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## POLICY ISSUE

March 9, 1994

(NEGATIVE CONSENT)

SECY-94-061

**FOR:** The Commissioners

**FROM:** Carlton R. Stoiber, Director  
Office of International Programs

**SUBJECT:** SIGNATURE OF PROPOSED ARRANGEMENT WITH LITHUANIA ON TECHNICAL  
INFORMATION EXCHANGE AND REGULATORY COOPERATION

### PURPOSE:

To inform the Commission of the staff's intention to sign a regulatory cooperation agreement with the Lithuanian Nuclear Power Safety Inspectorate (VATESI).

### DISCUSSION:

During Chairman Selin's visit to Lithuania in October 1993, Dr. Povilas Vaishnis, Head of VATESI, indicated his interest in signing a nuclear safety agreement with the NRC. It is understood that such an agreement could facilitate the exchange of nuclear safety information between the NRC and VATESI.

The Commission was informed in a Daily Item on October 20 of the Office of International Programs' (OIP) intention to prepare and clear an agreement for signature with VATESI. The OIP staff then prepared a standard agreement text and submitted it to the Department of State for interagency clearance. Clearance was received on December 1 and the draft agreement was forwarded to VATESI for their review. Dr. Vaishnis advised OIP in January that the agreement was agreeable to them. In the absence of a near-term opportunity for a signing ceremony and in the interest of putting the agreement into effect without undue delay, OIP proposed, and Dr. Vaishnis has now agreed, that the English version of the agreement be signed by the NRC and transmitted by mail to Dr. Vaishnis for his signature. When the Lithuanian translation is completed and verified, that version would also be signed by both agencies. The proposed English text of the agreement and its transmittal letter are attached.

Contact: Hans B. Schechter, OIP/BCA  
504-2218

NOTE: TO BE MADE PUBLICLY AVAILABLE  
WHEN THE FINAL SRM IS MADE  
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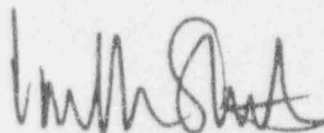
March 9, 1994

The agreement makes no commitments requiring additional funding and can be implemented using information and reports developed for other purposes. In addition, some funding and contractor support from AID may be available to address Lithuanian requests for safety assistance. However, the staff's lack of expertise in regard to RBMK design, and competing, higher priority demands on staff resources will limit our ability to respond to such requests. On this basis, the staff supports the agreement and is prepared to carry out its implementation.

The Office of the Executive Director for Operations concurs and the Office of the General Counsel has no legal objection.

RECOMMENDATION:

That the Commission note that it is the staff's intention to send a letter to VATESI conveying to them for counter-signature copies of the attached agreement signed by the Executive Director for Operations. The letter will be sent ten days from the date of this paper unless instructed otherwise by the Commission.



Carlton R. Stoiber, Director  
Office of International Programs

Attachments:

1. Proposed NRC-VATESI Agreement
2. Draft Transmittal Letter

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Thursday, March 24, 1994, that the Commission, by negative consent, assents to the action proposed in this paper.

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ARRANGEMENT

BETWEEN

THE UNITED STATES NUCLEAR REGULATORY COMMISSION

(USNRC)

AND

THE LITHUANIAN NUCLEAR POWER SAFETY INSPECTORATE

(VATESI)

FOR THE EXCHANGE OF TECHNICAL INFORMATION

AND COOPERATION IN NUCLEAR SAFETY MATTERS

ARRANGEMENT  
BETWEEN  
THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
(USNRC)  
AND  
THE LITHUANIAN NUCLEAR POWER SAFETY INSPECTORATE  
(VATESI)  
FOR THE EXCHANGE OF TECHNICAL INFORMATION  
AND COOPERATION IN NUCLEAR SAFETY MATTERS

The United States Nuclear Regulatory Commission (hereinafter called the USNRC) and the Lithuanian Nuclear Power Safety Inspectorate (hereinafter called the VATESI);

Having a mutual interest in a continuing exchange of information pertaining to regulatory matters and of standards required or recommended by their organizations for the regulation of safety and environmental impact of nuclear facilities;

Have agreed as follows:

I. SCOPE OF THE ARRANGEMENT

1. Technical Information Exchange

To the extent that the USNRC and the VATESI are permitted to do so under the laws, regulations, and policy directives of their respective countries, they will exchange the following types of technical information relating to the regulation of safety and environmental impact of designated nuclear energy facilities and to nuclear safety research programs:

- a. Topical reports concerning technical safety and environmental effects written by or for one of the parties as a basis for, or in support of, regulatory decisions and policies;
- b. Documents relating to significant licensing actions and safety and environmental decisions affecting nuclear facilities;
- c. Detailed documents on the USNRC process for licensing and regulating certain U.S. facilities designated by the VATESI as similar to certain facilities being built or planned in Lithuania, and equivalent documents on such Lithuanian facilities;
- d. Information in the field of confirmatory safety research, including safety information from technical areas to be further agreed by the parties. Cooperation in research areas may require a separate agreement, as determined to be necessary by the research organizations of one or both parties. Each party will transmit immediately to the other information concerning research results that requires early attention in the interest of public safety, along with an indication of significant implications;
- e. Reports on operating experience, such as reports on nuclear incidents, accidents and shutdowns, and compilations of historical reliability data on components and systems;
- f. Regulatory procedures for the safety, safeguards (materials accountancy and control and physical protection), waste management, and environmental impact evaluation of nuclear facilities;

- g. Early advice of important events, such as serious operating incidents and government-directed reactor shutdowns, that are of immediate interest to the parties;
- h. Copies of regulatory standards required to be used, or proposed for use, by the parties.

2. Cooperation in Confirmatory Safety Research

The terms of cooperation for joint programs and projects of confirmatory nuclear safety research and development, or those programs and projects under which activities are divided between the two parties, including the use of test facilities and/or computer programs owned by either party, will be considered on a case-by-case basis and may be the subject of a separate agreement, if determined to be necessary by the research organizations of one or both parties. When not the subject of a separate agreement, the terms of cooperation may be established by an exchange of letters between the research organizations of the parties, and will be subject to the terms and conditions of the present agreement. Temporary assignments of personnel by one party in the other party's agency will also be considered on a case-by-case basis and will, in general, require a separate letter of agreement.

3. Training

Within the limits of available resources and subject to the availability of appropriated funds, the USNRC will cooperate with the

VATESI in providing certain training and experience for VATESI safety personnel. Unless otherwise agreed, costs of salary, allowances and travel of VATESI participants will be paid by the VATESI. The following are typical of the kinds of training and experience that may be provided:

- a. VATESI inspector accompaniment of USNRC inspectors on operating reactor and reactor construction inspections in the U.S., including extended briefings at USNRC regional inspection offices.
- b. Participation by VATESI employees in USNRC staff training courses.
- c. Assignment of VATESI employees for 6-12 month periods to the USNRC staff, to work on USNRC staff duties and gain on-the-job experience.
- d. Possible training assignments within the radiation control programs of interested USNRC Agreement States.

4. Technical Advice

To the extent that the documents and other information provided by the USNRC as described in 1. and 3., above, are not adequate to meet VATESI's needs for technical advice, the parties will consult on the best means for fulfilling such needs. The USNRC will attempt, within the limits of appropriated resources and statutory authority, to assist the VATESI in meeting these needs. For example, within these limits, the USNRC will attempt to meet requests that come through the International Atomic Energy Agency for technical assistance missions to Lithuania by USNRC safety experts.

## II. ADMINISTRATION

1. The exchange of information under this Arrangement will be accomplished through letters, reports, and other documents, and by visits and meetings arranged in advance. Meetings will be held at such times as mutually agreed to review the exchange of information, to recommend revisions to the provisions of the Arrangement, and to discuss topics within the scope of the exchange. Visits which take place under this Arrangement, including their schedules, will have the prior approval of the Arrangement administrators, who will be designated by each party to coordinate its participation in the overall exchange.
2. The application or use of any information exchanged or transferred between the parties under this Arrangement will be the responsibility of the receiving party, and the transmitting party does not warrant the suitability of such information for any particular use or application.
3. Nothing contained in this Arrangement will require either party to take any action which would be inconsistent with its laws, regulations, and policy directives. Should any conflict arise between the terms of this Arrangement and those laws, regulations, and policy



directives, the parties will consult before any action is taken. No nuclear information related to proliferation-sensitive technologies will be exchanged under this Arrangement.

### III. EXCHANGE AND USE OF INFORMATION

#### 1. General

The parties support the widest possible dissemination of information provided or exchanged under this Arrangement, subject both to the need to protect proprietary or other confidential or privileged information as may be exchanged hereunder, and to the provisions of the Intellectual Property Addendum, which is an integral part of this Arrangement.

