



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

August 16, 1988

To: William G. McDonald, Director
Office of Administration and Resources Management

From: Christine N. Kohl, Chairman *CKK*
Atomic Safety and Licensing Appeal Panel

Re: Administration of the High Level Waste Management
Licensing Support System (LSS)

I have reviewed the August 9, 1988, draft paper examining several alternatives for LSS Administrator and recommending that the Commission assign this responsibility to the Office of Administration and Resources Management (ARM). I am unable to concur in the paper and recommendation for two basic reasons. First, the draft does not provide a balanced and complete presentation of the advantages and disadvantages of the three alternatives considered (ARM, the Office of the Secretary (SECY), and the Atomic Safety and Licensing Board Panel (ASLBP)). Second, it fails to consider a logical fourth alternative, the creation of the Office of the LSS Administrator as a separate entity not under the control of either ARM, SECY, or ASLBP.

A. The following examples illustrate my view that the draft paper does not adequately and evenhandedly address the respective advantages and disadvantages of ARM, SECY, and ASLBP serving as LSS Administrator.

On p. 1 in the Background section, the draft singles out the LSS Administrator's information resources management (IRM) activities. It fails to note, however, the LSS Administrator's role in performing other equally important activities virtually identical to those performed by SECY (such as providing public access to official NRC records and docketing formal adjudicatory proceedings).

On p. 2 in the Discussion section, the draft states that the two major factors to be considered in the selection of the LSS Administrator are experience and efficiency. A third major factor should be consistency with the requirements of the negotiated proposed rules for the High Level Waste (HLW) proceeding.

At the bottom of p. 2, ARM/IRM is again singled out with the statement that "increased efficiency and cost-effectiveness [have] been demonstrated" in that office's document management functions. While that may well be the case, two other points should also be made in order to give the complete picture. First, most of the document management work of ARM/IRM is performed under contract, not with NRC personnel. Second, assessment of the overall effectiveness of such a program should include some consideration of the quality of the work performed, in addition to efficiency and cost. The draft paper makes no mention of any qualitative analysis of NUDOCS, ARM/IRM's document management system.*

The three advantages identified for SECY understate that office's contribution to the negotiation of the proposed LSS rules and its experience in information management, especially in the area of providing public access to NRC records -- another major function the LSS will serve. The draft paper also fails to refer to the many functions SECY now performs, pursuant to NRC regulations, that are directly relevant to the HLW proceeding and not superseded by the proposed rules. See, e.g., 10 C.F.R. §§ 1.25(d), (e), (g), (h), (j); 2.702; 2.772.

As for the disadvantages listed, I am not in a position to assess the experience and expertise of most of SECY's staff -- I will leave that to the Secretary himself. I note, however, that disadvantages (a), (b), and (c), stated so negatively and definitively, are inconsistent with the responsibilities SECY has capably performed for the Commission over the years. Further, the extensive technical review of the LSS Conceptual Design Analysis recently performed by SECY (July 18, 1988) demonstrates substantial expertise in electronic information management and familiarity with the demanding requirements of the HLW proceeding and the LSS.

* In this regard, based on the Appeal Panel's experience, NUDOCS has a number of significant programming limitations and inconsistencies, as well as information-capture errors. As a result, it cannot be relied upon with any degree of confidence, particularly for Boolean searches -- the primary expected usage of the LSS.

Insofar as SECY disadvantage (d) is concerned, I do not view the references to duplication of effort and integration with NUDOCS as solely applicable to SECY. All HLW documents generated within the NRC will have to be produced and distributed in accordance with the special rules proposed for the proceeding. This will include submission to the LSS Administrator, which will be a separate entity for purposes of the rules, irrespective of what organization the LSS Administrator may belong or report to. Thus, I do not understand how there would be any greater "duplication of effort" as a consequence of SECY's selection as LSS Administrator. Nor do I see how integration of the LSS with NUDOCS would be any more difficult under SECY's auspices than that formidable task promises to be in any event. Disadvantage (d) also overlooks the fact that most of the material submitted to the LSS will be generated outside the NRC and thus will not be produced by ARM in the first instance. And if receipt of outside material is deemed to be an important factor, then SECY, as the recipient of all adjudicatory filings, must be given "extra credit" in that category as well.

The advantages listed for ARM are inflated or, at a minimum, include items that could just as easily be added to the advantages column for SECY and ASLBP, as well. For instance, it is not accurate to state that "ARM has provided the technical support to the NRC negotiating team . . ." (emphasis added). ARM's contribution in that regard was substantial, but ASLBP, the Appeal Panel, and especially NMSS and SECY also provided significant technical support and expertise. Much of ARM advantage (d) could be added to SECY's advantages, and advantage (f) and the first part of (g) certainly apply with equal force to both SECY and ASLBP. In the second part of advantage (g), the references to NUDOCS and ARM's provision of "all information technology support" and "records management" for ASLBP proceedings is somewhat misleading. ARM, as the contracting arm of the agency, pays the bill for the LEXIS and WestLaw legal research services and is in charge of the mail distribution function for the agency. Most of the critical records management activities for the adjudicatory proceedings -- such as issuance and service of board and Commission orders, oversight of court reporter contracts, maintenance of the official record -- however, are performed in the first instance by either the boards themselves or SECY. And, as noted above, NUDOCS unfortunately simply does not capture and code information accurately enough to be consistently reliable for adjudicatory use.

