

Outline – discussion on NJ Agreement Public Comment Analysis
August 3, 2009

Background

1. Received comments from RI (b)(5) during "office concurrence"
2. Also had Aaron review as a "technical editor"

*Ex 5
attorney-
client*

3. (b)(5)

*Ex 5
attorney
client*

4. (b)(5)

*attorney
client*

Discussion

1. Rev 5 is a track changes from Joan's last edit on July 31
 - a. This incorporates revisions needed from comments from RI, OGC, Aaron, and Joe

(b)(5)

*Ex 5
attorney
client*

- c. Rev 6 is a clean version of Rev 5
2. Comment in Question is SMC comment C re: NRC keeping SMC anyway, page 9 of revision 6
 - a. Comment and revised language in discussion in NRC response – page 9
 - b. Staff cannot recall any licenses that NRC kept authority over within a category of material nor found any in it's research with one exception
 - i. The one example is Honeywell – that was held for common defense and security, which we acknowledge in the comment resolution – under 274m.
 - c. Want to make sure we understand Joe's comment

- d. Do not believe that we will have the jurisdictional authority to retain a licensee – it would have to be written specifically into the Agreement
 - i. However, there are complications with keeping a single licensee in a category of material
 - ii. Discussed in OK Agreement paper – SECY-97-087
 - iii. Of note, the staff told the Commission that it would be inappropriate from a policy perspective for OK to not take all licensees in a category of material. OGC also indicated that implementation of this approach may be inconsistent with the Commission's authority under the AEA.
 - iv. Staff raised several concerns, including
 - 1. Limitation of NRC authority to a few discrete licensees is likely to create future problems if the State receives authority to regulate the activities conducted by those retained licensees
 - a. If a similar operation sought a license after the Agreement went into effect, the State would regulate that operation
 - b. Creates confusion
 - c. Creates a form of dual regulation
 - d. Pattern of NRC and A/S regulation could become confusing
 - v. Staff proposed addressing future requests on a case by case basis giving consideration to the following general guidelines:
 - 1. Staff would consider whether the proposed Agreement would jeopardize an orderly regulatory pattern between Commission and States (274a(3) of the AEA)
 - 2. Requests for limited Agreements would have to identify discrete categories of material or classes of licensed activity that
 - a. Can be reserved to NRC authority without undue confusion to the regulated community or burden to NRC resources
 - b. Can be applied logically and consistently to existing and future licensees over time.
 - c. NRC would not reserve authority over a single license unless that licensee clearly constituted a single class of activity or category of material meeting the 2 criteria described above
 - d. Staff will inform commission concerning any issues that are difficult to resolve or that involve significant disagreement between NRC and a State
 - 3. Commission SRM approved the staff's recommendation
 - vi. Of note is 2c – this is not the case with SMC
 - vii. Alternative language suggestion