

September 23, 1988

Note to: NRC LSS Negotiating Team
From: John H Frye
Subject: Objection to the Draft Consensus
Recommendation on the LSS Administrator

Enclosed for your review is my objection to the draft
consensus recommendation circulated by Chip Cameron on
September 22.

SEPARATE STATEMENT OF JUDGE FRYE

I find that I am unable to concur in the Negotiating Team's recommendation. While I have no fundamental objection to with their decision to recommend that a separate organizational unit be established to house the LSS Administrator, that unit to report to the Director of GPA, I do quarrel with the Team's failure to come to grips with the central issue raised by this controversy. That issue concerns the reconciliation of the legitimate interests of the various NRC offices which are concerned with the LSS. This issue was plainly brought out by the comments on ARM's August 9 proposed Commission paper and in the subsequent meeting called by the EDO in an effort to resolve this controversy. Some of the relevant comments on ARM's proposed paper were:

...irrespective of who is ultimately selected as the LSS Administrator, ARM, SECY, and ASLBP will have to coordinate with and support one another if the LSS is to work well and the Commission is to have any chance of meeting the statutory deadline for the proceeding.

Judge Kohl's August 16 Memorandum, p.5. Judge Kohl concludes that a separate office should be established and staffed with a core of experienced people from, among others, ARM, SECY, and ASLBP.

...we suggest adding a discussion on how internal coordination of LSS implementation efforts among

the relevant NRC offices will be accomplished. As the draft paper recognizes, several NRC offices will be affected by LSS operation and several will be required to provide the support necessary for the effective implementation of the LSS. One way to address this issue might be an internal steering committee which would meet regularly to advise the LSS Administrator on implementation issues. The committee could be the means by which relevant office views are communicated and coordinated.

Mr. Parler's August 19 Memorandum, pp.1-2.

The LSS is being created to support a single, first-of-a-kind case which is severely constrained by time and vitally important to national energy policy. The needs of that case must be paramount. Other Commission concerns such as a uniform docketing system and the automation of the Commission's record keeping system must be secondary. However, those needs may be served by consultation and support.

The LSS is inextricably intertwined with the judges and parties. ASLBP can administer the LSS at least cost with maximum efficiency. To house the LSS Administrator in other than the ASLBP is to invite the kind of administrative and quality control delays in the High Level Waste Licensing proceeding that the Commission and the country simply cannot afford.

Judge Cotter's August 22 Memorandum, p. 7.

Clearly at least three Commission offices, ARM, SECY¹, and ASLBP, have very real institutional interests in the operation of the LSS. Equally clearly, those interests may not always coincide. And if the issue of how to accommodate

¹In his August 24 Memorandum, Mr. Chilk also recognized this issue but concluded that it should not delay the selection of the LSS Administrator. See pp. 3, 4.

those potentially conflicting interest had not been previously brought to the fore, Judge Cotter's August 22 Memorandum presented it and demanded its resolution now. Moreover, each office which commented on ARM's August 9 proposal recommended a different way of reconciling these potential conflicts.

Nonetheless, in two lengthy sessions, the Negotiating Team devoted scarcely any attention at all to this issue. The determination to recommend the establishment of a steering committee advising the LSS Administrator to deal with this problem was made by the NRC Negotiator following my objection that the issue had not been addressed. Following that meeting I was informed that the steering committee would be chaired by the NRC's representative on the LSS Advisory Panel. These important points were not discussed by the Team. Another, equally plausible way to reconcile potentially conflicting interests would be to provide for Deputies to the Administrator for litigation, licensing, and public access. Although this suggestion was raised at the meeting and is similar to one made by Judge Kohl in her August 16 Memorandum, it was not discussed at the meeting. Unfortunately, the Team has ducked the principal issue which it was asked to address. Therefore, I do not concur in the Team's recommendation.