

Comments in Response to Department of Energy / Notice of Inquiry /Questions Concerning Technology Transfer Practices at DOE Laboratories

Electric Power Research Institute (EPRI) appreciates the opportunity afforded by the subject Notice for non-profit, tax-exempt organizations such as EPRI to comment on technology partnering mechanisms as utilized by DOE Laboratories. EPRI's specific experience derives from CRADAs and Work-for-Others (WFOs) mechanisms. Certain provisions in these documents have not lent themselves to timely or successful technology transfer transactions with DOE Laboratories. The key CRADA and WFOs provisions presenting concern are those revolving around indemnification. For a non-profit organization, the requirement to indemnify the federal government, the agency, the contractor, and their employees, officers, agents, and consultants is of concern. These all-encompassing indemnification provisions covering general, product, and 3rd party intellectual property infringement represent an allocation of risk which EPRI as a partner assumes without corresponding management control or authority to mitigate. Additionally, wording contained in the WFOs Disclaimer provision, wherein DOE's Contractor does not provide 3rd party intellectual property indemnification, is also problematic for EPRI. As a tax-exempt organization, EPRI seeks to conduct research and make the results available to its members providing funding and the public. EPRI should be able to have reasonable assurance that it is not infringing on a 3rd party's intellectual property when doing so. For a non-profit, tax-exempt organization, the assumption of risk is not a decision that can be taken without due deliberation as to the financial impact which might be sustained. EPRI is aware that for CRADAs it is possible to obtain a waiver from DOE for general and product indemnification; however, not all contemplated projects sought with or by DOE and national labs currently meet the pre-requisite criteria as laid out in the guidance manual for this purpose.

Changes in the area of indemnification facilitating the participation of organizations such as EPRI would be welcomed and viewed as a positive step in supporting the furtherance of technology transfer.

Prepared by: Karen Taylor on behalf of Electric Research Power Institute

The Electric Power Research Institute, Inc. (EPRI, www.epri.com) conducts research and development relating to the generation, delivery and use of electricity for the benefit of the public. An independent, nonprofit organization, EPRI brings together its scientists and engineers as well as experts from academia and industry to help address challenges in electricity, including reliability, efficiency, health, safety and the environment.

