

E. Shelburne



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555
August 19, 1988

MEMORANDUM FOR: William G. McDonald, Director
Administration and Resources Management

FROM: William C. Parler
General Counsel

SUBJECT: ADMINISTRATION OF THE LICENSING SUPPORT SYSTEM (LSS)

In response to your August 9, 1988 request, we have reviewed the draft Commission Paper on organizational alternatives for the LSS Administrator and believe that the following issues should be further developed and clarified before the draft paper is submitted to the Commission.

1. The statement in the first paragraph on page 3 of the draft paper that the Office of the General Counsel "has specifically advised that there are no legal issues that would preclude ARM from performing docket management support for the Secretary" must be placed in the proper context. The statement attempts to characterize the conclusions of a May 27, 1987 Memorandum from James A. Fitzgerald, Assistant General Counsel for Adjudications and Opinions, Office of the General Counsel to Commissioner Asselstine. As noted in the draft paper, the primary conclusion of this memo was that from a legal standpoint ARM could provide administrative support to assist the Office of the Secretary in carrying out its official docketing functions. However, the memo also stated in this regard that transferring the docket responsibility totally to a staff office such as ARM would probably not violate the Commission's separation of functions rules for adjudicatory proceedings, but concluded that such a transfer could violate the spirit of 10 CFR section 0.735-49a(f) in that "it could adversely affect the public's confidence in the integrity of the licensing process by impinging on the arm's length relationship that the Commission and Commission offices maintain towards the NRC staff in adjudicatory proceedings." This clarification is particularly relevant to paragraphs 6 and 7 below.
2. Although the paper recognizes the need for the timely implementation of the LSS, we suggest adding a discussion on how internal coordination of LSS implementation efforts among the relevant NRC offices will be accomplished. As the draft paper recognizes, several NRC offices will be affected by LSS operation and several will be required to provide the support necessary for the effective implementation of the LSS. One way

to address this issue might be an internal steering committee which would meet regularly to advise the LSS Administrator on implementation issues. The committee could be the means by which relevant office views are communicated and coordinated.

3. Since the LSS Administrator is required to implement the consensus advice of the LSS Advisory Review Panel, this issue should be considered as one of the factors in determining who the LSS Administrator should be. The NRC representative on the Advisory Panel will be binding the LSS Administrator with regard to many key implementation issues. Should the LSS Administrator be the NRC representative on the Advisory team, subordinate to the NRC representative, or totally separated?
4. To aid the Commission's consideration, it would be useful to indicate any existing functions of various Commission offices which would be effectively transferred to control of the LSS Administrator and any functions which the LSS Administrator would have to support without having decisional authority over whether the function would or would not be supported.
5. Among the factors for decision listed on page 2 should be the need to insure consistent and fair implementation of the rule by the LSS Administrator.
6. In our judgment, an advantage that the Office of the Secretary has over ARM is the consolidation of all HLW procedural responsibilities in one office. This should also be a disadvantage listed under ARM. Of course, to the extent ARM thinks all Commission docket functions should be consolidated in ARM, this point would be moot. See, in this regard, paragraph 7.
7. Disadvantages (3) (a) and (3) (b) on page 5 imply that ARM, if selected as LSS Administrator, should also take over the docket functions of the Office of the Secretary. The roles of the LSS Administrator and the Office of the Secretary are clearly separated in the draft proposed rule on the LSS, and the selection of the LSS Administrator should not imply that the proposed rule would require the traditional docket functions of the Secretary to be transferred to ARM.
8. One of the disadvantages identified for both the Office of the Secretary and the ASLEP is that placing LSS administration responsibilities in either of these organizations would make it difficult or impractical to "integrate NUDOCs operations with the LSS." (Alternative 1, Disadvantage (d); Alternative 3, Disadvantage (d)). We believe that additional detail in the discussion of this issue to make it apparent why integration of NUDOCs with the LSS would be difficult or impractical under these alternatives, or more importantly, to identify what the primary relationship of NUDOCs should be to the LSS. These issues should be addressed more fully in the draft paper.

9. Under the draft proposed rule on the LSS, decisions of the LSS Administrator, including the compliance determination decisions in proposed section 2.1003(h) (2), may be reviewed by the Pre-License Application Licensing Board under proposed section 2.1010(a). Selection of the ASLBP as the LSS Administrator would mean that employees of the ASLBP serving in an adjudicatory capacity would be reviewing the decisions of other employees of the Licensing Board serving in an LSS administration capacity. Even if substantial internal administrative barriers were erected to prevent any actual conflict-of-interest situations from arising, there could still be a perceived conflict-of-interest. For this reason, we do not believe that this alternative is a sound approach and is one which clearly has the perceived conflicts disadvantage. This should be identified as a disadvantage.
10. Advantage (b) of Alternative 2 states that ARM has provided the technical support to the NRC negotiating team. This is certainly correct for computer-related matters. It should also be noted that SECY (as well as NMSS, the ASLBP, and the ASLABP) provided substantial technical support to the NRC negotiating team in their respective areas.
11. The citations to the draft proposed rule in Attachment 1 are in some cases incorrect (for example, there is no section 2.1003(i)). These citations should be checked against the final version of the draft rule. We are of course available to provide assistance, if needed, to provide the correct citations.
12. The key LSS milestones in Attachment 2 do not include the formation of the LSS Advisory Committee required by section 2.1011(e) (2) of the proposed rule. We anticipate that the Federal Advisory Committee Act charter for this committee will be submitted to the Commission for review and approval in November, 1988.

If you have any questions about our comments, please contact Chip Cameron of my staff, x21623.

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(SEE PREVIOUS CONCURRENCE PAGE)

Handwritten: All - this version conforms will all modification
W.C. Parler made by W.C. Parler 8/19/88

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