

# POLICY ISSUE INFORMATION

December 29, 2007

SECY-08-0001

FOR: The Commissioners

FROM: Luis A. Reyes  
Executive Director for Operations

SUBJECT: STATUS UPDATE ON CONSULTATION WITH NATIVE AMERICAN  
TRIBES WHO MAY BE AFFECTED BY A COMMERCIAL REACTOR  
PROPOSED FOR GALENA, ALASKA

## PURPOSE:

To provide a status update on the progress of consultation with the appropriate Native American Tribal Governments who may be affected by the potential application for licensing of a nuclear reactor to be sited in Galena, Alaska. This paper does not address any new commitments.

## BACKGROUND:

In the Staff Requirements Memorandum to SECY-05-0121, "Request to Consider Developing a Formal Tribal Consultation Protocol," dated August 4, 2005, the Commission directed staff to engage in consultation with the appropriate Native American Tribal Governments with interests in the proposed siting of a nuclear reactor in Galena, Alaska. In SECY-06-0119, "Status Update on the Request to Consider Developing a Formal Tribal Consultation Protocol," dated May 22, 2006, staff provided a status update on the progress of consultation with Native American Indian Tribes located in the Galena, Alaska, area and in the Yukon River Watershed (potentially affected Native American Tribes). That paper included a discussion of the U.S. Nuclear Regulatory Commission's (NRC) Tribal Consultation Team (TCT), which was

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established for purposes of supporting NRC consultation activities with the appropriate potentially affected Native American Tribal Governments in view of the proposed reactor. As a primary responsibility, the TCT engages in dialogue and consultation with the appropriate Native American Tribal Governments who may be affected by actions taken by Toshiba Corporation and the City of Galena. Staff also committed to providing a future status report to the Commission on matters related to consultation with the potentially affected Native American Tribes and the work of the TCT.

### DISCUSSION:

Much of the Native American Tribal interest in the potential siting of a nuclear reactor in Galena, Alaska, arises from activity directly undertaken by the City of Galena and by Toshiba Corporation. While little such activity has occurred until recently, NRC has pursued regular dialogue with tribal representatives of the potentially affected Native American Tribes in order to maintain and strengthen ties between NRC and the tribes and to support future government-to-government consultative needs of the area's indigenous people.

#### *Meetings with Tribal Representatives of the Potentially Affected Native American Tribes*

NRC staff have pursued several avenues to further develop its relationship with the potentially affected Native American Tribes. In Spring 2007, the TCT hosted two teleconferences with Native American Tribal Government representatives to discuss interest in tribal consultation in relation to the potential reactor licensing application. The objective of those teleconferences was to develop an understanding of the needs of the appropriate Native American Tribal Governments, identify prospective roles, responsibilities, and expectations of the Native American Tribal Governments and of the NRC, and establish and maintain effective communications with the appropriate Native American Tribal Governments regarding tribal consultation.

Participation in both the April 5 and April 12, 2007, teleconferences included many tribal representatives and others involved in Yukon River-area tribal affairs, including tribal leaders from the Kaltag, Koyukuk, Loudon, Ruby, and Nenana Tribal Councils, Lucy Simpson, staff attorney of the Indian Law Resource Center, and Robert Rosenfeld, Alaska Region Director of the Yukon River Inter-Tribal Watershed Council (YRITWC). (Established in 1997, the YRITWC currently consists of 66 Tribal Governments, 53 located in Alaska and 13 located in Canada, and is committed to protecting the Yukon River and its Watershed through clean-up and preservation activities.) Discussions included the definition of "consultation" and the intent of Executive Orders which direct Federal agencies to establish timely and meaningful consultation and coordination with tribes. These discussions also resulted in staff's developing preliminary draft guidance for directing consultative interactions with the potentially affected Native American Tribes.

As a follow-up to the April 2007 discussions, NRC staff attended the June 2007, National Congress of American Indians Mid-Year Conference in Anchorage, Alaska. The conference hosted approximately 1,200 attendees, representing roughly 250 of the 562 Federally-recognized tribes, including tribal representatives from the potentially affected Native American Tribes. The conference focused on a variety of issues, including economic development, natural resources, education, and the preservation of Native cultures. Staff presented a slideshow on NRC's role, responsibility, and authority in licensing and regulating nuclear

material, and on its commitment to establishing and maintaining effective government-to-government communications and working relationships with Native American Tribes.

In August 2007, the YRITWC held its 10<sup>th</sup> Anniversary Summit in St. Mary's, Alaska. Per a May 7, 2007, invitation to the NRC, staff intended to attend and participate in that Summit. However, as the Summit date drew closer, organizing personnel with the YRITWC informed NRC that due to scheduling limitations, they would be unable to support a formal NRC presentation or meetings with tribal members of the potentially affected Native American Tribes. Accordingly, staff chose not to attend the August 2007 Summit.

