

1 UNITED STATES OF AMERICA
 2 NUCLEAR REGULATORY COMMISSION
 3 ***
 4 BRIEFING ON MOX FUEL FABRICATION
 5 FACILITY LICENSING
 6 ***
 7 PUBLIC MEETING
 8 ***

9
 10 Nuclear Regulatory Commission
 11 Room 1F-16
 12 NRC White Flint Building 1
 13 11555 Rockville Pike
 14 Rockville, MD
 15 Friday, April 3, 1998
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17 The Commission met in open session, pursuant to
 18 notice, at 9:03 a.m., the Honorable SHIRLEY A. JACKSON,
 19 Chairman of the Commission, presiding.
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21 COMMISSIONERS PRESENT:

- 22 SHIRLEY A. JACKSON, Chairman of the Commission
- 23 GRETA J. DICUS, Member of the Commission
- 24 NILS J. DIAZ, Member of the Commission
- 25 EDWARD McGAFFIGAN, JR., Member of the Commission

1 STAFF AND PRESENTERS:

- 2 KAREN D. CYR, General Counsel
- 3 ANNETTE VIETTI-COOK, Assistant Secretary
- 4 HOWARD CANTER, Department of Energy, Director, Office of
- 5 Fissile Materials Disposition
- 6 MR. RHODES, Department of Energy, Office of Fissile
- 7 Materials Disposition
- 8 DAVE NULTON, Department of Energy, Office of Fissile
- 9 Materials Disposition

1 P R O C E E D I N G S

2 [9:03 a.m.]

3 CHAIRMAN JACKSON: Good morning. The Commission
 4 would like to welcome Mr. Howard Canter, Director of the
 5 Department of Energy's Office of Fissile Materials
 6 Disposition. The Commission also welcomes Mr. Nulton and
 7 Mr. Rhodes from that office.

8 This morning the Commission will be briefed on
 9 DOE's most recent plans to implement a program to provide
 10 for safe and secure storage of weapons-usable fissile

11 materials, that is, plutonium and highly enriched uranium,
12 and DOE's strategy for the disposition of surplus
13 weapons-usable plutonium.

14 In December of 1996, DOE issued its final
15 programmatic environmental impact statement on the storage
16 and disposition of weapons-usable fissile materials. The
17 Secretary of Energy announced the record of decision on this
18 matter on January 14th, 1997. Shortly after the Secretary's
19 announcement of DOE's record of decision, the Department
20 briefed, on January 17th, 1997, the Commission on its plans.

21 In July of 1997, DOE issued a program acquisition
22 strategy for selecting private sector organizations to
23 assist in implementing the MOX fuel alternative. The
24 Commission was briefed by DOE on that strategy document in
25 September of last year.

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1 Today the Commission will again be briefed by DOE
2 on its most recent plans and schedules. The Commission is
3 extremely interested in the strategies being considered by
4 the Department of Energy on this topic because the program
5 could affect facilities that the NRC already has licensing
6 authority over such as commercial nuclear power reactors and
7 the geologic high level radioactive waste repository, and
8 the program potentially could extend NRC's regulatory
9 authority over other facilities, such as the MOX Fuel
10 Fabrication Facility, the subject of today's briefing.

11 So we look forward to hearing from you, and unless
12 my colleagues have anything to add, please proceed, Mr.
13 Canter.

14 MR. CANTER: Thank you very much, Madame Chairman.

15 What I would like to concentrate on today is the
16 Department's approach and thoughts on the regulation of the
17 Mixed Oxide Fuel Fabrication Facility.

18 I would like to discuss a little bit the planned
19 contract structure, to put this in a framework. The
20 proposed contract that we are going to issue a Request for
21 Proposal on very shortly is a contract with a consortium
22 that will consist of one of more reactor owners, a fuel
23 fabricator, possibly a nuclear steam supply system supplier
24 or someone else to design the fuel and, to the extent that
25 it is needed, an architect engineering firm may be part of

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1 the consortium.

2 It will consist of four phases, a base contract
3 which will cover the facility design, license application, a
4 lot of planning and preparation of documentation. That base
5 contract would be a cost plus fixed fee or incentive fee
6 type arrangement with the Department.

7 Option 1 is the period of time when the contractor
8 would be defending the license application and reaching a
9 point where construction could start and would cover the
10 facility construction and the cold start-up. Construction
11 would be done by the contractor letting contracts that are
12 fixed price. The remaining work would be cost plus fixed
13 fee.

14 Option 2 is the operating phase, which could run
15 to in the neighborhood of 15 years. It would include hot
16 start-up and full scale operations. In that particular
17 case, since we have borne the cost of creating the asset,
18 the Mixed Oxide Fuel Fabrication Facility, and any other
19 modifications that have to be made even at the reactor
20 sites, the operating phase, we think, would not be paid for
21 by the government but would be a commercial venture run by
22 this contractor for his utility partners that are part of

23 the consortium, and would fabricate the fuel, which could
24 conceivably either be cheaper or very close to the cost of
25 the low enriched uranium fuel that it replaces.

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1 Option 3 is the last phase where the contractor
2 would deactivate the facility, removal all the special
3 nuclear material and place the facility in a cold condition
4 and turn it back to DOE, who would assume responsibility for
5 decontamination and any further decommissioning that is
6 required.

7 The next viewgraph, please.

8 This is the program schedule which covers the
9 procurement and there is also an environmental impact
10 statement that we have underway specifically to select the
11 sites where the various activities for plutonium disposition
12 would be conducted.

13 There are three major facilities that we intend to
14 create. One is the mobilization capability. We have
15 already designated the Savannah River site as the preferred
16 site for that. And the other two we have not yet designated
17 a preferred site. One is the Plutonium Pit Conversion
18 Facility which would convert the metal from the plutonium
19 pits into oxide, and the other is the Mixed Oxide Fuel
20 Fabrication Plant, which is the subject really of today's
21 discussion.

