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NUCLEAR REGULATORY COMMISSION

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August 1, 2000

MEMORANDUM TO: Melanie A. Galloway, Chief
Enrichment Section
Special Projects Branch, FCSS

FROM: Timothy C. Johnson
Senior Mechanical Systems Engineer
Enrichment Section
Special Projects Branch, FCSS

SUBJECT: SUMMARY OF JULY 17, 2000, MIXED OXIDE FUEL PROJECT
UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION
MEETING

On July 17, 2000, Enrichment Section of the Special Projects Branch of the Division of Fuel Cycle Safety and Safeguards and Division of Security staff met with Duke, Cogema, and Stone & Webster consortium (DCS) staff and Department of Energy staff to discuss mechanisms for ensuring consistent control of Unclassified Controlled Nuclear Information (UCNI) for the mixed oxide fuel fabrication facility project. The preparation of a Memorandum of Understanding for special nuclear material (SNM) access authorization, security clearances, and storage of classified information was also discussed. I am attaching the meeting summary for your use.

Docket No: 70-3098

Attachment: UCNI Meeting Summary

cc: Mr. Peter Hastings, DCS

CONTACT: T. C. Johnson, NMSS/FCSS
(301) 415-7299

Mixed Oxide Unclassified Controlled Nuclear Information Meeting

Date: July 17, 2000

Place: NRC Headquarters, Rockville, Maryland

Attendees: See Attachment 1

Purpose:

The purpose of this meeting was to discuss the appropriate methods for controlling Unclassified Controlled Nuclear Information (UCNI) for the mixed oxide fuel fabrication facility (MOX) project, and to discuss the development of a Nuclear Regulatory Commission (NRC) - Department of Energy (DOE) Memorandum of Understanding (MOU) for special nuclear material (SNM) access authorization, security clearances, and storage of classified information.

Background:

In December 1999, Duke, Cogema, and Stone & Webster consortium (DCS) staff discussed UCNI and other security clearance issues with NRC staff. At that time it was decided that DCS and DOE should identify UCNI information applicable to the MOX project and propose an approach for handling this information. UCNI is a DOE controlled information category for unclassified information that still requires user control. It is similar to NRC safeguards information, but can also include other technical information. NRC does not use an UCNI classification or have procedures for controlling UCNI material. This classification issue could result in confusion and possible misinterpretation of NRC and DOE requirements if an agreement is not reached on a consistent approach for security and safeguarding this information.

P. Hastings presented 4 options for controlling UCNI (see Attachment 2). Under Option 1, NRC would treat UCNI as privileged information. In Option 2, UCNI would be treated as NRC Safeguards information requiring a higher level of control than in Option 1. In Option 3, DOE would recognize that 10 CFR Part 95 provides equivalent protection and would determine that UCNI is not applicable. Under Option 4, NRC would develop a program to control UCNI. After some discussion of the pros and cons of these options, it was decided that the most practical option would be for NRC to control UCNI safeguards information as NRC safeguards information and for NRC to control non-safeguards UCNI as privileged information under 10 CFR 2.790. P. Hastings committed to preparing a detailed list of non-safeguards UCNI information that would be used for the project. NRC indicated that it would propose this option in an MOU with DOE. DOE indicated that it would want to determine if NRC's program for controlling privileged information is consistent with its UCNI control objectives.

In SECY-99-177, NRC staff proposed that a MOU with DOE be developed to avoid dual regulation in the areas of SNM access authorization, issuance of security clearances, and approval of storage of classified information. The current NRC commitment to the Commission is to prepare the MOU by the end of September 2000. K. Everly of the NRC staff agreed to prepare a draft MOU for internal review addressing the above areas. DOE indicated that some

of the security clearances it issues include requirements for the Personnel Security Access Program (PSAP) that are more restrictive than simply an L or Q clearance. NRC does not have the equivalent program for issuing security clearances. T. Martin/NRC indicated that if there is a substantial number of MOX project staff that would require PSAP access controls, then DOE could be responsible for issuing the clearances.

The meeting then broke into two separate sessions, one to discuss design basis threats and the other to discuss classification issues. M. Warren concluded that NRC staff needs to internally discuss how PSAP requirements could be best implemented and how the differences in design basis threats between NRC and DOE applications, including how controlled area and protected area boundaries are defined, would be resolved for demonstrating compliance with NRC requirements. In addition, which agency would have oversight responsibility for the guard force would be discussed. These items would be added to the draft MOU by M. Warren.

MOX UCNI Meeting
Date: July 17, 2000

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MOX UCNI Meeting
Date: July 17, 2000

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NRC Technical Exchange

Control of MOX Information

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S&S Memorandum of Understanding

Duke Cogema Stone & Webster
17 July 2000



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Technical Exchange Objective

- Address open issue from December 1999 meeting
 - Define/compare DOE and NRC requirements for control of information
 - Discuss approaches at potentially analogous facilities
 - Propose options for NRC control of UCNI
- Discuss need for DOE-NRC MOU
- Additional topics
- Solicit NRC feedback

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NRC Technical Exchange

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Unclassified Controlled Nuclear Information (UCNI)



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Open Issue: NRC Handling of UCNI

- DCS subject to NRC and DOE requirements for physical security and safeguarding of information
 - NRC does not recognize DOE's *UCNI* designation
 - DOE does not (typically) use NRC's *Safeguards Information* designation
- DCS potentially subject to most stringent requirements
 - Could be confusing to DOE (contractual customer) or NRC (regulator)
 - Could cause discontinuities between similar facilities (e.g., MFFF vs PDCF)

