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Contractor Conflicts of Interest (43FR3288) (3)

February 23, 1978

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

During our review of the proposed regulation published in the "Federal Register" on Tuesday, January 24, 1978, establishing policies and procedures for the Nuclear Regulatory Commission with respect to the avoidance of contractor organizational conflicts of interest, we noted several items on which we wish to comment. We hope these comments will help persuade the Commission that the proposed regulation in its present form may cause an adverse reaction with undesirable effects u[illegible]he Nuclear Regulatory Commission and the organizations which have bee[illegible]orking, and hope to continue working, in this specialized industry.

Admittedly, Public Law 95-209 provides justification for drafting guidelines regulating organizational conflicts of interest; however, after reviewing the proposed regulation in the light of the legislative history of P.L. 95-209, we believe it is evident that the drafters of the proposed regulation went far beyond the spirit of the legislative intent. The result, we feel, if the proposed regulation is adopted, will have adverse effects upon the quality and level of technology available to the NRC.

The regulation, as proposed, will require that commercial organizations make a decision either to work for the NRC or work for the nuclear industry if they wish to avoid a charge of conflict of interest. This all-or-nothing decision will need be made because of the stringent requirements set out in the proposed regulation. The bottom-line effect, we believe, will be to deprive the NRC of a large segment of highly qualified and experienced contractors who hold within their organizations a significantly large pool of technical expertise in fields important to the NRC.

The exceptionally broad meanings of the nine items listed in the proposed

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regulation as "(b) Situation or relationships which might give rise to organizational conflicts of interest" compels the interpretation that almost any prior private contractual work for the nuclear industry will be considered a conflict of interest in the evaluation of a prospective contractor of the NRC. Thus, any such prior contractual work will tend to keep such organization from being considered as a contractor of NRC. Consequently, it can be expected that responses to a solicitation for proposals for contracts with the NRC will steadily decline to the point where both the quality and number of contractors available to the NRC are severely limited. This can only be detrimental to the NRC. A side effect will be to limit the very competition which the proposed regulation is intended to enforce.

Many organizations which have enjoyed respected relationships with private companies in the past are not likely to chance a charge of conflict of interest in order to work on isolated projects for the NRC. This can only result in a further degradation in the level of technical excellence heretofore available to the NRC, with a consequent undesirable effect upon the advancement of nuclear technology.

We firmly believe that a review of the past history of both private and public contracts performed in this highly specialized industry will not disclose any significant situations where the NRC has been hurt by a conflict of interest such as that described in the proposed regulation. As far as competition for NRC contracts is concerned, certainly every organization gains in experience, and hence in competitive advantage, as its work increases and broadens, but to suggest that such a gain is "unfair," as the proposed regulation suggests, is to say that all learning by experience is "unfair" because it gives one organization an advantage over another. This is manifestly unsound because it would reduce the level of learning in the nuclear industry to the mediocrity of the least experienced; hardly a result calculated to improve the excellence which the NRC, the private industry interests, and the public should be able to expect.

Your reconsideration of this proposed regulation in the light of these comments will be appreciated.

Respectfully submitted,

A. W. Betts
Senior Vice President
for Operations

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