

July 28, 1998

TO: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

Carlton R. Stoiber, Director
Office of International Programs

SUBJECT: REQUEST FOR COMMISSION WAIVER OF STAFF COST RECOVERY POLICY FOR WORK PERFORMED FOR THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

PURPOSE:

To request that the Commission approve a waiver of the policy requirement for recovery of staff costs on the \$0.65 million 1998 reimbursable agreement with AID (Attachment 1) to allow unimpeded continuation and completion of urgent, time sensitive, nuclear safety-related regulatory strengthening activities in Lithuania during the remainder of FY 1998, FY 1999, and in the first quarter FY 2000. In addition, the staff requests a waiver through December 31, 1999, for the existing Central and Eastern Europe (CEE) interagency agreement with AID which contains approximately \$215,000 of uncommitted funds (Attachment 2).

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BACKGROUND:

Special Time Urgency of Lithuania Assistance

The above \$0.65 million is urgently needed to enable NRC to continue without interruption of its part in an ongoing international assistance effort designed to help Lithuania's regulatory agency, VATESI, complete a western-type safety review of Ignalina NPP unit #1 by June 1999, and issue an operating license for this plant. The June completion date traces back to terms of an EBRD/NSA (European Bank for Reconstruction and Development/Nuclear Safety Account) grant agreement with Lithuania and is being strongly supported by the U.S. and the other G-7 member countries. The U.S. component of this work focuses on important safety issues which are not being addressed by other donor countries (i.e., Control and Protection System/ Emergency Protection System (CPR/EPPS) reliability during reactor scram commands; pressure tube gripping by graphite spacer rings; operation under severe undervoltage/ underfrequency conditions; material aging; single failure protection, and others). The U.S. has been officially informed that no other country is capable of stepping in on such short notice to fill in for the U.S. and successfully complete the training in the remaining period of time. It should be noted also that the Department of State (DOS) has committed directly to Lithuanian President Adamkus that the U.S. regulatory assistance effort to VATESI will be fully supported through its completion.

Absent an expedited decision by the Commission on this matter, NRC will be forced to alert its other assistance partners (Sweden, UK, Germany, Finland, and France) that, due to lack of funds, the U.S. will have to drop out at this time of the joint assistance effort.

An additional justification for requesting speedy release of funds is due to the fact that the OIP contractor has currently run out of funds and has been forced to halt all NRC activities in Lithuania. The principal investigator is now under increasing pressure from his management to work on other projects in Lithuania and CEE countries, some of which would pose a direct conflict of interest situation with his availability for continuing regulatory assistance activities in these countries (e.g., work for the utilities, helping them prepare the SARs for submittal to the regulators, whom he is currently assisting in the performance of regulatory reviews).

The principal outstanding activities under the existing agreement includes completion of training of the Czech Regulatory Authority in licensing the Temelin nuclear power plant and a training course to teach the Bulgarian regulators in the application of NRC I&C licensing methodology to Kozloduy units 5 and 6. Recovery of staff costs for the existing agreement had been previously waived by the NRC.

Resources

Direct FTE support costs through December 1999 for the Lithuania program are approximately 0.3 FTE and are included within OIP's available resources. FTE costs for the existing agreement are anticipated to be a small fraction of the Lithuanian effort.

NRC Reimbursable Work Policy

In a February 1995 Staff Requirements Memorandum (SRM) to SECY-95-012, "Reimbursement for Work Performed for Other Agencies,@ the Commission adopted a policy by which NRC would recover its full agency costs for work that is not part of NRC's statutory mission and for which NRC has not received appropriations. The Commission also granted the EDO the authority to issue waivers to this policy. Thus, waivers to the Commission's staff cost recovery policy were granted by the EDO for FY 1995 and FY 1996 USAID funds transferred to NRC. Pursuant to the January 5, 1997, NRC reorganization, Chairman Jackson delegated the authority to grant waivers from the EDO to the CFO. Accordingly, a waiver to the Commission policy was sought from and granted by the CFO for the FY 1997 USAID funds provided to NRC.

In a November 5, 1997, SRM to SECY-97-146, @NRC's Mandated and Non-Mandated Activities and Revisions to Agency Policy on Performing

Reimbursable Work for Others,@ the Commission reaffirmed the agency's full cost recovery policy. In addition, the SRM revised previous policy by indicating that the decisions to grant waivers from the recovery of full costs would be made by the Commission.

The Commission, in its December 19, 1997, SRM on SECY-97-207, which addressed reimbursable business-like FTE, directed that appropriate actions be taken to reopen negotiations with USAID in order to obtain reimbursable agreements for full recovery of NRC nuclear safety assistance-related costs beginning with FY 1999. The Commission also directed that, if these negotiations are successful, the salary and benefit costs and the related FTE utilized should be removed from NRC's FY 1999 budget request and moved into the reimbursable business-like FTE category for FY 1999. If unsuccessful, this issue will need to be addressed in future Commission deliberations on NRC's budget and fee legislation.

AID Rejection of Full Cost Recovery for FY 1999

In a March 4, 1998, memorandum, the Commission was advised of the staff's intent to send a letter to USAID requesting that USAID provide for full recovery of NRC FTE costs beginning in FY 1999. This letter was sent out on March 26, 1998. During a July 1, 1998, meeting with AID, DOS, and OMB, AID promised to discuss this issue with the other Executive Branch agencies involved and provide a written reply within the week.

The AID response letter, dated July 9, 1998, was received on July 14 (Attachment 3). It noted that AID could not agree to cover full FTE costs for NRC in FY 1999, but indicated readiness to discuss with NRC options for sustaining NRC involvement in the assistance programs. In the interim, they asked that NRC not hold up signing the FY 1998 interagency agreements for assistance to the CEE and Former Soviet Union countries.

DISCUSSION:

The staff recently received two draft interagency agreements from USAID: one for \$4.3 million to support nuclear safety-related regulatory activities in Russia, Ukraine, Kazakhstan, and Armenia, and a second one for \$0.65 million for regulatory assistance to Lithuanian regulatory authorities. The Lithuanian agreement, which is the subject of this paper, provides for a work completion date of December 31, 1999. Neither agreement includes reimbursement for NRC's staff costs.

In view of the urgent nature of the Lithuanian assistance program, which requires that the Lithuanian regulatory authority, VATESI, receive training by the U.S. and several other European countries to enable it to complete the regulatory safety review and licensing of Ignalina Nuclear Power Plant unit # 1 by June 1999, the staff is currently submitting for expedited Commission decision the present request for a waiver through December 1999 for staff cost recovery of the \$0.65 million in the Lithuanian agreement.

COORDINATION:

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

RECOMMENDATION:

That the Commission grant, by notation vote, a waiver of the policy requirement for recovery of OIP staff costs under both the new and existing aforementioned interagency agreements with USAID during the remainder of FY 1998, FY 1999, and in the first quarter of FY 2000.

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Attachments:

1. 1998 Interagency Agreement with AID
2. Amendment to Interagency Agreement
3. Letter from AID