22 The candidate sites for those two are the Hanford
23 site, Idaho, Savannah River and the Pantex site. We expect
24 to issue a draft EIS in May and we will design the preferred
25 sites for those two. We will go through a public comment

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1 period through the summer, hold some public meetings.
2 Finalize the EIS about the end of the year with a record of
3 decision on the sites early next year, probably in the
4 January time frame.

5 Regardless of which sites, we plan to proceed with
6 the procurement. We expect very shortly to issue the
7 Request for Proposal and that is going to somewhat -- how
8 fast we can get that out depends to what extent on how much
9 we have to revise it in order to accommodate the regulatory
10 approach, and then allow 90 days for proposals to be
11 prepared and then about 90 days for proposal evaluations to
12 award of contract.

13 This would result in a contractor being on board
14 and ready to start work late this year, which is early into
15 fiscal 1999. We have money in our budget request for fiscal
16 1999 for the contractor's work, including money to start
17 Title 1 and Title 2 design of the facility which is needed
18 to prepare any license applications. And, by the way, we
19 also have, we think, allowed sufficient money to pay for any
20 of the regulatory reimbursable activities that the NRC staff
21 would undertake, to cover that. So we don't expect anything
22 is going to be a free ride on this thing.

23 Next viewgraph.

24 Our initial approach, which was outlined in a note
25 in our record of decision of January of last year,

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1 basically, was based on submitting proposed legislation to
2 the Congress to have the MOX Fuel Fabrication Facility NRC
3 regulated. We had prepared to, and had several meetings
4 with your staff and were planning to work jointly on
5 developing this legislation and submitting it to Congress
6 this month.

7 We thought that to get started, and to start work

8 with the NRC staff, that we probably needed a Memorandum of
9 Understanding in place this year so that people could start
10 working on preparations, including revisions to Regulatory
11 Guides or Standard Review Plans -- I know there is also
12 going to be a significant revision to 10 CFR 70 -- and so
13 that the various requirements and documents could be updated
14 in preparation for this activity starting in fiscal '99.

15 We thought that we could Congressional approval of
16 the legislation in the Defense Authorization Act by the
17 beginning or early part of fiscal '99 and to have it in
18 effect probably about the first of next year.

19 The next viewgraph shows a schedule for this, and
20 it shows the beginning of NRC regulation, just about January
21 1st or possibly a little earlier, depending on how quick we
22 can all get ready for this.

23 The next viewgraph, please.

24 Based on a great deal of internal discussion in
25 the Department, which has included the Under Secretary and

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1 the Deputy Secretary, there is one major unresolved issue,
2 and it really centers around whether or not we will get
3 legislation this year. How do we get going in the event we
4 do not have legislation, and do we need legislation? So
5 there are many questions.

6 DOE wants to issue this RFP and desires to moves
7 towards NRC regulation and licensing. The Deputy Secretary
8 as very adamant upon this yesterday, that this will be a
9 licensed facility. But we are in some difficulty because we
10 can't issue the RFP without reaching some agreement on the
11 NRC regulatory role and how it will start. The RFP has been
12 prepared and it was totally approved, ready to go out the
13 end of February on the basis of NRC being the regulator on
14 this. However, we have got to make sure that we allow for
15 this period of transition in the start-up period, so we will
16 have to make some changes to that.

17 CHAIRMAN JACKSON: Well, I guess I am confused
18 here. What caused you to back away? Was it a time issue?
19 Some fundamental reconsideration within the DOE of having
20 the facility regulated by NRC? You didn't feel that you
21 could issue a RFP with a contingency clause? I guess,
22 because there seems to have been a major shift, and I think
23 we need to understand.

24 MR. CANTER: All right. The main concern is the
25 Department was concerned about trying to submit proposed

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1 legislation this year. We still want this to be NRC
2 regulated. We want it to be a licensed facility. And the
3 question was, how could we get started and shift to full NRC
4 regulation and licensing without legislation this year?

5 CHAIRMAN JACKSON: Now, was the concern about it a
6 time issue or a receptivity in the Congress issue?

7 MR. CANTER: I would say more the latter than the
8 former.

9 CHAIRMAN JACKSON: What were the bases for what
10 undergird that?

11 MR. CANTER: Well, there seems to be some
12 difference opinion of which committees would have
13 jurisdiction. The thought process originally was it would
14 be in the Defense Authorization Act and that is your Armed
15 Services Committee in the Senate and the House National
16 Security Committee, but there are other committees involved,
17 the Commerce Committee and the Environment Committee and so
18 forth. And to what extent this could actually -- we could
19 come out of it with what we were asking for, we

20 collectively, or would we get back legislation that does
21 things that we don't want to do, or wider issues or
22 something on this.

23 So I think that it is prudent to say, okay, what
24 happens is we don't get legislation this year, how do we get
25 going on this?

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1 CHAIRMAN JACKSON: But you talk about you can't
2 issue a RFP in a timely manner without reaching agreement on
3 NRC's regulatory role. So how do you get going?

4 MR. CANTER: Well, what we could do is revise the
5 RFP that shows this transition period, and where we start
6 off with the NRC in a technical role but, initially, if
7 there's no agreement on the authority of the NRC yet to be
8 the regulator, with DOE as the regulator, and with a
9 transition period.

10 CHAIRMAN JACKSON: Well, I guess, you know, you
11 mentioned a couple of things early on. You mentioned
12 revisions to 10 CFR Part 70. Now, we have a rulemaking
13 underway on Part 70. I don't know if you are referring to
14 something beyond that. You mentioned developing Reg. Guides
15 and Standard Review Plans.

