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Washington, DC 20585

July 31, 2006

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Washington, D.C. 20555-0001

5/31/06  
MFR 30967  
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Docket Nos. PROJ0734, PROJ0735, PROJ0736 and POOM-32  
Attention: Anna Bradford

The Department of Energy (Department or DOE) has reviewed the draft Standard Review Plan (SRP) for activities related to DOE waste determinations, which the Nuclear Regulatory Commission (Commission or NRC) issued on May 23, 2006. DOE respectfully objects to the draft SRP because it reflects a fundamental misreading of the plain meaning of section 3116 of the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005. If followed, the draft SRP would result in a regulatory process neither authorized by law nor contemplated when section 3116 was enacted.

Section 3116(a) expressly provides that the Secretary is the exclusive decision maker for determining whether radioactive waste resulting from the reprocessing of spent nuclear fuel at certain DOE sites is high-level radioactive waste. While section 3116(a) assigns the NRC a limited role as an informed consultant to aid the Secretary in making such waste determinations, the statute does not grant the Commission authority to license, certify or otherwise regulate DOE activities relating to determining that waste from reprocessing is not high-level radioactive waste. Nor does the statute specify particular sets of issues upon which the Secretary is to request aid from the NRC or authorize the Commission to dictate the terms and conditions of such consultations.

Despite the limited consultative role that section 3116(a) assigns to the Commission, the overall effect of the draft SRP would be to establish a process that casts the Commission in the role of the regulator, and the Secretary in the role of an applicant, with the apparent objective of treating the Secretary the same as the Commission treats licensees. For example, the draft SRP purports to: i) prescribe the role of the Commission as performing a technical review of a DOE waste determination in order to arrive at an independent conclusion as to whether there is reasonable assurance that the criteria in section 3116(a) can be met; ii) obligate DOE to demonstrate compliance with numerous NRC requirements and standards not set forth in section 3116(a) or justify why DOE used another approach; iii) define and

