AGENDA

Briefing – New Jersey Agreement Application
April 9, 2009

Purpose

Briefing on Commission paper for New Jersey Agreement Application and pre-brief prior to meeting with Marty

Background

1. New Jersey submitted it's final application by letter dated October 16, 2008, from Governor Corzine
2. The review team consisted of representatives from FSME/DWMEP and MSSA; RI; OGC; NSIR
3. Review followed procedures in SA-700, "Processing an Agreement," and references therein, such as Management Directives and internal procedures, as well Commission policy statements on criteria -
   a. Criteria for Guidance of States And NRC in Discontinuance of NRC Regulatory Authority and Assumption Therefore by States Through Agreement
4. Based on the team review, no substantial deficiencies were identified

Discussion

1. 1st Commission paper
   a. This SECY is the 1st of two – requesting Commission approval to publish FRN and draft Staff Assessment for public comment
      i. This follows the same format as for PA and VA
      ii. Criteria from the Criteria Policy are addressed – related to regulatory requirements, staffing, training/qualifications, inspections, etc.
      iii. Final Commission paper will address issues such as public comments, transfer of licenses, actions pending against licensees to be transferred, status of decommissioning sites

   b. Addresses 2 additional issues
      i. Commission directed staff, in the VA SRM, to evaluate the Agreement related to certain things that NRC retains authority over and a provision in part 150 – this is related to exempt distribution licensing.
      (b)(5)
      ii. NARM Waiver
         (1) Expires 8/7/09 – we address this in the paper, indicating that we are working with offices and NJ to ensure a smooth transition within legal requirements to minimize impacts.
         (2) Staff plans (attached)

2. Status/Schedule
   a. Staff working to an effective date of no later than 9/30/09

Ex 5 attorney client PWI log

Information in this record was deleted in accordance with the Freedom of Information Act. Exemptions Ex. 5 FOIA/PA 2010-0239

H/8

i. NJ original request was earlier if possible due to NARM waiver expiration
ii. With Front Office – 4/8/09 – Patty is reviewing
iii. Due to Marty Virgilio April 15, 2009
iv. Briefing to Marty on 4/13/09 – 1:00 p.m.
v. Paper due to Commission 4/22/09

b. Need expedited review for notification in the *Federal* Register mid-May if at all possible
   i. Based on when we get an SRM, we've planned the first publication mid-May
   ii. Depending on original publication – comment period would end mid-June
   iii. Staff has added information for the expedited review in the Periodic Materials for meetings with Commissioners and with Marty

3. Urgency of an effective date of no later than 9/30/09.
   a. Impact if Agreement not in place
      i. NARM waiver expires August 7, 2009
         (1) About a 7 week period before Agreement
         (2) Any further delay affects efficiency and impact on licensees, NRC and NJ staff
      ii. Fees – NRC will issue fees for FY 2010, beginning October 1; 2009; we prorate only on 6 month window
         (1) Licensees would also face NJ fees
      iii. Sheildalloy decommissioning plan – with each delay impact on NRC resources and Shieldalloy resources
         (1) DWMEP staff informed us that a revised decommissioning plan expected in August/September 2009 – will take about 6-9 months to review
      iv. NRC's FY 2010 budget does not include resources for regulating NJ licensees

4. Issues Marty may raise
   a. Alison said Marty wanted to ensure certain concerns were addressed – NJ going beyond normal involvement, and possibly beyond their rights.

   b. Concern appears to be related to reactor programs – State of Minnesota had tried to pass legislation putting requirements on ISFSI facilities where they didn't have the authority (NRC pre-emption)
      i. NJ does have a 274i agreement to accompany NRC inspectors on inspections at reactor
      ii. Apparently, NJ takes full opportunity of the agreement – wanting to look at engineering designs and do independent evaluations.
      iii. They have not been taking on a regulatory role – trying to apply NJ regulations for example
      iv. Note from Dennis – question at the time re: Minnesota was if it impacted the Agreement. Answer was no – agreement is related to 274 agreements/byproduct material; doesn't impact.

   c. Shieldalloy
      i. NJ will not allow restricted release and will require Shieldalloy to remove material off-site
      ii. NJ has taken action as an interested stakeholder, within the legal avenues that they have available to them.

d. The staff is aware of potential furloughs of State employees in NJ. The NJ staff has a plan for addressing emergencies during the furloughs; therefore, this issue will not have any impact on the processing of the Agreement application package.

NARM Waiver issues

1. As we do for all transitions, RI will be working closely with NJ regarding licensing actions – usually hold those coming in the last 30 days
   a. RI will work with NJ on any actions that come in - if urgent action needed, RI will do to meet licensee's need

2. RI will be accelerating inspections for those due in October – December

3. We are discussing with NJ the possibility of accelerating any NARM inspections due in the August – September timeframe so that none will be needed then.

4. Upon the expiration of the waiver, per the NARM rule, licensees in NJ will be in NRC jurisdiction and have to meet our regulations and reporting requirements

   a. They will have 6 months to apply for needed amendments and 12 months to apply for a new license

   b. We have not seen a huge rush within the 1st few weeks of phase 1 and 2 waiver terminations

   c. Don't expect that to be different for phase 3

5. Fees – NRC licensees have already paid fees for FY 2009.
   a. New fees issued October 1, 2009. For those licensees that will be in our jurisdiction between the waiver expiration and the effective date of the Agreement would not be assessed fees by NRC unless they applied for a license.
   b. Only 200 NJ NARM licensees to which this would apply; the other 300 NARM licensees that NJ has also have an NRC license and are already paying fees.

6. We'll be discussing communications with the licensees with NJ

   a. They will be starting outreach meetings in early May; plan a formal communication in the summer – May 8 and May 11
      i. Donna Janda, RI, will be attending to answer questions about the NARM waiver

7. Discussions with OGC and OE

   a. While licensees will have to report to NRC, we're considering an option to request that they also report to NJ as well – as a courtesy

   b. As always, events/enforcement occurring before the effective date of Agreement stays with the regulatory agency under which the event occurred – to completion

   c. In this situation, we will need to coordinate a bit more with NJ since they will be addressing any corrective action or evaluating during future inspections

   d. Since NJ licensees will have to meet NRC regulations, any violations of same are enforceable. Researching what happens if there is a violation of a NJ license condition **note: get info on transition plan and look at SOC**

Schedule To Have Agreement Effective By The Waiver Termination

Schedule will have to be drastically accelerated.

Staff will only have 2-3 days to evaluate/address public comments

Offices will have to review final package in 3-5 days

While the process normally allows 2 weeks for package from front office to the Commission, this would shorten to 2 weeks for everyone's review once office concurrence is in – from branch chief – division – fsme – edo -

If the Commission votes quickly, no later than 7/21/09, it is possible

For transition to the Agreement State, work in the Region begins about 3 months before the estimated effective date of the Agreement – in this case, late April to early May. This means that RI will need to know in the next week or two at the very latest. Many of our unknowns and challenges won't be seen until late May into June

Challenges:

1. While staff can have the majority of the documents completed with placeholders pending public comments there are still challenges

    a. Number and nature of proposed comments – we expect comments
    b. Other offices concurrence time, including OGC
    c. RI work for license transfer process for 500 licenses
    d. Accelerating inspections
        i. RI already scheduling for April-June timeframe
        ii. Will soon start scheduling for July-Sept timeframe
            (1) Will need to factor in accelerated schedule
        iii. Could discuss with NJ – maybe they only need to get ahead by 1 month, instead of 3