

August 17, 1993
ILR 93-L

Members of the Audit Subcommittee
State Capitol Building
Salt Lake City, Utah 84114

Subject: Fusion/Energy Council

Dear Legislators:

At the request of the Audit Subcommittee and in accordance with the Fusion/Energy Technology Act (**Utah Code 9-2-810**) which requires a performance audit of the advisory council, we conducted a review of the Fusion/Energy Advisory Council. It is our opinion that there is no need for a comprehensive performance audit for these reasons: 1) the legislative allocation has all been spent, 2) the inventory of equipment purchased with state funds for fusion research was disposed of in accordance with the provisions in the statute, and the by-laws of the of the National Cold Fusion Institute (NCFI), 3) the NCFI is no longer operable, 4) the University of Utah retains all rights and is protecting the patents, and 5) the council is no longer active. It appears that the objectives of reviewing, advising, reporting, and allocating funds for cold fusion research and technology have been accomplished, and a continuing need for the Fusion/Energy Advisory Council is questionable.

Performance Audit Is No Longer Needed

A performance audit of the Fusion/Energy Advisory Council is no longer needed. All of the state funding has been spent and additional funding is unlikely. In 1989, the Legislature appropriated \$5 million for the research and development of cold fusion and related energy technology. The initial budgeting of funds gave \$500,000 to the Attorney General for legal representation, and \$4,500,000 to the university for research and development, and an additional \$8,000 was budgeted for expenses of the advisory council. When the actual operating expenses were first evaluated, it was obvious that legal representation would need more money. The distribution of funds was changed to \$750,000 for the Attorney General and \$4,250,000 for the university.

We reviewed the most recent accounts of expenditures that we could find. As of May 1993, the expenditures for cold fusion research by the NCFI totaled \$4,385,823. This includes all of the state appropriation of \$4,250,000 plus an additional \$90,516 from private contributions and \$45,307 from unidentified sources. The expenditures for legal fees amounted to \$1,012,103 and were distributed among 9 different firms. The sources for reimbursement of legal expenses were \$749,708 from state appropriations and \$263,103 from the university. In addition to the expenses for research and legal work, the advisory council had accumulated about \$8,600 in expenses. Because the NCFI has ceased operations and the council no longer meets, we did not review the detailed support for the expenditures made.

The statute provides that any unexpended money appropriated to the advisory council shall lapse into the general fund. However, all of the money has been spent and there is nothing left to return to the general fund. According to John Morris, counsel to the president of the University of Utah, the NCFI has assets and equipment valued at about \$900,000. Although these assets were purchased with state funds, they are now the property of the University of Utah as per the by-laws of the NCFI. The equipment was intended to be reserved for future work in cold fusion. However, the funding has all been spent and there is almost no interest in cold fusion research. Therefore, the university is planning on releasing the equipment for use in other departments and colleges until there is renewed interest in fusion research.

The NCFI has been dissolved and all operations have been discontinued. The building has been vacated and will be used by the university for other purposes. There are nine patents that have been filed and are presently being reviewed under the name of NCFI and in behalf of the University of Utah and the scientists affiliated with the university. As specified in the corporation by-laws, the university owns the right to these patents and any inventions, processes, or research developed by the NCFI. The general feeling is that these patents will eventually be granted and will someday be valuable. Therefore, the university feels an obligation to maintain these patents and it is continuing to pay patent attorneys for legal counsel and patent protection.

The advisory council has not met since July 1991. Also, the Fusion Energy Oversight Committee held their meetings conjointly with the advisory council and we could find no record of their meeting since the last council meeting. The executive committee of the advisory council has met several times since then, but we could find no record of any discussion by the council or the executive committee since January 1992. At that time the chairman of the council said there was no further need for the council to meet unless funding issues could be resolved.

It is our opinion that the Fusion/Energy Advisory Council has completed its objectives. Since the NCFI is essentially closed and all revenue sources have been exhausted, there isn't any reason for the advisory council to continue.

Recommendation:

1. We recommend that the Legislature repeal the Fusion/Energy Technology Act (**Utah Code 9-2-801 et seq**).

We hope this letter provides you with some information that will be helpful to you. We

Audit Subcommittee
August 17, 1993
Page 3

recognize the survey has been done quickly and briefly. If there are any questions or you need additional information, please let us know.

Sincerely,

Wayne L Welsh
Auditor General

WLW:PAH/lm