the Pre-License Application

Licensing Board (PLALB) and subsequently by the Commission. If, as it appears, the LSS Administrator will be performing more than simply "ministerial" tasks, is the Chairman foreclosed from participating in the Commission's review of the PLALB decision on substantial compliance because of his role in overseeing day-to-day administration of the system? Are the other Commissioners similarly constrained because of their role in establishing the policies governing this office? These are matters that need to be examined more carefully. They do not seem to me to be intractable -- we might, for example, want to make the LSS Administrator's "substantial compliance" determination final and not subject to Commission review, thereby avoiding this problem. But we certainly don't want to foreclose our options on the LSS rule at this point by the decisions that we make on the establishment of the office to administer the LSS.

This leads to a more general observation: It is not clear to me just what tasks the LSS Administrator will be charged with performing -- and, as a consequence, I have struggled (unsuccessfully so far) to reach a decision on where within the agency this function should be placed, who the Administrator should report to, and what qualifications and expertise the individual should have. Will the Administrator, for example, be responsible for developing the regulatory guide, setting forth in more detail the topical guidelines? Will the Administrator be responsible for negotiating the MOU with DOE? These and other similar questions, in my view, should be addressed first (following a Commission decision on the scope and structure of the LSS) -- with a clear charter established by the Commission at the outset setting forth the responsibilities of the LSS Administrator.

Finally, I would observe that while SECY-88-321 cites the "considerable planning and interagency negotiating [that is ] required at the earliest possible date," there is very little discussion of just what all needs to be done -- and why it is so urgent. If the urgency is related to the ongoing DOE effort, I would simply note that the negotiating committee -- on which the NRC is represented -- is currently providing information to DOE on the design of the LSS. This is sufficient, in my view, to ensure that our interests on the hardware and software issues are adequately represented while we take the time to consider carefully the important policy issues that need to be addressed first in the rule itself.

In sum, I believe we should defer a decision on the structure and placement of the Office of the LSS Administrator until we decide on the LSS rule itself. In the interim, a charter proposing specific authorities and responsibilities for the Office of the LSS Administrator should be developed for the Commission to consider at the time it acts on the LSS rule.

cc: Commissioner Roberts  
Commissioner Carr  
Commissioner Rogers  
OGC  
EDO  
SECY