

**MEMORANDUM OF UNDERSTANDING
BETWEEN
U.S. DEPARTMENT OF ENERGY
AND
U.S. NUCLEAR REGULATORY COMMISSION
ON
CIVIL NUCLEAR CREDIT PROGRAM**

I. PURPOSE AND SCOPE

This memorandum of understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) (hereinafter the “parties” or “party”) describes the roles, responsibilities, and processes for their coordination pursuant to Section 40323 of the Infrastructure Investment and Jobs Act of 2021 (Public Law 117-58), commonly referred to as the Bipartisan Infrastructure Law (BIL).

The primary purpose of this MOU is to develop a process and identify relevant personnel at the DOE and NRC to carry out the Civil Nuclear Credit Program as established in Section 40323 of the BIL, codified at 42 U.S.C. § 18753.

II. AUTHORITY

DOE enters into this MOU under the authority of Section 646 of the Department of Energy Organization Act (Public Law 95-91, as amended; 42 U.S.C. § 7256).

NRC enters into this MOU under the authority of Section 203 of the Energy Reorganization Act of 1974 (Public Law 93-438, as amended; 42 U.S.C. § 5843).

This MOU does not alter the authorities or independence of the NRC and DOE or their abilities to fulfill their responsibilities.

III. BACKGROUND

This MOU covers necessary interactions between the Parties to meet the obligations under the BIL. The BIL requires that DOE establish a Civil Nuclear Credit Program to evaluate nuclear reactors that are projected to cease operations due to economic factors and to allocate credits to certified nuclear reactors. The BIL specifies that, not later than 60 days after a DOE-established deadline for nuclear reactor owners and operators to apply for certification of nuclear reactors under the program, DOE will determine whether to certify each of the applicant nuclear reactors as eligible for participation in the program. The BIL also specifies certain minimum requirements that must be met for

DOE to certify a nuclear reactor. One of these minimum requirements is that the NRC has reasonable assurance that the nuclear reactor will continue to operate in accordance with its current licensing basis (as defined in 10 C.F.R. § 54.3 or successor regulations) and poses no significant safety hazards. DOE is seeking to establish a process with the NRC to learn whether the NRC has the requisite reasonable assurance.

IV. ROLES AND RESPONSIBILITIES OF EACH PARTY

A. DOE

DOE will administer the Civil Nuclear Credit Program. In the course of determining whether applicant nuclear reactors meet the requirements for certification under the Program, DOE will submit the names of applicant nuclear reactors to the NRC and request that the NRC convey to DOE whether the NRC has:

- Reasonable assurance that the applicant reactors will continue to operate according to their current licensing bases, and
- Reasonable assurance that the applicant reactors pose no significant safety hazards.

DOE will make such requests to the NRC in writing and specify a requested timeframe for receiving the NRC's response. The requested deadline should be no earlier than 15 business days after the date the NRC receives the request.

B. NRC

Consistent with its role as an independent safety and security regulator and the statutory requirements under the BIL governing DOE certification of applicant nuclear reactors for participation in the Civil Nuclear Credit Program, the NRC, after receiving a request from DOE, will convey to DOE whether the NRC has reasonable assurance that an applicant nuclear reactor (1) will continue to operate according to its current licensing basis and (2) poses no significant safety hazards. It is understood, consistent with the limited statutory timeframe under the BIL for DOE to render certification decisions after the close of the application period, that the NRC's responses to these DOE requests will be based on the current status of the reactor under the NRC's licensing and regulatory oversight programs, and the NRC will not undertake any new licensing or regulatory reviews for purposes of the Civil Nuclear Credit Program certification process. The Director of the NRC's Office of Nuclear Reactor Regulation, or the Director's designee, is responsible for conveying the NRC's responses to these DOE requests in a timely manner and will do so in writing.

Other Information: In the event DOE identifies additional information that DOE believes the NRC may already possess that would assist DOE in carrying out DOE's responsibilities under the Civil Nuclear Credit Program, DOE may contact the NRC using the contact information specified in section V.B of this MOU. The NRC will

consider such requests, consistent with available resources and the NRC's role as an independent safety and security regulator.

V. ORGANIZATIONAL IMPLEMENTATION

A. Office

This MOU will be implemented through DOE's Office of Nuclear Energy and other offices as designated on behalf of DOE and through NRC's Office of Nuclear Reactor Regulation on behalf of NRC. These offices will coordinate the activities and sharing of technical expertise and knowledge covered by this MOU.

B. Contacts

The point of contact (POC) for coordination and implementation of this MOU for DOE will be the Civil Nuclear Credit Program Manager and for the NRC the POC will be the Chief of the Reactor Assessment Branch within the Office of Nuclear Reactor Regulation's Division of Reactor Oversight.

VI. FUNDING AND AUTHORIZATIONS

This MOU shall not under any circumstances restrict either of the parties from participating in any activity with other public or private agencies, organizations, or individuals.

This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU provides authorization or is intended to obligate the parties to expand, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value, or enter into any contract assistance agreement, interagency agreement, or other financial obligation. Any activity under this MOU is subject to the availability of funds.

This MOU is strictly for internal management purpose for each of the parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of either party. This MOU shall not be construed to provide a private right of cause of action for or by any person or entity.

All activities pursuant to this MOU are subject to and will be carried out in compliance with all applicable laws, regulations, and other legal requirements.

Each party is responsible for its own compliance with any applicable statutory or regulatory data protection, export control or security restriction regarding any information or materials resulting from this MOU. DOE and NRC will coordinate their efforts, as appropriate, to fulfill these responsibilities.

VII. COMMENCEMENT, MODIFICATION, AND TERMINATION

This MOU is effective upon the signature of both parties. The duration of the MOU shall be until September 30, 2031. Either party, however, may terminate its participation in this MOU upon 30 days written notice to the other party, consistent with their responsibilities under applicable law. DOE and NRC may, by mutual written agreement, amend this MOU.

VIII. SEVERABILITY

If any provision of this MOU, or the application of any provision to any person or circumstances, is or becomes invalid, the remainder of this MOU and the application of such provisions to other person or circumstances shall not be affected.

IX. AGREEMENT



Andrea Veil, Director
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission

Andy Griffith
Acting Assistant Secretary
Office of Nuclear Energy
U.S. Department of Energy

Date: _____

Date: 4/11/2022