Memorandum of Understanding
Pertaining To the Emergency Response Data System
Between
The U. S. Nuclear Regulatory Commission
And
The State of Texas

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Texas enter into this Memorandum of Understanding (MOU) under the authority of Section 274i of the Atomic Energy Act of 1954, as amended.

The State of Texas recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act. Nothing in this MOU is intended to restrict or expand the scope of regulatory authority of either the NRC or the State of Texas.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the NRC to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the agency responsible for regulating nuclear power plant safety.

B. NRC believes that its mission to protect public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 Federal Register 7530, February 25, 1992). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This MOU is intended to be consistent with, and implement the provisions of, the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities and monitoring the status and adequacy of licensees' responses to emergency situations.

D. The State of Texas fulfills its statutory mandate to provide for preparedness, response, mitigation, and recovery in the event of an accident at a nuclear power plant through its statutes located in Chapter 418, Texas Disaster Act of 1975, Texas Government Code.

III. Scope

A. This MOU defines the way in which NRC and the State of Texas intend to cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System (ERDS) during emergencies at commercial nuclear power plants in the

State of Texas that have implemented an ERDS interface, and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Texas.

B. It is understood by the NRC and the State of Texas that ERDS data will only be transmitted to the State of Texas during emergencies classified at the Alert Level or above, during scheduled tests, or during exercises when available.

C. Nothing in this MOU is intended to restrict or expand the statutory authority of the NRC, the State of Texas, or to affect or otherwise alter the terms of any agreement in effect under the authority of Section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this MOU intended to restrict or expand the authority of the State of Texas on matters not within the scope of this MOU.

D. Nothing in this MOU confers upon the State of Texas the authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by the NRC; or (5) direct or recommend nuclear power plant employees to take, or not take, any action. Authority for all such actions is reserved exclusively to the NRC.

E. This MOU does not confer any binding obligation or right of action on either party. This MOU does not obligate any funds and is subject to the availability of appropriated funds.

IV. NRC's General Responsibilities

Under this MOU, the NRC will maintain ERDS. ERDS is a system designed to receive, store, and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide the State of Texas, up to 10 digital certificates for use by State designated personnel in accessing ERDS data during emergencies at nuclear power plants which have implemented an ERDS interface, and for which any portion of the plant's 10-mile EPZ lies within the of State of Texas. The NRC reserves the right to revoke digital certificates at any time.

V. State of Texas' General Responsibilities

A. The State of Texas, through its lead radiological agency, will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, the Texas Department of State Health Services will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. The State of Texas will provide the NRC with an initial, and periodically updated, list of designated persons serving as holders of ERDS digital certificates.

C. The State of Texas will use ERDS only to access data, at the Alert level or higher, from nuclear power plants for which all or a portion of the 10-mile EPZ falls within its State boundary.

D. For the purpose of minimizing the impact on plant operators, the State of Texas will seek clarification of ERDS data through the NRC.

VI. Implementation

A. The State of Texas and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding ERDS are followed:

a. The State of Texas and the NRC agree in good faith to make available to each other information within the intent and scope of this MOU.

b. NRC and the State of Texas agree to meet as necessary to exchange information on matters of common concern pertinent to this MOU. Unless otherwise agreed, such meetings will be held in the NRC Headquarters Operations Center. The affected utilities will be kept informed of pertinent information covered by this MOU.

c. To preclude the premature release of sensitive information, NRC will protect sensitive information to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552, Title 10 of the Code of Federal Regulations, Part 2.790, and all other applicable authority. The State of Texas will protect sensitive information to the extent of the Texas Government Code, Chapter 552, Public Information.

d. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to the Texas Department of State Health Services by the NRC. The Texas Department of State Health Services may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

e. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, the Texas Department of State Health Services will coordinate with the NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this MOU will be the Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response for the NRC, and the Director, Client Services Contracting Unit, Texas Department of State Health Services, for the State of Texas. These individuals may designate appropriate staff representatives for the purpose of administering this MOU.

B. Identification of these contacts is not intended to restrict communication between NRC and Texas Department of State Health Services staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this MOU, NRC and the State of Texas will work together to resolve these differences.

B. Differences between the State of Texas and NRC staff over issues arising out of this MOU will, if they cannot be resolved in accordance with Section VIII.A, be resolved by the Director of the NRC Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the NRC's Director, Office of Nuclear Security and Incident Response.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This MOU will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than 1 year after the effective date, will be performed by the NRC to evaluate implementation of the MOU and resolve any problems identified. This MOU will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

XI. Separability

If any provision(s) of this MOU, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this MOU and the application of such provisions to other persons or circumstances will not be affected.

FOR THE U.S. NUCLEAR REGULATORY COMMISSION
Dated:

R.W. Borchardt 1-23-09

R. William Borchardt
Executive Director for Operations
U.S. Nuclear Regulatory Commission

FOR THE STATE OF TEXAS
Dated:

1-6-9

Bob Burnette, C.P.M., CTPM
Director, Client Services Contracting Unit
Department of State Health Services