16 The point I am making is these are fairly major
17 activities from a resource expenditure perspective, both
18 human and financial, in addition to any overall technical
19 support. And I guess it may be comfortable for you, but
20 there is an issue from the point of view of comfort for the
21 NRC.

22 MR. CANTER: Dr. Paperiello has explained this to
23 me in no uncertain terms. So I am fully aware of that. We
24 go through some of the same problems. I said we would try
25 to assist in any way. We can provide the funds. I have no

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1 way of providing the NRC positions or FTE slots. I can
2 provide the funds that would cover it.

3 I suggested to him that if the first step is to
4 sit down with OMB, that we could certainly go with your
5 staff to OMB and support the case on this and, hopefully,
6 work something out. Because there is no free lunch on this
7 thing, I understand that.

8 CHAIRMAN JACKSON: Well, are you looking for NRC
9 to help DOE create a regulatory framework that looks like
10 ours that DOE would implement? Or are you looking for NRC
11 to help DOE create a regulatory framework in a pre-licensing
12 sense? That's a very important issue.

13 MR. CANTER: It's in the pre-licensing sense, it's
14 the latter.

15 CHAIRMAN JACKSON: And then there are any number
16 of issues related to linkages in the larger foreign policy
17 arena which I am sure Commission McGaffigan may wish to --

18 COMMISSIONER MCGAFFIGAN: I am not even going to
19 touch on those.

20 [Laughter.]

21 COMMISSIONER MCGAFFIGAN: But could I just --

22 CHAIRMAN JACKSON: Please.

23 COMMISSIONER MCGAFFIGAN: The issue of the
24 multi-committee jurisdiction is always going to be there.
25 It's at the center of some of the discussions we have had

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1 with others in DOE about external regulation, because
2 whenever external regulation goes forward, I think there's
3 at least three House committees, perhaps four, four House
4 committees, I think, and three Senate committees that will

5 want to kibitz.

6 So if there's -- how does that problem ever get
7 solved? And the second part of my question is, if it isn't
8 going to get solved, or the prospects aren't 100 percent,
9 let's say, do you have to, in your RFP, include options that
10 DOE will be the external regulator permanently? Even though
11 you have the desire that is the opposite, if you see less
12 than 100 percent chance of the Congress approving that, do
13 you have to lay out in your RFP there are two options, one
14 this transition plan you are about to present to us, and the
15 other we never transition and we remain the regulator?

16 MR. CANTER: I think --

17 COMMISSIONER MCGAFFIGAN: We being DOE.

18 MR. CANTER: -- well, can do almost anything you
19 want to with a Request for Proposal. What you need is
20 something spelled out so that all offerers have a level
21 playing field that they can make a proposal against. It is
22 not desirable, but you could, once you have the contract in
23 place, if the rules change, you could always negotiate a
24 change. I am not in favor of that, because I would prefer
25 that they understood up-front, when they are preparing their

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1 proposals, what they are going to be faced with. And I
2 think they would propose that also, if we want responsible
3 contractors on this.

4 There will never been 100 percent probability that
5 we are going to get exactly the legislation that we may
6 desire. Nobody can guarantee that.

7 COMMISSIONER MCGAFFIGAN: Right.

8 MR. CANTER: So one of the questions, and I am not
9 an attorney, so I am just a stupid engineer, is to what
10 extent do we really need legislation? And this resulted in
11 a rather lengthy session yesterday. I think one of the
12 things we have to do is get both of our offices of General
13 Counsel together with some people with some creative
14 thought, to possibly think out of the box a little bit and
15 take a look at what is there so we can reach agreement.

16 COMMISSIONER MCGAFFIGAN: I have a comment on
17 that.

18 MR. CANTER: I am sure there will be plenty of
19 comment on it.

20 COMMISSIONER MCGAFFIGAN: No, just the idea. I
21 don't think you do something this significant --

22 MR. CANTER: Yes.

23 COMMISSIONER MCGAFFIGAN: -- by creatively trying
24 to get around the Congress. I mean I think you -- some of
25 these provisions, like 42 USC 7272, are potentially

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1 ambiguous. But as a former Congressional staffer, --

2 MR. CANTER: I understand.

3 COMMISSIONER MCGAFFIGAN: -- my advice to you
4 would be to take the Congressional interpretation of those
5 provisions and not try to get an out of the box
6 interpretation because --

7 CHAIRMAN JACKSON: I agree.

8 COMMISSIONER DIAZ: And also being engineers, we
9 are kind of on equal terms in here.

10 [Laughter.]

11 COMMISSIONER DIAZ: I kind of fail to see how,
12 after we prepare to really be very, very prompt and
13 responsive to DOE positions, we have all this work, how it
14 can be said that timeliness might be better when we no
15 longer can use the base where we were going. And also, if
16 we look at what Commissioner McGaffigan was saying, which it

17 does not mean that it is going to have be an inscrutable
18 process, all of a sudden, by changing around, we might put
19 the entire program in a different light. And I don't see
20 how we are going to make things more expedient by changing
21 at the very last minute, or make it more scrutable.

22 MR. CANTER: Well, we are in the process of, and
23 we have identified significant changes to this Request for a
24 Proposal to show this process where we start off with DOE
25 and NRC in a technical assistance role, and a review role,

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1 and a transition to full NRC regulation. I think we have to
2 inform the industry of the fact that that is the reality
3 here, because there won't be, by the time they start, a full
4 process in place for NRC regulation.

5 The Department does want to go to NRC regulation
6 on this. And the other things is we don't want to mix it up
7 with the much wider issue of external regulation of DOE. It
8 is not -- this is not a pilot project or something having to
9 do with that program, although there will be a lot that is
10 learned out of this from that program.

