



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ADVISORY COMMITTEE ON NUCLEAR WASTE
WASHINGTON, DC 20555 - 0001

March 18, 2004

MEMORANDUM TO: ACNW Members

FROM: H. J. Larson, Special Assistant, ACRS/ACNW */RA/*

SUBJECT: LETTER TO D. J. GRASER, NRC, FROM J.D. ZEIGLER, DOE -
DISCUSSING AN "OPERATIONAL ALTERNATIVE" FOR POPULATING
THE LICENSING SUPPORT NETWORK (LSN) DATED FEBRUARY 27,
2004,

On October 27, 2003, the writer forwarded a memorandum discussing the current status of the LSN at that time, to wit:

... there are no new DOE documents in the system (primarily due to advice given DOE by its legal consulting firm, Winston and Strawn. The concern by the law firm is due, it is believed, to the on-going lawsuit from some 20+ utilities regarding DOE's inability to take title to, and possession of, the spent nuclear fuel. DOE has indicated that it intends to make all materials available to the NRC on the date required by Subpart J of 10 CFR Part 2, which requires that the information be available to NRC six months prior to a LA.

In the memorandum noted above (and attached), DOE indicates that it would be willing to file documents with NRC's licensing support network early for the purpose of being indexed and loaded onto the LSN provided that NRC maintained tight control of the material and did not release the information before DOE certified the documents were publicly available.

The alternative was proposed, in part, because of the sheer magnitude of the DOE filings. The department expects to file roughly 27.5 to 36.5 million pages of documents supporting its license application for the HLW repository at Yucca Mountain. Absent the alternative, it would take NRC five months to characterize and profile 30-million pages so those documents could be retrieved by a search engine.

Recently DOE waste program director Margaret Chu told officials at the NRC Regulatory Information Conference in Washington, DC that DOE would certify six months before the application submittal that the documents were loaded onto NRC's LSN. She did not, however, specify whether that information would be retrievable.

ACTION/RECOMMENDATION: No action required. The purpose of this communication is to continue to keep the Committee aware of the current status of NRC-DOE interactions on the subject.

NOTE: The web site is www.LSN.net.gov.

Attachment: As stated

cc: ACNW Staff
J. T. Larkins
R. P. Savio



Department of Energy
Office of Civilian Radioactive Waste Management
Office of Repository Development
1551 Hillshire Drive
Las Vegas, NV 89134-6321

QA: N/A
Project No. WM-00011

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Mr. Daniel J. Graser
Licensing Support Network Administrator
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Graser:

The U.S. Department of Energy (DOE) has reviewed your letter of February 5, 2004, proposing an "operational alternative" for populating the Licensing Support Network (LSN) with DOE documents. You asked that DOE respond to the proposal by February 27, 2004, in order for you to report back to the Commission.

The DOE appreciates the time and effort put forth by your office to formulate the proposal within the U.S. Nuclear Regulatory Commission (NRC) and commit resources as necessary to the task. Based upon our preliminary review, DOE believes the proposal sounds quite promising and, under proper conditions, may well enable DOE to provide the LSN Administrator (LSNA) with documents for the limited purpose of indexing and loading them prior to initial certification to facilitate LSN operations.

While your letter provided a general outline of the proposal, DOE believes there is the need for further discussions with your office before agreement and implementation of this approach. For example, in your letter you provide helpful reassurance that DOE's documentary material made available to the LSN staff would be protected from disclosure prior to DOE certification or absent DOE approval. In our view, important elements of such protection would include the following. All DOE documents received by the LSNA will be controlled to prevent their unauthorized disclosure. This would include preserving in strict confidence the information received, maintaining information in either locked files or areas providing restricted access to prevent unauthorized disclosure. In preserving this information, the LSNA would use the same standard of care it would use to secure and safeguard its own confidential information of similar importance, but in no event less than reasonable care.

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The documents would retain their character as DOE agency records, and would not be considered to be records in the possession or control of the NRC such that the NRC would consider them responsive to a Freedom of Information Act (FOIA) request directed to the NRC. Rather, any such FOIA request would be referred to the DOE for its direct response to the requester. Furthermore, DOE's control of the documentary material would include the exclusive ability to continue its evaluation of the material for relevancy and privilege after it has been provided to the LSN for indexing/loading. Thus, DOE would maintain its ability and right to refine the identification of documentary material appropriate for inclusion or subject to privilege in the LSN prior to DOE certification. Relatedly, DOE does not believe this arrangement would alter current policies or practices regarding NRC and DOE interactions in the pre-licensing phase (e.g., this arrangement itself would not trigger initiation of the high-level waste proceeding and attendant NRC rules of procedure).

We believe it is important -- for both DOE and NRC -- to have a common understanding on these and related matters before agreement and implementation of this proposal. We are available to meet at the earliest opportunity to discuss these matters and clarify the details of the proposal.

Your letter also requested a current estimate regarding the size of the DOE LSN document collection. As you know, DOE is actively collecting, processing and reviewing its documentary material for possible inclusion in the LSN. The current estimate remains within the range previously provided, approximately 3 - 4 million documents composed of 27.5 - 36.5 million pages.

Please contact me at (702) 794-5567 if you have questions on this letter.

Sincerely,



Joseph D. Ziegler, Director
Office of License Application and Strategy



cc:

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