



POLICY ISSUE

(Notation Vote)

April 14, 1999

SECY-99-114

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: RESPONSIBILITY FOR THE LICENSING SUPPORT NETWORK

PURPOSE:

To obtain Commission review and approval to reassign organizational responsibility for directing the implementation and operation of the Licensing Support Network (LSN) and the position of the Licensing Support Network Administrator to the Atomic Safety and Licensing Board Panel.

BACKGROUND:

The Commission recently issued a final rule revising the provisions in 10 CFR Part 2, Subpart J, on the use of an electronic information management system in support of the licensing proceeding on the disposal of high-level radioactive waste in a geologic repository. 62 FR 60789. The system was previously called the Licensing Support System (LSS) but was re-named the Licensing Support Network to better reflect the present configuration of the system under the new rule. The final rule retained the function of an "LSN Administrator" who is responsible for coordinating the development of the LSN by identifying and assisting in the resolution of technical and policy issues related to system implementation. Section 2.1011(c) of the new rule sets forth the responsibilities of the LSN Administrator.

In light of the recent changes to the rule, as well as the changes to the NRC organizational structure since the original rule on the Licensing Support System was promulgated, the Executive Council has re-evaluated the issue of where to place the overall responsibility for the LSN and the LSN Administrator within the NRC. When the original LSS rule was promulgated, the Commission created a new office of the LSS Administrator which reported to the Commission on policy issues and to the Chairman for administrative purposes (SECY-88-321). The Commission revised this organizational arrangement in 1992, disbanding the separate office and designating the Licensing Support System Administrator as a senior manager within the Office of Information Resources Management, the predecessor to the Office of the Chief Information Officer (OCIO).

CONTACT: F. Cameron, OGC
(301) 415-1642

Discussion:

A number of factors were considered in arriving at a recommendation on the placement of responsibility for the LSN and the LSN Administrator. The recently promulgated rule on the LSN retained the stipulation from the original rule that the LSN Administrator shall not be in any organizational unit that either represents the NRC staff as a party to the high-level waste repository licensing proceeding or is part of the management chain reporting to the Director, Office of Nuclear Material Safety and Safeguards. Section 2.1001. This provision was intended to address conflict-of-interest concerns that might result from the LSN being under the same management as that responsible for advocating positions on the substantive and procedural issues related to the license application. In addition, we noted the overarching criterion considered by the staff in its evaluation of this issue when the original LSS rule was promulgated, i.e., the ability to address the needs and concerns of external and internal users of the LSS and to be seen as neutral and effective by those users.

The evaluation also considered the need for a "business sponsor" for the LSN. The concept of a "business sponsor" for information management systems, such as the LSN, is a management concept reflected in the legislation that created the Chief Information Officer function. Specifically, section §3506 (a) (4) of the Paperwork Reduction Act of 1995 states "... in consultation with the Chief Information Officer, the program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs." The concept is also reflected in the principles underlying the NRC's Capital Planning and Investment Control process (SECY-98-32). The simplest expression of this concept is that the organization responsible for the "business activity" that an information management system supports should be responsible for project management of the system, e.g., design requirements, budgets, and schedule. Otherwise, there is a high probability that the system will fail because the manager of the business activity has not maintained a sufficient interest in the system.

Within the NRC Staff, primary beneficiaries and users of the LSN will be NMSS, OGC, and the Licensing Board. Based on the specific conflict-of-interest limitations imposed in the rule noted above, both NMSS and the Office of General Counsel¹ were eliminated from further consideration. The importance of having a "business sponsor" for the LSN, eliminated the Office of the Chief Information Officer and the Office of the Secretary from consideration. Although both offices have responsibilities for activities related to the rule, neither will be the primary user of the LSN, nor has any significant expertise on the discovery process in a complex licensing case.

Three alternatives for placement of the LSN Administrator were considered viable--

1. Establish an intra-agency oversight committee composed of representatives from OGC, NMSS, and the Atomic Safety and Licensing Board Panel to serve as the business sponsor and policy coordinating body for the LSN. The LSN Administrator would be

¹Various parts of OGC will advise and represent the NMSS staff in the repository licensing proceeding. Since a very small element of OGC will be available (legally separated from other OGC and NRC staff under 10 CFR 2.781) to advise the Commission on repository licensing, not all of OGC is subject to the 10 CFR 2.1001 ban.

placed in the OCIO for administrative purposes and report to the oversight committee on policy issues.

2. Return to the original concept of the LSN Administrator as a separate office reporting to the Commission or the Chairman.
3. Establish the LSN Administrator within the Atomic Safety and Licensing Board Panel.

Option 1, an intra-agency coordinating body was rejected as inefficient. Centralized planning, policy development, and decision making are necessary for the LSN to be implemented in a timely and effective manner.

The creation of a new office as proposed in Option 2 was also not found desirable because we did not believe it necessary to create a separate office, with the attendant increase in FTE for overhead, to administer the LSN. As reflected in the new rule, the nature of the LSN has fundamentally changed from a large, centralized data base contemplated in the late 1980s, to a distributed, web-based system. In addition, substantial progress has already been made by DOE on the identification and capture of its relevant documents for the LSN data base.