11 There are significant differences. Some of the
12 reasons are that it is a private contractor, not a M and O
13 contractor. We have even looked at such issues as who would
14 own the facility. We have some options there. We can even
15 consider the idea of leasing the facility, once it is
16 created, back to the contractor, and a number of things to
17 make this very clear how this would work, and very clear who
18 has the NRC authority.

19 I agree with Commission McGaffigan that we do not
20 want to end run the Congress on this thing. There is
21 significant interest in the Congress. A number of the staff
22 members have contacted me and they may be off writing their
23 own legislation on this. In fact, I know, I think, of one
24 case on the Senate side where they may be doing that right
25 now.

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1 COMMISSIONER MCGAFFIGAN: Could I follow?

2 CHAIRMAN JACKSON: Please.

3 COMMISSIONER MCGAFFIGAN: Every time you say
4 something, it rings another questions. If somebody in the
5 Congress is writing their own legislation and planning to
6 tuck it in the Defense Authorization Bill, do we need to
7 continue the discussions that have now been laid aside, as I
8 understand it, on the legislative proposal so that we have
9 jointly something to react with? Should it -- I mean
10 Congress can make things viable that you all -- that we all
11 think aren't viable, by just stepping out and doing it.

12 MR. CANTER: I think we need to go ahead and
13 develop what we would want. And I think that is very
14 important because sooner or later, even if it is initiated
15 from the Hill, there will be some draft language that we are
16 asked to comment on, informally, in many different methods.
17 It would be good that we had a joint approach so that any
18 comments that are provided back to the writers -- we are
19 often asked for writing assistance on legislation, so that
20 there is no fundamental disagreement between the NRC and
21 DOE.

22 CHAIRMAN JACKSON: Right. Except the one thing
23 that I note that is missing in the revised approach is any
24 reference to draft legislation. In seems to be one wants to
25 get started with activity without also at least

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1 concomitantly working on a parallel path of developing

2 putative legislation. I mean I don't see how one can come
3 around it. I mean you have heard from all of us in that
4 regard.

5 So the issue is, what is the meaning of the fact
6 -- the revised approach? One sees no reference to that, but
7 yet there is discussion about phasing in NRC regulation.
8 The plan -- is embodied in that plan, the development of
9 draft legislation? I am looking at the next viewgraph, I
10 have jumped ahead, actually.

11 MR. CANTER: Well, if you look at the subtext, it
12 is under there, and that was to resolve the uncertainties on
13 the scope of existing authorities, and that is to reach
14 agreement on to what extent, and exactly what is needed for
15 additional legislation to resolve the issues.

16 CHAIRMAN JACKSON: Have there been discussions? I
17 mean has your General Counsel contacted -- Karen, have you
18 been contacted?

19 MS. CYR: No.

20 MR. CANTER: I think there's probably considerable
21 disagreement internally in the Department of Energy on what
22 is needed. So we are really not ready to rush out and try
23 to pull something together to be submitted this month.
24 That's really one of the problems here.

25 CHAIRMAN JACKSON: Well, I think there are two

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1 pieces here. I think one has to do with, as you are
2 outlining, activity. The other piece is what undergirds
3 that activity. And while one is not necessarily looking to
4 rush out, because it is not something that one can rush out
5 and do, I agree with my colleagues here that the process has
6 to be scrutable, and part of that scrutability is kind of an
7 up-front dealing with what the legislative issues would seem
8 to be.

9 If there is any hope, if one wants to pursue this
10 line, of having it go through the Congress and having it
11 supported even in budget space, then it has to be done on
12 the basis of having a clean approach, it seems to me.

13 MR. CANTER: Yes, I agree with you.

14 Since we are on that sheet, what we would be doing
15 here is, initially, DOE would be starting out with the NRC
16 in this, though a MOU, providing a lot of technical support,
17 and review and assistance.

18 One of the things that we are concerned about is
19 dual regulation and dual oversight. In fact, there is even
20 the potential for triple oversight here if we are not
21 careful and plan this out properly between DOE exercising a
22 degree of oversight, the NRC staff providing some oversight,
23 and maybe even the Defense Board. And I think that would be
24 a lot of confusion and, essentially, a disaster if we had
25 that.

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1 So we want to plan this out properly. We want to
2 apply NRC standards. And we want to only supplement that
3 with any DOE requirements if there is a gap in the NRC
4 standards or something that isn't covered.

5 CHAIRMAN JACKSON: Would NRC standards be applied
6 at the very beginning of the project?

7 MR. NULTON: Yes.

8 MR. CANTER: Yes.

9 CHAIRMAN JACKSON: And would DOE apply the new
10 Part 70 to the facility?

11 MR. CANTER: Yes. That's our plan.

12 COMMISSIONER DIAZ: But how is that consistent
13 with your first statement? Your first statement appears to

14 be that we would only provide advice, technical review and
15 assistance. How is that consistent with, you know, we being
16 the regulator? That's the bottom line.

17 MR. CANTER: Well, it would set it up so that we
18 could transition to DOE pulling out of any regulatory role
19 and the NRC being the regulator. We would like to make this
20 so that the transition is seamless whenever it occurs, if
21 possible.

22 I don't want to do things that then have to be
23 undone or done over. I think that would be very wasteful.

24 We will -- DOE can apply the NRC standards, even
25 if DOE starts out as the regulator. In fact, the Congress

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1 gave us a little help on that last year when they, in the
2 Conference Report on the Appropriations, said any facility
3 constructed after the year 2000 will be designed and built
4 to NRC licensing standards. They didn't say to be NRC
5 licensed.

6 COMMISSIONER DIAZ: And do you intend to comply
7 with that directive?

8 MR. CANTER: Yes.

9 COMMISSIONER DIAZ: Including the MOX Facility?

10 MR. CANTER: Yes. In fact, one of the things that
11 would be very helpful is we are not familiar with what the
12 revisions to 10 CFR 70 are and if we could have that made
13 available to us, it would help us plan.

