

March 4, 1999

SECY-99-068

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: UPDATE ON U.S. DEPARTMENT OF ENERGY FUNDING FOR U.S. NUCLEAR REGULATORY COMMISSION MATERIAL PROTECTION, CONTROL, AND ACCOUNTING ASSISTANCE TO THE REPUBLICS OF THE FORMER SOVIET UNION

PURPOSE:

To provide an update to the Commission on the status of efforts to obtain fiscal year (FY) 1999-2001 funding from the U.S. Department of Energy (DOE) to support the U.S. Nuclear Regulatory Commission's (NRC's) material protection, control, and accounting (MPC&A) assistance to the nuclear regulatory agencies in Russia, Ukraine, and Kazakhstan.

DISCUSSION:

SECY-98-205 provided information concerning the status of NRC efforts to obtain funding from DOE to support NRC's MPC&A assistance to Russia, Ukraine, and Kazakhstan during FY 1999-2001. Staff committed to update the Commission on the Office of Nuclear Material Safety and Safeguards (NMSS) planned course of action soon after DOE's notifying NMSS of FY 1999 funding levels. After numerous meetings to discuss various aspects of the request, DOE provided a formal response to NRC's requests on February 16, 1999, which addressed some of the issues.

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As part of NRC's funding request, DOE was provided preliminary funding information during 1997 and 1998, and, at DOE's request, NRC provided DOE, during July 1998, work plans, developed in coordination with the recipient countries, containing anticipated project and cost information for NRC's FY 1999 assistance for the three countries.

On July 1, 1998, NRC sent a letter to DOE (Attachment 1) requesting: (1) DOE agreement to fund NRC staff costs for the support activities; (2) joint cooperation in the development of a reimbursable agreement to transfer DOE funding to NRC for staff and project-related costs; and (3) DOE's commitment that, beginning FY 2000, a separate line item be established to fund NRC in DOE's budget request. On August 26, 1998, the Commission met with Executive Branch officials to address interagency funding of NRC's safety and safeguards assistance to countries of the former Soviet Union. The DOE representative at that meeting stated that DOE could fund NRC staff costs through the reimbursable agreement mechanism. A follow-up letter was sent to DOE on September 25, 1998, (Attachment 2) reminding DOE of the commitment its representative had made at the August meeting with the Commission, and requesting a response to the issues raised in the July 1998 letter.

Staff continued to pursue resolution of FY 1999-2001 MPC&A support funding issues with DOE's Former Soviet Union Task Force management and staff. On four occasions (October 21, 1998; December 18, 1998; January 26, 1999; and February 16, 1999) NRC management and/or staff met with DOE officials and contractors to discuss various aspects of the DOE funding of NRC's staff and project costs.

During the most recent meeting, on February 16, 1999, NRC received a written response from DOE to the July 1998 and September 1998 letters (Attachment 3). In the response, DOE formally commits to provide reimbursement for NRC staff costs and task funding beginning in FY 1999. DOE states that it will provide NRC \$280,000 in FY 1999 for MPC&A work with Russia and that these funds will be identified in DOE's next financial plan for disbursement to NRC. In addition, the letter acknowledges that the staffs from both agencies are working together to develop the NRC-DOE Reimbursable Agreement. (During the meeting on October 21, 1998, NRC provided a markup of the NRC-DOE Plutonium Disposition Reimbursement Agreement to DOE, for DOE to use as model text for the development of an NRC-DOE MPC&A reimbursable agreement.) DOE did not endorse the use of a separate line item request in its budget as a mechanism for providing funds to NRC. Instead, the response states, "DOE will continue to integrate NRC supported tasks into our out-year planning as we develop long term requirements." Staff intends to pursue funding of staff salaries and benefits and overhead costs as well as travel and project costs, all of which will be specified in the reimbursable agreement.

The utilization of the FY 1999 funding for Russia is not only dependant on the completion of the reimbursable agreement, but also requires agreement on the specific tasks to be performed. In response to Russian requests, NRC had proposed to conduct in FY 1999 two MPC&A workshops in Russia and support inspector accompaniments in both Russia and the United States. In addition, DOE has expressed interest in NRC support to Russia in developing a long term regulatory implementation and support plan.

