

DOD (SP07)



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

January 4, 2000

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Mr. Thomas W. Ortziger, Director  
Illinois Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, IL 62704

Dear Mr. <sup>Tom</sup>Ortziger:

I am writing to respond to your letter of October 19, 1999, in which you expressed disappointment in the Commission decision not to include funds for reimbursement for certain work by Agreement States at NRC formerly licensed sites. The Commission has recently decided to develop a proposal to address your concerns for submission to OMB and Congress.

Under Office of Management and Budget (OMB) Circular No. A-87 (May 4, 1995) and applicable NRC requirements, it is impermissible to allow payment for work completed prior to the award of a grant or cooperative agreement absent specific Congressional authorization. As a result, we will seek Congressional approval to provide funds to Agreement States for their work on NRC formerly licensed sites that was incurred before the establishment of the grant program previously approved by the Commission. We will take this step in the context of our FY2001 budget request.

I appreciate the actions taken by the Illinois Department of Nuclear Safety to address the formerly licensed sites within the State promptly. I hope that we are successful in persuading Congress to allow the NRC to address the issue you raise.

Sincerely,

Richard A. Meserve

PDR STPRG

[Originated By: D. Sollenberger, SP]

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SP-AG-8 89

Mr. Thomas W. Ortziger, Director  
 Illinois Department of Nuclear Safety  
 1035 Outer Park Drive  
 Springfield, IL 62704

Dear Mr. Ortziger:

Thank you for your letter of October 19, 1999, in which you presented your disappointment in the Commission decision not to include in the appropriation request funds for reimbursement of Agreement States for work already completed on NRC formerly licensed sites. The Commission recognizes and appreciates the prompt actions of Illinois in this matter and has sought to identify some mechanism through which the State may be reimbursed. Regrettably, however, the rules governing the award of grant funds do not provide NRC with a means to reimburse the State in this instance.

Under Office of Management and Budget (OMB) Circular No. A-87 (May 4, 1995), there are no mechanisms, absent specific Congressional authorization, that will allow payment for work completed prior to the award of the specific grant, contract, or cooperative agreement. For States, such as Illinois, that have completed all formerly licensed site activities, there is no basis to award a grant to those States under this program. In addition, after due consideration, the Commission has not sought specific authorization for pre-award costs due to its recognition that Congress has been very reluctant to authorize such funds particularly where they would involve appropriations from the general fund off the NRC fee base.

I appreciate the actions taken by the Illinois Department of Nuclear Safety to promptly address the formerly licensed sites in the State of Illinois. Your actions demonstrate your concern for the health and safety of the citizens of Illinois. I hope that our inability to reimburse you for these actions will not interfere with the excellent working relationship that has developed between our organizations.

Sincerely,

Richard A. Meserve

DCD (SP07) PDR (YES)

This correspondence addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy.

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**\*See previous concurrence.**

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Mr. Thomas W. Ortziger, Director  
 Illinois Department of Nuclear Safety  
 1035 Outer Park Drive  
 Springfield, IL 62704

Dear Mr. Ortziger:

Thank you for your letter of October 19, 1999, in which you presented your disappointment in the Commission decision not to include in the appropriation request funds for reimbursement of Agreement States for work already completed on NRC formerly licensed sites. The Commission recognizes and appreciates the prompt actions of Illinois in this matter and has sought to identify some mechanism through which the State may be reimbursed. Regrettably, however, the rules governing the award of grant funds do not provide NRC with a means to reimburse the State in this instance.

The objective of the appropriation request is to provide funds for completion of the formerly licensed sites effort. The grant program proposed by the staff to administer the funds is to be conducted under NRC Management Directive 11.6 (MD 11.6), "Financial Assistance Program." This Management Directive was developed in accordance with the Atomic Energy Act of 1954, as amended, the Federal Grant and Cooperative Agreement Act of 1977, and Office of Management and Budget (OMB) Circular No. A-87 (May 4, 1995). Under OMB Circular No. A-87, there are no mechanisms, absent specific Congressional authorization, that will allow payment for work completed prior to the award of the specific grant, contract, or cooperative agreement. NRC MD 11.6, Part IV, Section (F)(2) implements this requirement in the case of grants and other financial instruments issued by NRC. For States, such as Illinois, that have completed all formerly licensed site activities, there is no basis to award a grant to those States under this program. In addition, after due consideration, the Commission has not sought specific authorization for pre-award costs due to its recognition that Congress has been very reluctant to authorize such funds particularly where they would involve appropriations from the general fund off the NRC fee base.

I appreciate the actions taken by the Illinois Department of Nuclear Safety to promptly address the formerly licensed sites in the State of Illinois. Your actions demonstrate your concern for the health and safety of the citizens of Illinois. I hope that our inability to reimburse you for these actions will not interfere with the excellent working relationship that has developed between our organizations.

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Mr. Thomas W. Ortziger, Director  
 Illinois Department of Nuclear Safety  
 1035 Outer Park Drive  
 Springfield, IL 62704

Dear Mr. Ortziger:

Thank you for your letter of October 19, 1999, in which you presented your disappointment in the Commission decision not to include in the appropriation request funds for reimbursement of Agreement States for work already completed on NRC formerly licensed sites. The objective of the appropriation request is to provide funds for completion of the formerly licensed sites effort. The grant program proposed by the staff to administer the funds is to be conducted under Management Directive 11.6 (MD 11.6), "Financial Assistance Program." This Management Directive was developed in accordance with the Atomic Energy Act of 1954, as amended, and the Federal Grant and Cooperative Agreement Act of 1977. Under MD 11.6, there are no mechanisms that will allow payment for work completed prior to the award of the specific mechanism (grant, contract, or cooperative agreement). MD 11.6 does allow pre-award costs when it is in the best interest of the Government to allow payment of otherwise allowable and allocable costs for grant related activities before award. These pre-award costs are to be directly related to the conduct of the grant activities. For States, such as Illinois, which have completed all formerly licensed site activities, there is no basis to award a grant to those States under this program. NRC does not intend to penalize States which have accepted and carried out this health and safety responsibility to address formerly licensed sites, such as Illinois. However, our focus in seeking funding was to bring this program to conclusion by providing assistance to those cases which are still outstanding.

I appreciate the actions taken by the Illinois Department of Nuclear Safety to promptly address the NRC formerly licensed sites in the State of Illinois. Your actions demonstrate your concern for the health and safety of the citizens of Illinois. I hope our inability to reimburse you for these actions will not interfere with the excellent working relationship that has developed between our organizations.

Sincerely,

Richard Meserve

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