14 CHAIRMAN JACKSON: Yes?

15 COMMISSIONER McGAFFIGAN: Just as disclosure for
16 you on that, I think all of us routinely have an industry
17 group led by NEI come in and see us about their concerns
18 with where the staff may be headed on the Part 70 revision.
19 So it may not be an absolutely straightforward process. The
20 last meeting I had, the word train wreck came up.

21 The other point is that the industry group, this
22 NEI-led group, wants MOX treated separately, as maybe a
23 subpart of Part 70, but they don't want to mix the MOX with
24 their facilities. They want whatever is going to apply to
25 MOX to be off on the side.

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1 I don't know what the staff's view is, I am sure
2 they have heard this from the industry. So the Part 70
3 rewrite, as just a matter of disclosure, is not going to be
4 a straightforward process. There will be a lot of comment
5 on the staff proposal, a lot of negative comment if it is as
6 the industry understands it at the current time. So just so
7 you understand that.

8 MR. CANTER: I understand that, and I think we --

9 CHAIRMAN JACKSON: Well, I have slightly revised
10 point of view, I call it just part of the rulemaking
11 process.

12 MR. CANTER: Yes. And we had assumed, based on
13 the brief discussions we have had with your staff, that this
14 Part 70 rulemaking is going to be at least a year. Right.
15 And you start off with what you have and then, when it gets
16 revised, you shift over to it.

17 I also understand from your staff that you are
18 going through the Part 70 rulemaking whether or not the MOX
19 plan was involved, it's not specifically for this.

20 COMMISSIONER McGAFFIGAN: That's right.

21 MR. CANTER: So you need it for your other work.

22 The next sheet is just another pictorial and at
23 the bottom is this revised approach where there's --

24 CHAIRMAN JACKSON: But I notice there is no

1 MR. CANTER: Because we don't know when there
2 would be a breakpoint, and so I didn't know where to put it,
3 so I used some creative art work here.

4 CHAIRMAN JACKSON: Very creative.

5 MR. CANTER: As a soon as possible, as far as I am
6 concerned.

7 The features in this are DOE would have initial
8 responsibility for regulation. It does provide more time to
9 obtain adequate NRC staffing for, -- you know, to get your
10 -- your rulemaking would proceed, maybe not be totally done,
11 but be substantially down the pike, and for your staff to
12 review, update Regulatory Guides, Standard Review Plans and
13 such other documents.

14 We need to establish the regulatory authority
15 structure, public involvement and resources. This is one of
16 the interesting aspects. When people talk about DOE
17 regulating, we do not have an established public process to
18 use. So when you start to say what public process would we
19 use, we want a public process. It has got its pros and
20 cons, but we think it is of value. And so, you know, that's
21 why we are so anxious to shift it over as quick as possible,
22 so we can, at the appropriate time, have it.

23 I would much rather have that than have some ad
24 hoc process thrown together by DOE without an established
25 mechanism and rules and so forth like you have. This

1 Request for a Proposal would be revised to accommodate this.

2 There is one aspect of this that I think is
3 interesting and might enter into some of your thought
4 process. The material will be declared no longer -- in
5 fact, it already has been declared no longer required for
6 defense purposes, and it would be transferred to the
7 contractor, title to it, upon delivery. So the question is,
8 is this even a defense activity?

9 COMMISSIONER MCGAFFIGAN: As a former Senate Armed
10 Services Committee staffer, if you are getting your money
11 out of the 050 account, which you are, they take a very
12 broad definition of Atomic Energy Defense Activities and so
13 I would hang my hat too heavily on an interpretation that
14 this is not a defense activity with defense funds are being
15 used to support it.

16 MR. CANTER: Well, that's true. And so there's a
17 lot of differences of opinion, and this is why, as we got
18 into this, we found out there is no way we could rush this
19 through in this month.

20 CHAIRMAN JACKSON: Please.

21 COMMISSIONER DICUS: Yes, I want to ask a question
22 about the public involvement. I think you said that you
23 don't have a mechanism for public involvement, and you
24 didn't want to throw together, I think the terminology was,
25 an ad hoc process. So, can we assume from that, that up

1 until the time NRC would take over as the regulatory agency,
2 there would not be public involvement of any kind?

3 MR. CANTER: If we do this right, that would be in
4 the period of time when design is starting, application for
5 license would be in preparation and you normally don't have
6 a public process on that. The public process usually starts
7 when something is submitted. So I hope we don't go so far
8 as to have things submitted and not be able to say what is
9 the public process. If the public process is suitable to
10 have something, we should have it in place.

11 What we like about your process is it is well
12 established. You have rules that govern it and rules that
13 restrain it, to the extent that it needs to be restrained.
14 The only one we have a public proces is NEPA and that is a
15 different process.

16 The initial NRC role, the language here may be
17 incorrect on technical advice, review and assistance. It
18 may be greater than that. I don't know, and it depends on
19 what we write into this MOU. I think this TWRS, Tank Waste
20 Remediation System, program is a model that we can look at,
21 if that is adequate. But, obviously, we are going to need
22 assistance, and the contractors will, to identify and
23 interpret NRC standards, review technical deliverables and
24 identify any differences with your regulatory approach.

25 You are, no matter whether we were here or not,

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1 revising 10 CFR 70. I don't know to what extent you were
2 going to revise the Regulatory Guides, and there may be
3 different ones that are applicable because we are dealing
4 with plutonium here, and other regulatory documents. You
5 would have to, obviously, plan on and staff and ramp up to
6 transition to the lead regulatory role. And we need to
7 jointly establish this Memorandum of Understanding and the
8 funding mechanism.