We recommend Option 3, the Atomic Safety and Licensing Board Panel, for location of the LSN Administrator and as the business sponsor for the LSN. The primary function of the LSN is support of the hearing process on the high-level waste repository license application, particularly in reducing the significant amount of time associated with the discovery process. The Licensing Board Panel supervises the hearing process, including discovery and the resolution of discovery disputes. The objectives and functions of the LSN are fundamentally consistent with the interests and responsibilities of the Licensing Board Panel for an efficient, comprehensive, and effective hearing process. The Licensing Board Panel also has many years of experience with the legal, policy, and technical issues related to automation of the hearing process that would serve as a base of knowledge for developing and administering the LSN. The Licensing Board Panel has ordered documents to be filed in electronic form in a number of proceedings, and has operated a full-text retrieval system in several large proceedings. The Licensing Board Panel has the ability to address the needs and concerns of external and internal users of the LSN and to be seen as independent, neutral, and effective by those users.

One concern with the selection of the Atomic Safety and Licensing Board Panel was the potential conflict of interest created by the possibility that the Pre-Licensing Application Presiding Officer in the high-level waste repository licensing proceeding may need to review decisions of the LSN Administrator. If the LSN Administrator is under the supervision and control of the Panel, the latter organization might be in the sensitive situation of reviewing the decisions of its own employee, i.e., the LSN Administrator. This concern was also expressed when the Commission made its original decision on the LSS Administrator.

After evaluating this issue, we do not believe that it is a significant concern. In practice and by regulation, boards or presiding officers of the Atomic Safety and Licensing Board Panel resolve the issues before them independent from any pre-decisional substantive supervision by the Chairman of the Panel or association with other members. The Commission's regulations make clear that it is the Presiding Officer of a board who has the responsibility and authority to

manage the proceeding and resolve the substantive issues raised by the parties. In addition, the regulations ensure that the presiding officer will exercise that authority in an independent and impartial manner. The Chairman of the Panel does not exercise any supervisory authority over the Licensing Board Judges in the performance of their substantive work.

Moreover, assigning the responsibilities of the LSN Administrator to the Atomic Safety and Licensing Board Panel is consistent with the location and supervision of such analogous Federal Judicial officers as Clerks of the Court, reporters, masters, and magistrates. For example, among the duties of the Clerk of the Court are the maintenance, control and certification of the official hearing dockets of the court. Each of these officers are appointed and supervised by the Judges, or the Chief Judge, of the court they serve. The decisions of the clerk of the court are routinely subject to review and reversal by the judge of the court to which the particular matter at issue has been assigned. Similarly, masters are appointed by the court, often to supervise complex discovery matters, and are subject to its general supervision. Reports and findings by a master may be reviewed, and accepted or rejected by the court that appointed and supervised them.

Finally, the specific scenario that stimulated the original concern about the Panel's involvement was the potential for the board review of a disputed LSN Administrator determination on DOE compliance with the requirements of the LSS rule. Under the new rule, the LSN Administrator no longer has this compliance determination responsibility and consequently there is no review by the Presiding Officer. Although it is still possible that some decision or advice of the LSN Administrator may come under the review of the Pre-license Application Presiding officer, such determinations should not create any novel or insurmountable conflict of interest situations. Based on these considerations, conflict of interest concerns do not detract from the considerable benefits to be gained from placing the LSN Administrator within the Atomic Safety and Licensing Board Panel.

Resources:

Resources have already been budgeted to support known LSN requirements. In FY 1999, the OCIO budget contains 1 FTE to cover both the LSN Administrator and technical support and \$100K for contractor and travel. These resources will be transferred to the LSN business sponsor and OCIO will use existing FTE to provide technical support for the remainder of FY 1999. In FY 2000 through FY 2001, the OCIO budget contains 2 FTE (1 for full-time LSN Administrator and 1 for technical support) and \$535K for contractor support, hardware/software acquisition, and travel. In FY 2000 and beyond, OCIO will retain 1 FTE for technical support and all other budgeted resources will be transferred to the LSN business sponsor.

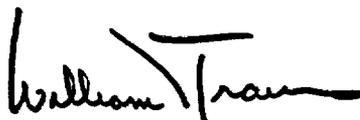
It should be noted that, although some resources have been budgeted for technical activities to implement the LSN, the total cost of the LSN cannot be determined until some fundamental functional and procedural decisions are made by the LSN business sponsor which will allow a full Capital Planning and Investment Control analysis to be performed.

Coordination:

The Executive Council reviewed this paper and endorses the recommendations. The Office of the General Counsel has no legal objection to this Paper. Although we believe we have addressed the Atomic Safety and Licensing Board Panel 's concerns, the Atomic Safety and Licensing Board Panel intends to provide the Commission with separate comments on this paper.

Recommendations:

The Executive Council recommends that the Commission approve Option 3: the Atomic Safety and Licensing Board Panel becomes the business sponsor of the LSN and assumes responsibility for the LSN Administrator.



William D. Travers
Executive Director for Operations

Commissioners' completed vote sheets/comments should be provided directly to the Office of the Secretary by COB Thursday, April 29, 1999.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT April 22, 1999, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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