

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner McGaffigan
Commissioner Merrifield
September 17, 2001

FROM: William D. Travers */RA/*
Executive Director for Operations

SUBJECT: DELAY IN PREPARING MEMORANDUM OF UNDERSTANDING
BETWEEN THE U.S. DEPARTMENT OF ENERGY AND THE
U.S. NUCLEAR REGULATORY COMMISSION CONCERNING
MIXED OXIDE FUEL FABRICATION FACILITY SECURITY

The Defense Authorization Act for Fiscal Year 1999 (PL-105-261) provided the U.S. Nuclear Regulatory Commission (NRC) with licensing and related regulatory authority for any facility under a contract with, and for the account of, the U.S. Department of Energy (DOE), that is used for the express purpose of fabrication of mixed plutonium-uranium oxide (MOX) nuclear reactor fuel for a commercial nuclear reactor. SECY-99-177, entitled, "Current Status of Legislative Issues Related to NRC Licensing a Mixed-Oxide Fuel Fabrication Facility," concluded that no additional legislation (in addition to PL-105-261) is needed, with regard to NRC licensing and regulating the MOX fuel fabrication facility, and subsequent burning of MOX fuel in NRC-licensed reactors. The paper also committed NRC staff to developing a Memorandum of Understanding (MOU), with DOE, to resolve overlapping regulatory authority in the areas of classified and sensitive unclassified information protection, granting of material access, and personnel security clearances, to avoid misunderstandings in areas where both DOE and NRC have common responsibilities. NRC and DOE staffs prepared a proposed MOU to address these common responsibilities without limiting or restricting NRC or DOE authority. The proposed MOU defines certain security-related DOE/NRC responsibilities in relation to licensing the MOX facility. In early Fall 2000, the proposed MOU was ready for review by senior management of DOE and NRC.

In October 2000, as NRC staff was preparing a Commission Paper to inform the Commission of the MOU, DOE staff informed NRC staff that, because of organizational changes resulting in the creation of the National Nuclear Security Administration (NNSA), responsibilities for overall DOE security issues had changed. Because of these changes, NNSA staff indicated that additional time was needed to review the proposed MOU. Consequently, the original due date for the MOU, was modified to December 15, 2000. The due date was extended again in December to May 31, 2001, to allow NNSA staff additional time to provide input. In May 2001, NNSA staff indicated that, because of other office priorities, NNSA would not be able to provide input until

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May 2002. NRC management has confirmed DOE management's commitment to meet this schedule. Based on this latest information from NNSA, NRC staff is extending the due date for completing the MOU to July 31, 2002, to allow time for NNSA staff to provide input, to allow for resolution of any issues, and to prepare a Commission Paper.

cc: SECY
 OGC
 OCA
 OPA
 CFO

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