#### 2. Definitions

- A. The term "information" means nuclear energy-related regulatory, safety, safeguards, waste management, scientific or technical data, including information on results or methods of assessment, research, and any other knowledge intended to be provided or exchanged under this Arrangement.
- B. The term "proprietary information" means information made available under this Arrangement which contains trade secrets or other privileged or confidential commercial information (such that the person having the information may derive an economic benefit from it or may have a competitive advantage over those who do not have it), and may only include information which:

- (1) has been held in confidence by its owner;
  - (2) is of a type which is customarily held in confidence by its owner;
  - (3) has not been transmitted by the owner to other entities (including the receiving party) except on the basis that it be held in confidence;
  - (4) is not otherwise available to the receiving party from another source without restriction on its further dissemination; and
  - (5) is not already in the possession of the receiving party.
- C. The term "other confidential or privileged information" means information, other than "proprietary information," which is protected from public disclosure under the laws and regulations of the country of the party providing the information and which has been transmitted and received in confidence.

3. Marking Procedures for Documentary Proprietary Information

A party receiving documentary proprietary information pursuant to this Arrangement will respect the privileged nature thereof, provided such proprietary information is clearly marked with the following (or substantially similar) restrictive legend:

"This document contains proprietary information furnished in confidence under an Arrangement dated..... between the United States Nuclear Regulatory Commission and the Lithuanian Nuclear Power Safety Inspectorate and will not be disseminated outside these organizations, their consultants, contractors, and licensees, and concerned departments and agencies of the Government of the United States and the Government of Lithuania without

the prior approval of (name of transmitting party). This notice will be marked on any reproduction hereof, in whole or in part. These limitations will automatically terminate when this information is disclosed by the owner without restriction."

This restrictive legend will be respected by the receiving party and proprietary information bearing this legend will not be used for commercial purposes, made public, or disseminated in any manner unspecified by or contrary to the terms of this Arrangement without the consent of the transmitting party.

4. Dissemination of Documentary Proprietary Information

- A. In general, proprietary information received under this Arrangement may be freely disseminated by the receiving party without prior consent to persons within or employed by the receiving party, and to concerned government departments and government agencies in the country of the receiving party.
- B. In addition, proprietary information may be disseminated without prior consent
  - (1) to contractors or consultants of the receiving party located within the geographical limits of that party's nation, for use only within the scope of work of their contracts with the receiving party in work relating to the subject matter of the proprietary information;
  - (2) to domestic organizations permitted or licensed by the receiving party to construct or operate nuclear production or utilization facilities, or to use nuclear materials and

radiation sources, provided that such proprietary information is used only within the terms of the permit or license; and (3) to domestic contractors of organizations identified in 4.B.(2), above, for use only in work within the scope of the permit or license granted to such organizations, provided that any dissemination of proprietary information under 4.B.(1), (2), and (3), above, will be on an as-needed, case-by-case basis, will be pursuant to an agreement of confidentiality, and will be marked with a restrictive legend substantially similar to that appearing in paragraph 3., above.

- C. With the prior written consent of the party furnishing proprietary information under this Arrangement, the receiving party may disseminate such proprietary information more widely than otherwise permitted in subsections A. and B. The parties shall cooperate in developing procedures for requesting and obtaining approval for such wider dissemination, and each party will grant such approval to the extent permitted by its national policies, regulations, and laws.

5. Marking Procedures for Other Confidential or Privileged Information of a Documentary Nature

A party receiving under this Arrangement other confidential or privileged information will respect its confidential nature, provided such information is clearly marked so as to indicate its confidential or privileged nature and is accompanied by a statement indicating

- A. that the information is protected from public disclosure by the government of the transmitting party; and
- B. that the information is transmitted under the condition that it be maintained in confidence.

6. Dissemination of Other Confidential or Privileged Information of a Documentary Nature

Other confidential or privileged information may be disseminated in the same manner as that set forth in paragraph 4., Dissemination of Documentary Proprietary Information.

7. Non-Documentary Proprietary or Other Confidential or Privileged Information

Non-documentary proprietary or other confidential or privileged information provided in seminars and other meetings organized under this Arrangement, or information arising from the attachments of staff, use of facilities, or joint projects, will be treated by the parties according to the principles specified for documentary information in this Arrangement; provided, however, that the party communicating such proprietary or other confidential or privileged information has placed the recipient on notice as to the character of the information communicated.

