



MEMORANDUM OF EX PARTE COMMUNICATION WITH THE DEPARTMENT OF ENERGY

Date of Meeting: December 30, 2014

Attendees: Scott Blake Harris, Harris, Wiltshire & Grannis LLP; Ellen Ginsberg, General Counsel, Nuclear Energy Institute; and Steven Croley, General Counsel of the Department of Energy

Summary of what was discussed:

Mr. Harris and Ms. Ginsberg discussed Part 810 of the Department's rules, and the September 2011 Notice of Proposed Rulemaking (NOPR) and the July 2013 Supplemental Notice of Proposed Rulemaking (SNOPR) (RIN 1994-AA02) to update those rules.

First, they discussed the lack of clarity of certain rules as described by both industry and the GAO in its October 2014 Report on Part 810. Specifically, Mr. Harris and Ms. Ginsberg suggested that important definitions in the rules and the proposed rules (such as that for a nuclear reactor) were either unclear or overbroad. They also pointed out that the rules do not address sales and marketing efforts, and thus are unclear about what kinds of information may be shared with potential customers in the sales and marketing process. Finally, they said that the rules governing what information must be submitted in the application process for an export license are unclear.

Second, Mr. Harris and Ms. Ginsberg argued that case-by-case guidance as to the meaning of the rules did not solve the problems caused by unclear rules, since individual guidance is time consuming, and leads to inconsistent advice. They also pointed out that since individual guidance is not public it does not create useful precedent.

Finally, Mr. Harris and Ms. Ginsberg said that while clear rules are the best solution to the problems they had identified, these problems could also be usefully addressed by guidance issued by the Office of the General Counsel – and they pointed out that Part 810 explicitly provided the General Counsel with authority to issue such guidance. They also pointed out that other agencies with export administration jurisdiction did issue such guidance.

Submitted by:

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