9 COMMISSIONER DIAZ: Yes. Would you like to
10 elaborate a little bit what you mean by DOE has, and I am
11 going to take the "initial" out, has responsibility for
12 regulation? Because whether it is initial or a little time,
13 you are going to be responsible for what that period of time
14 is. And what does that entail and how will that play out
15 into the potential for NRC then assuming a role?

16 MR. CANTER: Well, --

17 COMMISSIONER DIAZ: And it is your responsibility
18 at that point, right?

19 MR. CANTER: That's correct.

20 COMMISSIONER DIAZ: Entirely, 100 percent?

21 MR. CANTER: That's correct.

22 COMMISSIONER DIAZ: Okay. And what does that
23 mean?

24 MR. CANTER: Well, if it were like any other DOE
25 facility where DOE is self-regulated, we would have to

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1 establish the requirements. Right now we have got people
2 looking at what DOE orders would even be applicable. And it
3 is not that clear. This is different. So it is not like
4 our other facilities in the complex.

5 What we have to do is work from whatever standards
6 the NRC has as the base, and sort of deal with what else is
7 needed. If integrated safety analysis is not yet required
8 by the NRC standards in 10 CFR 70, and we feel integrated
9 safety assessment is required, then we might add that.
10 There are a number of examples of these things.

11 COMMISSIONER DIAZ: So, in other words, if I may
12 paraphrase you, it is not clear what that responsibility
13 entails?

14 MR. CANTER: That's correct. I know Dave has been
15 working with our Environment, Safety and Health people on
16 this. I don't know whether you want to add anything to it.

17 MR. NULTON: Well, one of the things that we have
18 looked at it is a work-smart approach where identify high
19 level requirements, 10 CFR 70.75, Part 50, Appendix B,
20 perhaps 20 and then where we feel, where the Department
21 feels there is not adequate coverage of a particular area,

22 we would fill in the gap with a DOE requirement. But, to
23 the extent that we can, we would keep these NRC requirements
24 as the over-arching requirements, and then ask the
25 contractors to assist us in identifying any requirements

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1 that we didn't identify adequately up-front.

2 That approach, we hope, would allow us to make a
3 transition over to NRC regulation with a minimal change.

4 COMMISSIONER DIAZ: What is the value of the
5 mixing? What do you gain by mixing your regulations and
6 ours? It doesn't seem like -- whatever time you gain at the
7 beginning, you are going to lose it midway.

8 MR. NULTON: We would hope to have minimal mixing.
9 We would have NRC requirements to the greatest extent
10 possible. As Howard had mentioned, in areas like integrated
11 safety assessment or safety management, where there may not
12 be coverage right now in the NRC regulations, then we would
13 probably stipulate something there. And it may require some
14 change during the transition phase.

15 MR. CANTER: My understanding is that you are
16 shifting to a more performance-based regulatory regime, this
17 is what I have heard in various fora.

18 DOE's orders are extremely prescriptive down into
19 great details, which I don't think is the way to go. So
20 what we would like to do is, wherever possible, use the NRC
21 requirements. We don't know, at least we in DOE don't know
22 yet what your revised 10 CFR 70, even in draft, looks like
23 at this stage, which we want to learn about, and to what
24 extent it is significantly different from the existing 10
25 CFR 70.

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1 CHAIRMAN JACKSON: Yes, Commissioner McGaffigan.

2 COMMISSIONER MCGAFFIGAN: It sounds a lot like
3 what you are asking us to do is something like what we are
4 doing at the Tank Waste Remediation System up in Hanford.
5 We have a resident there, we are preparing to license those
6 facilities if Congress someday gives us the authority to do
7 it. The people who are involved there are trying to figure
8 out how these facilities would be designed to a NRC
9 standard, and it is taking -- that has been going, I
10 believe, for two or three years already and will take some
11 number of years to come, although I think big dollars may be
12 flowing and contracts may be about to be awarded there as
13 well.

14 Have you talked to the folks who are doing the
15 Tank Waste Remediation thing to see if there is a model
16 there as to how this transition works or has worked?

17 MR. CANTER: Yes. And, as I said before, I think
18 that is the closest model we can find, although it may have
19 to be altered.

20 COMMISSIONER MCGAFFIGAN: Right.

21 MR. CANTER: Because this is a little different.
22 In the Tank Waste Remediation System, there are doing
23 something that really hasn't been done before. And while a
24 MOX plant, it is technology exists today and there are a
25 number of MOX plants in Europe, in fact, a new one where

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1 construction is completing, I believe, this year in England.
2 So there are some things that can be looked at.

3 That is another thing that I didn't mention here,
4 because it is a detail of one of the things the NRC would
5 have to do during this ramp up period, is do whatever you
6 need to do with your staff to become familiar with what the
7 French and the Belgians and the British are doing, and their

8 regulatory processes. There may be some models there that
9 could be used. There may be a lot of lessons learned out of
10 some of that. So that we don't tread the same steps.

11 CHAIRMAN JACKSON: There are some initial steps
12 the staff has already taken, but, you know, specifically,
13 along that line.

14 MR. CANTER: Yes.

15 CHAIRMAN JACKSON: But as I indicated earlier, the
16 real issue is to have clarity on where we are going or not
17 going, because that governs how much in the way of resources
18 we can or are willing to invest and how to plan what our
19 activities would be.

20 But Carl Paperiello's folks are well aware of the
21 French and other programs and have done some initial
22 look-sees in that regard.

23 Commission McGaffigan.

24 COMMISSIONER MCGAFFIGAN: And another question
25 that may come from a different direction, you mentioned

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1 earlier multiple regulators. All the sites you are
2 considering for the MOX Facility are Defense Nuclear
3 Facility Safety Board sites at the moment, and will be for
4 some time because they are not early pilots. Under the
5 Grumbly-Berube report, they would be 10 years from the point
6 of legislation before most of those facilities would come
7 under our regulation, if ever.

