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RULEMAKING ISSUE

(Notation Vote)

September 22, 1999

SECY-99-234

FOR: The Commissioners
FROM: William D. Travers
Executive Director for Operations
SUBJECT: REQUEST FOR EXTENSION OF MILESTONE FOR FINAL RULEMAKING PACKAGE ON 10 CFR PART 63 (DISPOSAL OF HIGH-LEVEL WASTE AT YUCCA MOUNTAIN, NEVADA)

PURPOSE:

To obtain Commission approval to extend the milestone for the final rulemaking package on 10 CFR Part 63 from November 30, 1999, to March 31, 2000.

BACKGROUND:

On February 22, 1999, the Commission proposed licensing criteria for disposal of high-level radioactive waste (HLW) in the proposed geologic repository at Yucca Mountain, Nevada (Part 63). The public comment period on the proposal was originally scheduled to close on May 10, 1999, but was extended to June 30, 1999. We received approximately 100 sets of written comments, most of them arriving after June 15th. We held five public meetings in Nevada (between March 1999 and June 1999), and are reviewing transcripts from the meetings for additional comments. The comments cover many topics, such as: (a) protection of infants and children by a single individual dose limit; (b) defense in depth; (c) definition of reasonable assurance; (d) characteristics and location of the critical group; (e) performance confirmation; (f) pre-closure (or operational) safety analysis; (g) human intrusion; (h) transportation; and (i) the extent of the Nuclear Regulatory Commission's (NRC's) regulatory jurisdiction.

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The current schedule calls for staff to submit a final rulemaking package to the Commission by November 30, 1999. The final rulemaking package will include: 1) a Commission paper describing any policy issues and providing alternative approaches for the Commission to consider; 2) a draft Federal Register notice, "Notice of Final Rulemaking and Response to Public Comments;" and 3) associated documents, such as Congressional letters and press releases.

DISCUSSION:

In developing the final rulemaking package for Part 63, staff is faced with a large number of comments involving a complex set of issues. Preliminary review of the written comments and public meeting transcripts identified approximately 700 individual written comments and approximately 200 individual comments recorded at the public meetings. The staff anticipates a substantial effort to evaluate the merits of the comments, identify potential changes to regulations, and develop meaningful responses.

Further complicating the rulemaking schedule is the concurrent review of the U.S. Department of Energy's (DOE's) Draft Environmental Impact Statement (DEIS) and the preparation of draft Commission comments. The DOE provided the NRC with the DEIS on August 5, 1999. Although the DOE has extended the original comment period from 90 to 180 days, key members of the Division of Waste Management staff are expected to be heavily involved in the review over the next 3 months. Thus, completing the Part 63 final rulemaking package by November 30, 1999, will be very difficult, because of 1) the large number of comments and the complex set of issues; and 2) the involvement of key staff in the NRC's review of the DOE's DEIS.

Based on experience with 10 CFR Part 35, involving a roughly similar number of public comments, the rule team will need approximately 7 months to finish a suitable Part 63 rulemaking package for Office concurrence. Staff proposes the following revised schedule:

- Analyze comments and identify substantive changes to Part 63 by October 31, 1999.
- Meet with the Advisory Committee on Nuclear Waste (ACNW) on policy issues (tentatively scheduled for November 1999).
- Meet with the DOE and other stakeholders on defense in depth in December 1999.
- Complete responses to all comments by December 31, 1999.
- Put staff's final rulemaking package into concurrence by January 31, 2000.
- Send draft guidance document [i.e., Yucca Mountain Review Plan Revision 0 (YMRP) (Post-closure only)] and staff defense in depth clarifications (see SECY-99-186) to Commission in final rulemaking package (scheduled for March 31, 2000).
- Send final rulemaking package on Part 63 to the Commission by March 31, 2000.
- Publish final Part 63 rulemaking in June 2000.

- Hold public meetings in Nevada to discuss the final Part 63 and the YMRP in June 2000.
- Issue the YMRP Revision 1 for public comment in September 2000.

This proposed milestone extension will not conflict with the Commission's concurrence on the DOE's revision of its siting guidelines. The DOE has initiated rulemaking to modify its siting guidelines (10 CFR Part 963) before site recommendation in 2001. (DOE has recently submitted a draft Part 963 to the Office of Management and Budget for interagency review.) Although the NRC staff anticipates it will be asked to comment during the interagency review, the DOE does not anticipate asking for Commission concurrence on its revised guidelines before April 2000.

The pros and cons of extending the milestone are discussed below.

PRO:

- Provides sufficient time to analyze and respond to the large number of comments.
- Allows more time to develop a Part 63 final rulemaking, because the DOE has dropped plans to develop a draft License Application (LA) and is focusing on site recommendation. (DOE's LA is expected in 2002, but could be delayed; Part 63 final rulemaking would still be published well beforehand, possibly as early as June 2000.)
- Ameliorates impacts of overlap with the staff's review of the DOE's DEIS.
- Affords sufficient time to have the associated guidance document [i.e., YMRP (Post-closure only)] available in draft with Part 63 final rulemaking package.
- Staff informally consulted with two stakeholders (DOE, Nuclear Energy Institute) about how they would regard a possible extension of the Part 63 schedule and did not hear significant objections about the schedule being extended to March 2000.

CON:

- Delays potential clarifications and revisions, to Part 63, as a result of public comments.
- May impact the DOE's preparation of an LA if substantive changes were to be made to Part 63.
- Delays staff plan to address defense in depth issue (SECY-99-186).
- Further delays publication of Part 63 final rulemaking package, which has July 1, 1999, as the date of publication in the NRC's 1999 Performance Plan.

RESOURCES:

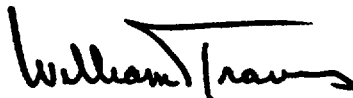
The activities described above are part of the efforts to finalize Part 63 and complete Revision 0 of the YMRP in fiscal year 1999 and beyond. Resources to accomplish these activities are included in the current budget.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

RECOMMENDATION:

That the Commission approve the staff's revised schedule for submission of the Part 63 final rulemaking package to the Commission Document Tracking System, which extends the due date from November 30, 1999, to March 31, 2000.



William D. Travers
Executive Director
for Operations

Commissioners' completed vote sheets/comments should be provided directly to SECY by c.o.b. Friday, October 8, 1999.

Commission staff office comments, if any, should be submitted to the Commissioners NLT October 1, 1999, with an information copy to SECY. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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