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Basis for UCNI

- DOE has identified MFFF as a "sensitive facility"
- DOE Order and Notice
 - O 471.1 *Unclassified Controlled Nuclear Information*
 - N 205.1 *Unclassified Cyber Security Program*
- Determination Guidance
 - GG-4 *UCNI General Guidance*
 - TG-FSSS-1 *UCNI Topical Guidance for Fixed-Site Safeguards and Security*
 - IG-SR-2 *UCNI Internal Guideline-Savannah River Site*

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NRC Technical Exchange

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Types of Information Controlled as UCNI

- Information not otherwise classified
- Sensitive facility floor plans
- Safeguards and security details
- Some technical details of operating facilities

Not all *UCNI* would be *Confidential*
under NRC guidance

Comparison of Requirements

DOE

- No controls
- Privileged
 - criteria from FOIA [10CFR1004.11]
 - not typically used for safeguards/security-related information
- UCNI
 - includes sensitive floor plans, safeguards and security details, some technical operating details
 - DOE O 471.1, DOE N 205.1, and general, topical, and internal guidelines
 - routine/special access
 - administrative control of information
- CNSI
 - DOE and NRC requirements similar

NRC

- No controls
- Privileged
 - criteria from FOIA [10CFR2.790]
 - also includes safeguards/security-related information that is not safeguards or classified [§2.790(d)]
- Safeguards Information
 - applies to physical security plan, features of physical protection design, alarm system details, security procedures, vital equipment lists, etc.
 - 10CFR73.21
 - access requires need to know
- CNSI
 - DOE and NRC requirements similar



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Comparison to Other Facilities

- USEC Gaseous Diffusion Plants
 - subject to DOE *UCNI* requirements; *UCNI* part of certificate basis; *UCNI* not provided to NRC
 - 10CFR76 specifies *UCNI* to be treated as *Safeguards Information* [§76.113(c) - formula quantity only]
 - complies with 10CFR95¹ and (presumably) 10CFR25²
- NFS Erwin Facility
 - subject to DOE *UCNI* requirements for minimal information; *UCNI* not provided to NRC
 - complies with 10CFR25 and 95
 - DOE audits classification information security
- BWXT (Lynchburg) is similar to NFS

¹ Security Facility Approval and Safeguarding of National Security Information and Restricted Data

² Access Authorization for Licensee Personnel



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UCNI Options

- Option 1: no change
 - *UCNI* and *Confidential* apply to DCS
 - NRC treats *UCNI* as *privileged*
 - Requires eventual implementation of 10CFR25 and 95
- Option 2: DCS control to higher standard
 - *UCNI* controlled by DCS at next-highest NRC level (e.g., *Safeguards Information* or *CNSI*)
 - Still requires eventual implementation of 10CFR25 and 95 and may limit submittal of *UCNI* information until then (or until reciprocity is agreed to)
- Option 3: adopt NFS/BWXT-like method
 - DOE recognizes equivalent protection afforded under 10CFR95 and determines *UCNI* not applicable
 - Requires pre-license implementation of 10CFR25 and 95



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UCNI Options (continued)

- Option 4: NRC adopts *UCNI* (not practical)
- Preferred option is 1 or 3
 - Action: determine differences (if any) in NRC and DOE methodology to ensure continuity of protection (e.g., DOE UCNI should not become NRC classified)

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Safeguards & Security Memorandum of Understanding (MOU)



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NRC-DOE S&S MOU

- SECY-99-177 referred to desire for MOU (Issue 14)
 - SNM access authorization (10CFR11)
 - security clearances for classified information (10CFR25)
 - facility approval for storage of classified information (10CFR95)
- Other related SECY-99-177 issues
 - Issue 10: regulatory oversight of transportation safety and physical protection for MOX fuel assemblies
 - Issue 12: regulatory oversight of safeguards at the MFFF
 - Issue 13: modifications necessary for commercial reactors
- DCS recommends an MOU
 - requirements can likely drive understanding without MOU, but early clarification will be helpful

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Potential MOU Elements

- SNM access authorizations: DCS comply with 10CFR11
- Exemption/reciprocity for DOE clearances and facility approvals
 - classified information access and security clearances: NRC grant clearances on basis of DOE "L" clearances; DOE grant clearance on basis of NRC clearances
 - facility approval for storage of classified information: NRC grant facility approval on basis of review of DOE facility approval
 - 10CFR25 and 95 currently apply to "...any individual [or] government agency other than...DOE, except that the DOE shall be considered a person to the extent that its facilities are subject to the licensing and related regulatory authority of the Commission..."
- Handling of UCNI: Option 1 or 3 from above
- Guard forces and use of deadly force: affirm acceptability of use of DOE guard force and authorization for use of deadly force consistent with other DOE facilities

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Other Topics

Other Topics

- Classified discussion on threat guidance
- Constructability
- Classification guidance

Summary/Conclusion

Summary/Conclusions

- UCNI
 - UCNI as privileged or UCNI waived by DOE
 - S&S MOU
 - SNM access authorization (10CFR11)
 - security clearances for classified information (10CFR25) and reciprocity between DOE and NRC
 - facility approval for storage of classified information (10CFR95) and reciprocity between DOE and NRC
 - handling of UCNI
 - affirm acceptability of use of DOE guard force and authorization for use of deadly force
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Summary/Conclusions (continued)

- Other topics
- Review of action items
 - UCNI
 - MOU
 - other topics
- Request for NRC feedback

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