8 There is a model at Savannah River different from
9 the model at Hanford, and another vitrification facility
10 where the Defense Nuclear Facility Safety Board provided the
11 oversight, and they had some sort of public process, because
12 I know they had a lot of public meetings on that facility as
13 it was starting up a couple of years ago.

14 If you don't get legislation, if this doesn't
15 work, have you looked at the Defense Nuclear Facility Safety
16 Board model and seen whether it will work?

17 MR. CANTER: Well, I am familiar with the process
18 that they use for public, they do have public meetings, but
19 it is not a formalized process like yours is. And plus, the
20 Defense Board is an oversight agency, it is not a regulatory
21 agency.

22 COMMISSIONER MCGAFFIGAN: I understand.

23 MR. CANTER: So they never have to quite reach the
24 conclusion -- to be a licensed facility, and if you are the
25 regulator, you have to decide at some point, is it

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1 acceptable? The Defense Board is an oversight and
2 commenting role and they don't really have to decide it is
3 acceptable. They can decide that I don't have any more
4 significant comments to make. There's little differences,
5 some subtle differences there.

6 I have discussed this with the Defense Board, and
7 we made a presentation to them on the program, and we told
8 them our intent was to have the MOX plant NRC regulated.
9 Conway asked a few brief questions, why? And we explained
10 the linkage with the reactors and so forth, and that it is a
11 little different, and he had no objection to it at the time.

12 We will go back and brief him and his other board
13 members on this transition period so that they understand
14 and hopefully have no problem with it, but what we wanted to
15 do is reach agreement, hopefully today, so that we can
16 proceed with whatever revisions we need to make to this
17 request for proposal, and I didn't want to do that in write
18 in some transition period without the concurrence of the NRC

19 Commission because we are sort of obligating you to do
20 things and I don't think I have the right to do that.
21 The next chart is just the schedule for the
22 procurement and it shows hopefully getting this request for
23 proposal out in May and then receipt of the proposals 90
24 days later.

25 CHAIRMAN JACKSON: Do you have a target date for

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1 the contract award? It's not on there.

2 MR. CANTER: We are looking to see whether we can
3 shorten up the evaluation period, but it will be in the
4 October-November timeframe.

5 CHAIRMAN JACKSON: Okay.

6 MR. CANTER: And the last chart is just the next
7 steps. We would like to have your agreement on the general
8 approach to this phased-in process. We want to work with
9 your staff to develop the detailed regulatory framework,
10 resolve any uncertainties, and we want to issue this RFP
11 because we are staring at a delay, and so that is all there
12 is to my prepared presentation at this point.

13 CHAIRMAN JACKSON: Thank you, Mr. Canter.

14 You know, the soil seems to be shifting and have
15 shifted quite a bit even within the last 24 to 48 hours, and
16 so the real question that naturally occurs is how firm is
17 DOE with the strategies and plans that you have presented
18 today, because you are asking for the Commission to make a
19 Commission decision but within the last 48 hours, you know,
20 the shifting sands, so how firm are you here, and how far up
21 does that firmness go within DOE?

22 MR. CANTER: Well, in a --

23 CHAIRMAN JACKSON: Is the Secretary on board?

24 MR. CANTER: I think the Secretary is on board to
25 the extent that he knows we want this to be an NRC licensed

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1 facility.

2 CHAIRMAN JACKSON: Does he agree with that?

3 MR. CANTER: Yes. The Deputy Secretary reviewed
4 this whole thing yesterday and was very strong in her
5 approach that, one, she wants it NRC licensed, and in no
6 uncertain terms. She did not like any concept where there
7 is no license and it may be appropriate that you have a
8 conversation with her.

9 CHAIRMAN JACKSON: I will.

10 MR. CANTER: I assumed you would, and that you can
11 judge for yourself on that, but she was very adamant about
12 this yesterday, and unfortunately I think what confused
13 things for a few weeks was people interpreting what they
14 thought she meant, and that wasn't what she thought she
15 meant at all.

16 CHAIRMAN JACKSON: I see.

17 MR. CANTER: So I was very pleased to hear what I
18 heard from her yesterday.

19 CHAIRMAN JACKSON: Okay. Commissioner Diaz.

20 COMMISSIONER DIAZ: If I may piggyback on the
21 Chairman's questioning, I look at your page 5 and trying to
22 see from words what commitment is.

23 You know, that very first line in there really to
24 me is not what I will call a commitment or -- it says we
25 "want" to issue an RFP and "desires" -- now my problem is

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1 this, like the Chairman said, is that there is a difference
2 between desiring something and having a structural plan that
3 is actually fixed, because we thought we had one and we
4 worked to it, and now, you know, it has changed.

5 So throughout these things I can see good
6 intentions, but I do not see a commitment to do things in a
7 certain way, and maybe that commitment is not at your
8 disposal, but I think the Commission needs to make decisions
9 based on information that it can be relied upon -- you know
10 what I'm saying?

11 MR. CANTER: Let me comment on that. This may
12 just be a poor choice of words here on this slide, to use
13 the word "desire" -- as far as I am concerned, and I think
14 you can verify this from the Deputy Secretary, we want to
15 move ahead with NRC regulation and licensing in no uncertain
16 terms.

17 What we don't have is all the plans and the
18 details and the steps on how we get there planned out at
19 this point, and we have to work on them and we have to work
20 with your staff on them because we can't do it in a vacuum.