Assuming that agreement is reached on the proposed FY 1999 tasks and funding is received

by the third quarter, NRC should be able to complete the workshops by the end of the FY 1999. In addition, work could commence on the development of the long term regulatory implementation and support plan.

The DOE formal response addressed only funding for Russia for FY 1999. With regard to Ukraine and Kazakhstan, staff was informed that this would be addressed in a separate communication. The responsibility for Ukraine and Kazakhstan is in the process of being transferred to another Division within DOE. The new organization has included NRC projects in its preliminary draft plan, but the availability of resources is still being assessed. Also, at an upcoming meeting in early March in Vienna, DOE intends to confirm that the NRC-proposed efforts do not duplicate those of any other donor countries. DOE also plans to coordinate plans for support with the European Union during May 1999.

Although the DOE response is helpful, it does leave open a number of important issues, some of which may be resolved as we continue to work with DOE in this area. However, it is possible that the conditions, level, and uncertainties associated with DOE's funding of NRC's MPC&A support may significantly dilute the contributions that NRC can make, and adversely impact, to a substantial degree, how efficiently NRC's contributions can be made. Three potential problems are as follows:

- The uncertainty in the level of funding, and in the timing of when DOE funding decisions will be made, will make it difficult for NRC to plan staff assignments, and to coordinate activities with each recipient country in a time frame consistent with each country's implementation plans (i.e., the recipient country's internal plans for implementing elements of the regulatory program). It is already difficult to identify and coordinate the scheduling of activities with the recipient countries. In addition, DOE oversight, depending on how this is performed, could make this already challenging planning and coordination process more difficult, possibly resulting in program delays and additional staff effort to satisfy the needs of this oversight.
- DOE staff, at times, referred to direct future NRC participation in DOE support activities, particularly with Russia. NRC has participated, on a limited basis, in DOE meetings, document reviews, and training sessions. More extensive participation in the future could dilute NRC's ability to make direct contributions to the recipient states (i.e., could interfere with the provision of regulatory support where NRC can make the greatest contribution to the MPC&A regulatory programs of Russia, Ukraine, and Kazakhstan).
- The DOE letter states: "In any case, any contracting will continue to be done through the national laboratory system." If staff is constrained to use only DOE laboratory support, in lieu of private contractors with prior NRC regulatory experience, NRC would need to place less reliance on contractor support, and more on NRC staff. (The cost of the NRC staff would be covered by a reimbursable agreement) Without increased utilization of NRC staff, the MPC&A support activities would likely need to proceed at a much slower pace.

Staff plans to continue working with DOE in implementing the FY 1999 program, and planning for FY 2000 and beyond. As part of this process, staff will prepare a letter to DOE, identifying the foregoing problems, and requesting a DOE response by June 1999. If such a response is not received by that time, or it does not adequately address matters that are crucial to the cost-effectiveness of NRC staff efforts, staff will propose to the Commission that a notification be sent to the National Security Council stating that NRC is withdrawing from this program. This notification would be appropriate because Presidential Decision Directive 41 addresses NRC's role in providing MPC&A regulatory support to Russia, Ukraine, and Kazakhstan.

RESOURCES:

NMSS' FY 1999 and FY 2000 budgets include two FTEs and zero contract support and travel dollars to support MPC&A assistance to Russia, Ukraine, and Kazakhstan. The DOE commitment of \$280K in FY 1999 provides funds for activities associated with the Russian Federation only. DOE plans to address funding to support MPC&A activities in Ukraine and Kazakhstan by separate communication.

COORDINATION:

This paper has been coordinated with the Offices of International Programs, General Counsel, the Chief Information Officer, and Chief Financial Officer, which have no objections.

William D. Travers
Executive Director
for Operations

Attachments:

1. Letter from NRC (M. Knapp) to DOE (R. Gottemoeller) dated July 1, 1998
2. Letter from NRC (C. Stoiber) to DOE (L. Spector) dated September 25, 1998
3. Letter from DOE (L. Spector) to NRC (C. Paperiello) dated February 16, 1999

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