

## MEMORANDUM OF LAW

**SUBJECT:** Request for Circular 175 Authorization to Negotiate and Conclude an Agreement between the U.S. Department of Energy and the Ministry of Industry and Trade of the Czech Republic for Cooperation in Civilian Nuclear Energy Research and Development.

The attached Circular 175 Action Memorandum requests authority to conclude an agency-to-agency agreement between the U.S. Department of Energy (DOE) and the Czech Ministry of Industry and Trade (MOIT) on civilian nuclear energy research and development. *See* Tab 1, "Agreement between the Department of Energy of the United States of America and the Ministry of Industry and Trade of the Czech Republic for Cooperation in Civilian Nuclear Energy Research and Development" (the Proposed Agreement). Any substantive changes in the final text of the Proposed Agreement would, prior to signature, be subject to the concurrence of ISN, L, EUR, and other relevant bureaus.

The Proposed Agreement between DOE and MOIT (the Parties) would provide for cooperation regarding research and development of advanced nuclear reactor systems technologies, nuclear fuel cycle technologies, and nuclear safety and assessments. Cooperation would be focused on advanced technologies for improving the cost, safety, waste management, and proliferation-resistance of nuclear power systems for civil use.

Cooperation under the Proposed Agreement may include research on the following: molten salt-cooled reactor technologies and fluoride-cooled high temperature reactors; next-generation reactor power plant designs; innovative nuclear plant design, manufacturing, construction, operation, maintenance, and decommissioning technologies; advanced nuclear fuels and materials technologies; advanced used nuclear fuel and waste treatment, storage, and disposal technologies; nuclear safety analysis, probabilistic safety assessment and risk-informed decision-making analysis tools; fundamental nuclear science areas; and other areas as the Parties may agree to in writing. Cooperation will not include sensitive nuclear technology (SNT).

Forms of cooperation under the Proposed Agreement may include: the exchange of personnel, equipment, materials, and unclassified information and results of research; the conduct of seminars, workshops, and other meetings; joint projects; and other forms of cooperation as mutually agreed by the Parties in writing. Cooperative activities that involve sharing costs or may give rise to the creation of intellectual property must be described in writing in a "Project Annex, subject to the Proposed Agreement and including detailed provisions for carrying out the cooperation. The Proposed Agreement would establish a Bilateral Steering Committee (BSC), which would, under the direction of the Parties, select, propose and monitor all cooperative activities between the Parties.

Exchange of personnel would, in each instance, be agreed in advance through an exchange of letters between the Parties. In the event of such an exchange, the sending Party would be responsible for the salaries, insurance, and allowances for its staff or



contractors, as well as for travel and living expenses while in the host state. Regarding samples, material, and equipment exchanged, title would remain with the sending Party at all times. Equipment, samples, and material transferred would, upon completion of the relevant project, be returned to the sending Party. Responsibility for expenses, safekeeping and insurance of the equipment or material transfers to the receiving Party at the point of entry into the receiving state. Information exchanged pursuant to cooperative activities shall be accurate and joint results shall be widely distributed. The Annex on Intellectual Property (Annex A) to the Agreement between the United States of America and the Czech Republic for Scientific and Technological Cooperation of September 6, 2007 (the "S&T Agreement") governs the treatment of intellectual property and business-confidential information created or transferred under the Proposed Agreement.

The Proposed Agreement itself would not require any obligation of funds. However, as provided for in the Agreement, any and all costs associated with cooperation under the Proposed Agreement will be subject to the availability of appropriated funds. Disputes arising under the Proposed Agreement would be settled through consultation between the Parties. Each Party's activities under the Proposed Agreement would be conducted in accordance with laws and regulations applicable to each Party, including those relating to export control.

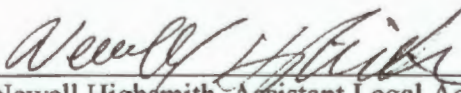
The Proposed Agreement would enter into force upon signature by both Parties, and would remain in force for ten years with automatic renewal for five-year periods unless terminated by one of the Parties upon six months advance notice. Joint activities not completed at the time of termination may continue to completion under the terms of the Proposed Agreement. The Proposed Agreement may be amended by written agreement.

Existing agreements related to the Proposed Agreement include the Agreement between the United States of America and the Czech Republic for Scientific and Technological Cooperation, signed at Prague September 6, 2007 (the "S&T Agreement") and the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the United States of America and the European Atomic Energy Community, signed at Brussels November 7, 1995, and March 29, 1996. In addition, in December 2010, DOE, the Department of Commerce, and MOIT signed a Joint Declaration on Civil Nuclear Commercial Cooperation. Thereafter, representatives of DOE's Office of Nuclear Energy and MOIT met to explore bilateral nuclear R&D cooperation in areas of mutual interest, including reactor safety and lifetime extension, chemistry, university research collaboration, and faculty/student exchanges.

Legal authority to conclude the Proposed Agreement derives from the President's powers under Article II of the Constitution and his authority to represent the nation in foreign affairs, as exercised by the Secretary of State on a day-to-day basis (22 U.S.C. § 2656). The exercise of such authority also is consistent with 22 U.S.C. § 2656d, which states that the "Secretary of State...shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States and foreign countries...."

DOE has the authority to engage, *inter alia*, in international cooperative activities relating to research and development of nuclear processes (42 U.S.C. §§ 2051(a) and 5817(a)), peaceful uses of nuclear energy (42 U.S.C. §§ 2011 and 2013(e)), and international energy policy (42 U.S.C. §§ 5813(9) and 7112(10)), as well as authority by virtue of the transfer of functions from the predecessor Atomic Energy Commission to the DOE (42 U.S.C. §§ 5814 and 7151(a)), subject to any other applicable rules and regulations, including those relating to government procurement. Section 5813(9) of the Energy Reorganization Act of 1974, as amended (42 U.S.C. § 5813(9)), provides that the Secretary of Energy shall have responsibility for "encouraging and participating in international cooperation in energy," and section 5817(a) of that Act grants the Secretary the authority to "exercise his powers in such manner as to insure continued conduct of research and development and related activities in the areas or fields deemed by the Secretary to be pertinent to the acquisition of an expanded fund of scientific, technical, and practical knowledge in energy matters." (42 U.S.C. § 5817(a)). (DOE acquired this authority when the functions of the Administrator of the Energy Research and Development Administration were transferred to the Secretary of Energy. 42 U.S.C. § 7151(a)). DOE has advised that it believes the cooperative activities envisioned by the Proposed Agreement to be pertinent to these goals.

For the foregoing reasons, there is no legal impediment to negotiation and conclusion of the Proposed Agreement with the MOIT.

  
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for Nonproliferation and Verification