The two disadvantages listed for ARM are confusing and not consistent with the proposed rules. These rules would require SECY to be custodian of the official adjudicatory record, as it now is pursuant to 10 C.F.R. § 2.702; the LSS Administrator to establish a file within the LSS to contain the official record in electronic form; and the parties to submit one signed paper copy of all adjudicatory filings to SECY. Each of these requirements is included in the rule for a legal or practical reason, and none has anything to do with what office may eventually be assigned LSS Administrator responsibilities. A significant disadvantage that should be included, but is not, is ARM's lack of experience in identifying different types of legal documents and distinguishing them from the non-adjudicatory material that will form the bulk of the LSS. Unlike SECY and ASLBP, which make such informed judgments daily, ARM/IRM, or more particularly, its NUDOCS contractor, need not, for its purposes, accord special significance to formal adjudicatory materials.

With respect to ASLBP, again, its advantages and experience are understated, while its disadvantages are generally overstated. For example, ASLBP has ordered documents to be filed in electronic form in a number of proceedings, and it requires all hearing transcripts to be captured in such form as well. In addition, it has operated a prototype full-text retrieval system in at least two large proceedings (Indian Point and Braidwood). ASLBP also has experience in contracting and system programming that is worthy of greater attention than the draft paper gives. As for disadvantage (d), my comments on SECY disadvantage (d) pertain here as well.

A significant disadvantage of ASLBP serving as LSS Administrator that the draft paper fails to include, however, is the potential conflict of interest that this would create. Section 2.1010(a)(1) of the proposed rules for the HLW proceeding specifies that certain disputes arising from LSS Administrator actions may be resolved by the Pre-license Application Licensing Board (PALB). The PALB is expected to be named from members of the ASLBP and is also likely to comprise the members of the eventual Hearing Licensing Board(s) that will preside over the formal HLW adjudication. If the LSS Administrator is under the supervision and control of ASLBP, the latter organization will be in the sensitive situation of adjudicating disputes involving the decisions of its own employee (i.e., the LSS Administrator). Even if a "Chinese wall" were to be erected in ASLBP, there would still be a significant problem of

perception of a conflict -- one that should be avoided in a proceeding that will already be freighted with substantial other controversies.

The draft paper's Conclusion (p. 6) again overstates the advantages of ARM. ARM does not now have responsibility for all PDRs (only the local ones), nor does it oversee the two NRC law libraries. The fact that NUDOCS is operated under contract should be explicitly stated, so as not to give the incorrect impression that this work is being done in-house with ARM/IRM staff.

B. The second reason that I am unable to concur in the draft paper is its failure to consider a logical fourth alternative -- the creation of the Office of the LSS Administrator as an entity separate from the other three alternatives. Like the Office of Special Projects and the Office of Consolidation, the LSS Administrator will have a discrete mission of substantial magnitude for a finite period of time. In addition, the LSS Administrator will have to be established as a separate organizational entity in any event. This office will require an extremely talented staff with skills in a variety of specialized disciplines -- information management, computers, complex legal proceedings -- as well as experience in working with the public and developing operating procedures that both NRC personnel and outside parties will be expected to follow. None of the three offices considered in the draft paper alone embodies all of these requisite attributes, but together they do. And, irrespective of who is ultimately selected as the LSS Administrator, ARM, SECY, and ASLBP will have to coordinate with and support one another if the LSS is to work well and the Commission is to have any chance of meeting the statutory deadline for the proceeding.

I therefore urge that serious consideration be given to the alternative of establishing a separate Office of the LSS Administrator, reporting to the EDO. This office would be staffed with a core of experienced people from ARM, SECY, ASLBP, and other offices within and outside the NRC. The actual information processing work, however, would be done under contract, as it is with NUDOCS and as contemplated from the outset of the LSS negotiated rulemaking process.

The Appeal Panel has had a major role in the development of the proposed rules and the LSS. Under those rules, the Panel will likely become active in the adjudicatory process within a few months of the establishment of the PALB and will continue its involvement

through the end of the formal adjudicatory proceeding. Thus, the Panel is not just an interested observer, but rather a major participant in all phases of the HLW licensing process and a major potential user of the LSS. It is therefore of critical concern to the Panel that the Office of the LSS Administrator be competently staffed and efficiently managed. To that end, all reasonable alternatives should be fully and fairly explored.

C. The list of major milestones is a good idea and captures most of the key items. One that is missing, however, is the Memorandum of Understanding between the NRC and DOE on the design and development of the LSS. (See proposed Supplementary Information for section 2.1011.) Also, in order to avoid confusion and to be consistent with the terms of the proposed rules, "LSS Review Panel" should be "LSS Advisory Review Panel"; "Commission Designates Pre-License Application Review Board" should be ". . . Pre-license Application Licensing Board"; and "Appeal for Access to LSS Begins" should be "Petitions for Access to LSS Begin to be Filed."

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