#### *Recent Activity by Toshiba Corporation and the City of Galena, Alaska*

Per an August 24, 2007 request from Toshiba Corporation for a pre-application meeting with NRC for design approval of the Toshiba "Super-Safe, Small, and Simple" (4S) reactor, (Agencywide Documents Access and Management System (ADAMS) Accession Number ML072540677), NRC held a meeting with Toshiba and its three project partners, Japan's Central Research Institute for Electric Power Industry, Westinghouse Electric Company, and Argonne National Laboratory, on October 23, 2007, to discuss their request to engage the NRC staff in pre-application review activities for design approval of the 4S reactor. During its presentation, Toshiba outlined a proposed pre-application review plan, culminating in the submittal of a 4S design approval application in early Calendar Year 2009. The pre-application review meeting was held in the NRC Auditorium, and was attended by pre-applicant team members from Japan and the United States, NRC staff, and members of the public.

Staff arranged for a telephone bridge line and informed tribal representatives of the potentially affected Native American Tribes and the YRITWC of the scheduled meeting. Three of the six members of the public who participated by bridge line (March Runner of the Loudon Tribal Council, Peter Demoski of the Nulato Tribal Council, and Robert Rosenfeld of the YRITWC) represented the potentially affected Native American Tribes located within the Yukon River watershed. During the end-of-meeting public comment period, the YRITWC stated its position opposing the transport, storage, and experimentation of radioactive materials on the Yukon River Watershed, as well as opposition to the 4S reactor. (Official NRC transcript of meeting proceedings at ADAMS Accession Number ML073050078.)

#### *Status of NRC's Consultative Role with the Potentially Affected Native American Tribes*

As required by the TCT's Scope of Work communicated in SECY-06-0119, staff has continued to engage Tribal Governments of the potentially affected Native American Tribes in an information sharing and consultative role. Staff has obtained the necessary contact information needed to communicate with individual tribal leaders and with those organizations that represent Native American Tribes along the Yukon River. Staff of the TCT, representing six NRC Offices and one Region, possess knowledge, experience, and expertise in a variety of regulatory disciplines and has spoken with tribal representatives on multiple occasions to provide information and respond to questions on the NRC's licensing and pre-application review processes that may arise from the Toshiba Corporation 4S reactor proposal. As a result, staff has begun to develop an understanding of the needs of the potentially affected Native American Tribes. In particular, staff recognize the tribes' need to better understand NRC's pre-licensing activities and its technical and licensing review processes. Staff has identified as a priority the

identification of, and communication to the potentially affected tribes and tribal organizations about, opportunities for public participation and involvement. Staff has communicated this information to tribal leaders and is committed to maintaining this level of communication throughout its relationship with the tribes and the YRITWC.

The TCT has provided a forum in which tribes speak with other potentially affected tribes, and with knowledgeable NRC representatives, to gain greater clarification and understanding of pre-licensing and licensing proceedings. Such meetings have provided NRC staff with the opportunity to listen to particular concerns and gain a better understanding of the often complex relationships that shape and inform tribal policy and subsequent action taken in response to issues raised by the Toshiba 4S proposal. Finally, as the TCT is comprised of NRC staff who learn of actions and requests by Toshiba Corporation and the City of Galena through their primary Office activities, the TCT, and subsequently the potentially affected Native American Tribes, learn of important information in a timely manner.

Members of NRC's TCT staff continue to reach out to established tribal contacts, and seek to address the concerns of both individual tribes and the tribal representative group, the YRITWC. Moreover, the TCT remains abreast of current activities undertaken by principal participants Toshiba Corporation and the City of Galena, and informs tribal interests, through multiple avenues of communication, about activities (such as public meetings) associated with the potential license application for a 4S reactor in Galena, Alaska. When necessary, the TCT also works with the tribes to improve communication and to more clearly define consultative roles in light of regulatory processes and other administrative and technical issues that arise from NRC's pre-licensing and licensing activities.

#### *Path Forward*

The current relationship between the NRC and the potentially affected Native American Tribes provides for effective communication and consultation on issues related to the potential application for licensing of a nuclear reactor in Galena, Alaska. The TCT and other NRC staff plan to continue working with the potentially affected Native American Tribes and will rely on past practices to further the NRC's consultative relationship. These practices include pro-active outreach and communication such as teleconference meetings and participation by staff at regional conferences, meetings, or trade shows. Additionally, continued dialogue led by NRC technical and legal experts, and by staff who are well versed in administrative procedure, will be used to educate and inform tribal leaders and representatives and to assist them in developing tribal policies and strategies. At this time, the staff does not believe that written agreements between the NRC and the tribes related to the proposed Galena reactor will provide for additional effectiveness or efficiency in the NRC's consultative relationship with the potentially affected Native American Tribes, and the staff does not plan to pursue such protocols.

#### RESOURCES:

Staff estimates approximately 0.42 full-time equivalents (FTE) is required in Fiscal Year (FY) 2008 to continue to engage in consultation with the appropriate Native American Tribal Governments who may be affected by the potential application for licensing of a nuclear reactor to be sited in Galena, Alaska. Resource requirements are broken out as follows: 0.12 FTE for the Office of Federal and State Materials and Environmental Management Programs, and 0.05

FTE each for the Office of New Reactors, Office of the General Council, Office of Nuclear Regulatory Research, Office of Nuclear Security and Incident Response, Office of Nuclear Material Safety and Safeguards, and Region IV. These resources are included in the FY 2008 budget. No funds for reimbursement to Native American Tribal governments are necessary at this time.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and concurs. Region IV has reviewed this paper and concurs. This paper has also been coordinated with the Office of International Programs, which has no objections.

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