8. Consultation

If, for any reason, one of the parties becomes aware that it will be, or may reasonably be expected to become, unable to meet the nondissemination provisions of this Arrangement, it will immediately inform the other party. The parties will thereafter consult to define an appropriate course of action.

9. Other

Nothing contained in this Arrangement will preclude a party from using or disseminating information received without restriction by a party from sources outside of this Arrangement.

10. Dispute Resolution

Cooperation under this Arrangement will be governed by the laws and regulations of the respective countries. Any dispute or questions between the Parties concerning the interpretation or application of this Arrangement arising during its term will be settled by mutual agreement of the Parties.

IV. FINAL PROVISIONS

1. This Arrangement will enter into force upon signature and, subject to paragraph 2. of this Article, will remain in force for a period of five (5) years. It may be extended for a further period of time by written agreement of the parties.

2. Either party may withdraw from the Arrangement after providing the other party written notice 180 days prior to its intended date of withdrawal.

Done at Rockville, Maryland, this ..... day of March 1994, and at Vilnius, Lithuania, this ..... day of ..... 1994, in the English language. A Lithuanian text will be prepared and signed as soon as possible hereafter.

FOR THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION:

FOR THE LITHUANIAN  
NUCLEAR POWER SAFETY INSPECTORATE:

James M. Taylor \_\_\_\_\_

\_\_\_\_\_  
(Name)

Executive Director for Operations

\_\_\_\_\_  
(Title)

## INTELLECTUAL PROPERTY ADDENDUM

Pursuant to Article III. of this Arrangement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Arrangement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Arrangement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Addendum.

### I. SCOPE

1. This Addendum is applicable to all cooperative activities undertaken pursuant to this Arrangement, except as otherwise specifically agreed by the Parties or their designees.
2. For purposes of this Arrangement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967; viz., 'intellectual property' shall include the rights relating to:

- literary, artistic and scientific works,
- performances of artists, phonograms, and broadcasts,
- inventions in all fields of human endeavor,
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

3. This Addendum addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain rights to intellectual property allocated in accordance with the Addendum by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Addendum does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.
4. Disputes concerning intellectual property arising under this Arrangement should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the



Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern.

5. Termination or expiration of this Arrangement shall not affect rights or obligations under this Addendum.

## II. ALLOCATION OF RIGHTS

1. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Arrangement. All publicly distributed copies of copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.
2. Rights to all forms of intellectual property, other than those rights described in Section II.1., above, shall be allocated as follows:
  - a. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.
  - b. (1) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own country. The Party in whose country the invention was made shall have first option to acquire all rights and interests in third countries. If research is not designated as "joint research," rights to intellectual property arising from the research will be allocated in accordance with paragraph II.2.a., above. In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.
    - (2) Notwithstanding paragraph II.2.b.(1), above, if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests worldwide. Persons named as inventors of the property shall nonetheless be entitled to royalties as provided in paragraph II.2.b.(1), above.

DRAFT

Dr. Povilas Vaishnis, Head  
Lithuanian Nuclear Power Safety  
Inspectorate (VATESI)  
Gedimino, 36  
Vilnius 2600  
Lithuania

Dear Dr. Vaishnis:

Thank you for your letter of January 4, 1994, to NRC Office of International Programs Director C. R. Stoiber, and your follow-up message of February 4, indicating that the VATESI has reviewed the English text of the proposed "Arrangement Between the United States Nuclear Regulatory Commission (USNRC) and the Lithuanian Nuclear Power Safety Inspectorate (VATESI) for the Exchange of Technical Information and Cooperation in Nuclear Safety Matters," found it to be acceptable, and wishes to sign it as soon as possible, without waiting for the ongoing development and clearance of the companion Lithuanian text.

I am therefore pleased to forward for your counter-signature two English language texts of the draft arrangement. I ask that you sign both copies, retain one for your records, and return the other to me. The date of your signature will become the effective date of our arrangement. The Lithuanian text, which you indicate you would still like to sign, will be completed as soon thereafter as possible, but will not govern this arrangement.

We look forward to this formalization of our expanding cooperation. Please plan to visit us during your next travel to the United States. It will be good to see you again.

Sincerely,

James M. Taylor  
Executive Director for Operations

Attachment:  
USNRC-VATESI Arrangement (2 cys)

cc w/attachment:  
American Embassy - Vilnius  
Lithuanian Embassy - Washington

Attachment 2