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August 28, 2018

The Honorable Rick Perry
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

RE: Need for Collaboration on DOE Order 140.1 Prior to Further Implementation

Dear Secretary Perry:

On behalf of the Energy Communities Alliance (ECA), I am writing to request that the U.S. Department of Energy (DOE) pause and revisit the implementation of DOE Order 140.1, *Interface with the Defense Nuclear Facilities Safety Board*, and that efforts to resume implementation of the Order begin after the Defense Nuclear Facilities Safety Board (DNFSB) comments on the Order, and a formal review process that solicits input from the local communities most impacted by the Order and the public.

Collaboration and Consultation Necessary Steps in Policy Development:

As the organization of local communities that are impacted by DOE and National Nuclear Security Administration (NNSA) activities, ECA believes that efforts by DOE to develop policies that promote efficiencies in interactions with the DNFSB must be developed collaboratively with the DNFSB and be fully vetted through a process that includes: (i) notice; and (ii) opportunity for public comment. The previous policy under which DOE has operated with regard to the DNFSB was developed collaboratively between DOE and DNFSB, and ECA believes any new policies should be crafted similarly. DOE has chosen to unilaterally implement Order 140.1 without consulting the organizations and stakeholders most concerned by the impacts that DOE/NNSA activities have on public health and safety. ECA interacts with DOE on a regular basis, yet neither ECA nor its local government members were formally informed about the development or adoption of Order 140.1. DOE's failure to consult our organization, local communities, state regulators, tribes, or the public at any point is unusual for DOE.

The Significance of the DNFSB:

Congress created the DNFSB due to a significant number of high-profile problems associated with DOE's management of the nuclear weapons program, which could have potentially caused real health and safety issues for ECA member communities. Congress' intent in creating the DNFSB was to establish an oversight mechanism to: (1) review and evaluate the content and

implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of DOE at each DOE defense nuclear facility; (2) investigate any event or practice at such a facility which the DNFSB determines has adversely affected, or may adversely affect, public health and safety; (3) have access to and analyze design and operational data from any DOE defense nuclear facility; (4) review and make recommendations to the Secretary regarding the design and construction of new DOE defense nuclear facilities; and (5) make recommendations to the Secretary with respect to all DOE defense nuclear facilities as necessary to ensure adequate protection of public health and safety.¹

While DOE has established its own internal review procedures, the presence of the DNFSB as an independent, non-duplicative body adds trust and safety to the important work of DOE and NNSA concerning high-hazard and nuclear operations. The DNFSB does not possess regulatory authority over DOE and NNSA, but it acts as an important third party that provides additional information on the actual risk of activities, and actions needed to mediate risk to the communities that would be most impacted by a nuclear accident. The DNFSB must be permitted to coordinate with DOE and its contractors to perform this oversight.

Critiques of DOE Order 140.1:

Though ECA appreciates DOE's stated goals of improving DOE operating efficiencies and decreasing costs, we believe Order 140.1 does not adhere to the spirit of the legislative requirements under which the DNFSB was created.

ECA believes the new chain of command established by Order 140.1 for DOE and NNSA communicating with DNFSB will decrease the timeliness of reporting important information. DOE learned years ago that working with regulators and the DNFSB is far more productive than fighting them. The DOE process identified in the Order will slow the development of critical DOE/NNSA infrastructure and progress for DOE defense cleanup missions.

ECA asserts that many of the requirements of Order 140.1 appear comprehensively and, at times, arbitrarily to limit DNFSB access to information on DOE activities or DOE personnel who make key decisions and understand the work in the field. The requirement that DOE "speak with one voice" may make sense in theory, but in practice ECA has not seen it implemented effectively across DOE or within any individual office. One of the largest problems at many major DOE sites is the inability of the multiple offices operating there to work together. Moreover, the Order seems to be systematically lessening the diversity of opinions that may exist between DOE personnel and DOE contractors related to critical safety issues.

Furthermore, it is unclear to ECA how NNSA, the Office of Environmental Management, the Office of Science, and other DOE offices that rely on the DNFSB to complete their projects will follow Order 140.1. These concerns should be addressed prior to the Order's implementation.

¹ U.S. House of Representatives. National Defense Authorization Act, Fiscal Year 1989, Conference Report (to Accompany H.R. 4481). (H.Rept 100-735).

Conclusion:

ECA supports efficiencies in the DOE and DNFSB working relationship. We would hope that DOE would provide an opportunity for public input to refine it and create a clear working relationship between DOE/NNSA and DNFSB. ECA acknowledges that the DNFSB's operations can and must improve, particularly with regard to more meaningfully incorporating concerns of cost and technical feasibility into their recommendations to DOE. Nevertheless, DOE must not impede DNFSB operations by restricting access to critical information necessary to fulfill the Board's mandate. Limiting interaction is not a solution for creating efficiencies.

ECA asks DOE to take immediate action to involve the DNFSB, local communities, state regulators, tribes, and other stakeholders in the development of an improved policy that corrects the errors of the new Order 140.1. We welcome the opportunity to discuss this issue further with your office. If you have any questions, please contact ECA Executive Director Seth Kirshenberg at (202) 828-2317.

Sincerely,



Ronald Woody
County Executive, Roane County, TN
Chair, Energy Communities Alliance

Cc: Councilmember Steve Young, City of Kennewick, WA; Vice-Chair, ECA;
Councilor Rick Reiss, Los Alamos County, NM; Treasurer, ECA;
Mayor Rebecca Casper, City of Idaho Falls, ID; Secretary, ECA;
Councilmember Jennifer Chandler, Village of Piketon, OH; Member-At-Large, ECA;
Councilmember Chuck Smith, Aiken County, SC; Past-Chair, ECA;
ECA Board of Directors;
Under Secretary for Science Paul Dabbar, DOE;
Under Secretary of Energy Mark Menezes, DOE;
Administrator Lisa Gordon-Hagerty, NNSA;
Assistant Secretary for Environmental Management Anne White, DOE;
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