21 CHAIRMAN JACKSON: Excuse me, Karen?

22 MS. CYR: And you may need to work with Congress
23 on this.

24 MR. CANTER: Yes, ma'am.

25 CHAIRMAN JACKSON: Commissioner?

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1 COMMISSIONER McGAFFIGAN: I am on Slide 5 as well.
2 I think our staff was trying to work with you on the
3 legislative proposal, and I don't know whether -- about the
4 disagreements within DOE, but I actually thought that there
5 was an awful lot of pretty good work going on that could
6 lead in a reasonable time period to a legislative proposal
7 that even if it is only a backup, to respond to Congress in
8 a coherent way, and I would urge you to think about
9 continuing that work and see if we could have a legislative
10 proposal that was ripe, because that is one thing.

11 On the other hand, I don't know how we ever --
12 that legislative proposal ever became a pacing item for your
13 RFP because it was always clear when we were talking about
14 this, when you did the record of decision that the earliest
15 legislation we'd pass would be late -- you know, September,
16 October of this year, and it was always a question as to
17 whether Congress would approve it, so you always needed a
18 backup plan of some sort that would maintain you in the
19 regulatory role and perhaps us in an assistance role.

20 I think I asked the question last time we had a
21 briefing about whether you could make that work, and I think
22 your answer was yes, if that happened, you know, we would
23 have to worry about the interface when the fuel got to your
24 licensees, NRC, but you could make a DOE licensing or a DOE
25 self-regulation work, so as I say, if I had been the

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1 procurement officer, I probably would have been suggesting
2 to you that we have to open up both options -- tell the
3 bidder that there's both options and to the extent that
4 there are costs associated with, that are outside the
5 control of the bidder we'll cover them, and then you could
6 go ahead with the RFP without having it all tied down,
7 because to the extent it requires legislation it is not
8 going to be tied down, so I am struggling with the
9 chicken-and-egg issue here, I guess.

10 MR. CANTER: Well, that is exactly what we are
11 doing with the RFP at this juncture, and maybe we
12 incorrectly had it drafted with a statement that the
13 department intended to seek legislation, but the RFP was
14 based upon successfully getting that legislation, and that
15 was probably a tactical error at the time, although we

16 thought we had everybody's agreement on that approach
17 internally, so we are working on revising it at this point,
18 but didn't want to go ahead and revise it and go ahead and
19 issue it when it commits the Commission or your staff to do
20 certain things without having gotten at least some
21 concurrence from you on even doing that, because even this
22 transition period with DOE regulation, there is a
23 substantial role for the NRC. Okay?

24 CHAIRMAN JACKSON: Commissioner McGaffigan?

25 COMMISSIONER MCGAFFIGAN: Well, again my reaction

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1 is that to the extent that you are paying the bills and we
2 can get whatever relief we need from OMB for the
3 non-business-like FTEs I think is what they are called these
4 days, then just as we went into external regulation in order
5 to honorably respond to the Grumbly-Berube report, we should
6 probably honorably try to deal with you on whichever --

7 CHAIRMAN JACKSON: We already have.

8 COMMISSIONER MCGAFFIGAN: And we have been, and we
9 have been -- and we are not, as I say, we are not the pacing
10 item in this, at least as I understand it.

11 CHAIRMAN JACKSON: No, we're not, and in fact we
12 are out ahead in general.

13 Commissioner, any further comments?

14 COMMISSIONER DIAZ: Yes. Let me make one more
15 comment, because I am trying to put things together as an
16 engineer from almost your same class.

17 You know, you're expressing that you want to have
18 the NRC as a regulator for MOX and obviously you have a very
19 sharp group of lawyers, and Karen, I am going to find out
20 how sharp they are, that you believe you can proceed with
21 this process without Congress.

22 It should be very easy for you lawyers to
23 establish NRC as a regulatory authority from the first time.

24 MR. CANTER: No comment.

25 [Laughter.]

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1 COMMISSIONER DIAZ: And a second comment -- you
2 know, just for the record -- there is probably, you know,
3 one regulatory structure that can be created that is more
4 cumbersome and more complex than the DOE and the NRC, and
5 that is a mix -- DOE and NRC.

6 [Laughter.]

7 MR. CANTER: That is my recurring nightmare and so
8 I want to get out of that as quickly as possible, because I
9 think that will make it a very difficult environment.

10 CHAIRMAN JACKSON: Well, thank you very much, Mr.
11 Canter. This has been an interesting briefing that
12 obviously has both national and international security and
13 economic significance.

14 As you have heard, the Commission recognizes the
15 Administration's view of the importance of this program to
16 this country as well as other nations around the world and
17 the need to successfully address the broad objectives and
18 goals.

19 The issues involved, as we have all discussed, are
20 complex, but the NRC is ready to carry out the
21 responsibilities within its authority.

22 That are necessary to insure the success of the
23 program. However, having said that, there are a number of
24 technical, and in some ways those are easier, funding and
25 legal issues, that need to be addressed, including the issue

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1 of enabling legislation. So, in other words, in order to

2 proceed on the technical and regulatory and other issues, we
3 need a commitment from DOE to concurrently work on the
4 legislation and with the Congress. So that's number one.
5 And that commitment has to come from the highest levels
6 within DOE.

7 And then the follow on to that is that stability
8 at the highest policy levels within DOE, of its overall --
9 with respect to its overall commitment to this, is something
10 that we absolutely must have. Because we can't operate on
11 the basis of shifting land. This is too important from a
12 national security and international security point of view.
13 And our whole -- the whole premise of how we do our
14 business, whether people think we do it perfectly or not, is
15 scrutability and that has to be a fundamental element.

16 But we need these commitments at the highest
17 levels, and if the commitments are going to shift, then they
18 ought to be communicated at the highest levels. And so,
19 with that, we are adjourned.

20 [Whereupon, at 10:10 a.m., the briefing was
21 concluded.]

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