

October 27, 1987

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MINUTES OF THE HLW LICENSING SUPPORT SYSTEM
ADVISORY COMMITTEE MEETING

September 16-17, 1987
Washington, D.C.

MEETING LOCATION AND ATTENDANCE

The first meeting of the HLW Licensing Support System Advisory Committee (hereafter referred to as the committee) was held on September 16, 1987 from 10:00 a.m to 5:00 p.m. and September 17, 1987 from 9:30 a.m. to 4:30 p.m. at the offices of The Conservation Foundation at 1250 Twenty-Fourth Street, N.W.; Washington D.C.

A list of the committee members and their alternates who attended the meeting is attached to these minutes, along with a list of the members of the public who were in attendance (see Attachments 1 and 2).

OFFICIAL CONVENING BY THE EXECUTIVE SECRETARY

Donnie Grimsley, Director, Division of Rules and Records, U.S. Nuclear Regulatory Commission (NRC), started the meeting. He introduced himself and stated that he will serve as the Executive Secretary of the HLW Licensing Support System Advisory Committee. In this role Mr. Grimsley will be responsible for assuring that the activities of the committee comply with the Federal Advisory Committee Act (FACA) and NRC's implementing regulations for this act. He noted in particular that:

- o Committee meetings will be open to the public, members of the public may file written statements regarding Committee proceedings, and the Committee may establish procedures to permit members of the public to speak during its meetings.

- o The agenda for each meeting of the Committee will be published in the Federal Register at least two weeks prior to each meeting.

- o After the Committee has approved them, minutes of each meeting, along with any reports received by the Committee, shall be placed in the NRC's public document room and its local public document rooms for the HLW sites.

INTRODUCTIONS AND OPENING STATEMENTS

Mr. Grimsley introduced Howard S. Bellman, independent mediator and Senior Fellow with The Conservation Foundation. Mr. Bellman, who will serve as the lead facilitator to the committee, introduced the members of his team including Timothy J. Mealey, Associate with The Conservation Foundation, Matthew A. Low of TLI Systems, Incorporated and Kirk Balcom of TechLaw, Incorporated. Mr. Mealey will serve as an assistant to Mr. Bellman, with primary responsibility for drafting minutes and coordinating all logistical matters related to Committee activities. Messrs. Low and Balcom will serve as legal and technical advisors to Mr. Bellman and Committee members.

Mr. Bellman then asked the spokesperson for each negotiating team to introduce themselves and the members of their team and, if they desired, to make a brief opening statement to the other members of the committee.

William Olmstead, Office of the General Counsel, introduced himself as the spokesperson for the NRC, along with his alternate Francis X. (Chip) Cameron, also from the Office of the General Counsel. Mr. Olmstead referred to the NRC's August 5, 1987 Federal Register notice which announced the formation of this committee. In particular, he emphasized the importance of remaining focused on the four objectives outlined in this notice for the Licensing Support System (LSS). These include:

- o To facilitate discovery by providing comprehensive and easy access to potentially relevant licensing information;
- o To establish the information base for the licensing proceeding, to the extent practicable, before the DOE license application is submitted and the three year statutory time period begins;
- o To facilitate review of relevant licensing information by all parties and eventually the boards through the provision, to the extent practicable, of full text search capability; and
- o To reduce the time associated with the physical submission of motions and other documents associated with the licensing proceeding by providing for electronic transmission of these documents.

The representatives from Nevada introduced themselves including Harry Swainston, Deputy Attorney General and Mal Murphy, Special Deputy Attorney General. They noted that Robert Loux, Director of the Nevada Nuclear Waste Office, will be the spokesperson for Nevada and that James Davenport, Special Deputy Attorney General, will also be an alternate (Mr. Davenport attended the second day of the meeting). The Nevada representatives stated that they intended to participate in good faith and they described several issues which they felt were of critical importance. (These are listed below as they were provided to the facilitator by the Nevada representatives in a document that was not distributed to the committee):

1. The negotiated rulemaking should be limited to electronic document discovery, and should not encompass other forms of discovery such as depositions, written interrogatories, requests

for admissions, etc.

2. The goal of any LSS must be to enhance the parties document discovery rights, and not detract from any rights to discovery under current NRC procedures.

3. The LSS should be under the control of some agency other than DOE (NRC or some neutral third party). In no other circumstance is the mechanism for controlling essential discovery rights placed in the hands of an applicant, and thus a party to the licensing proceeding.

4. Traditional notions of "proprietary information" should not be applicable to any of DOE's documents. If the Department uses any information in any manner whatsoever in the siting of a repository, then documents containing that information should be included in the LSS, whether they are of a proprietary nature or not.

5. The system should be designed with security provisions sufficient to guarantee that no unauthorized access is permitted, and that all documents, once entered, cannot be removed or altered without the knowledge of all other parties.

6. All documents should be entered in full text.

7. All information which DOE uses, or has used in the past, in connection with the siting of a repository should be entered into the system, without the application of any arbitrary cut-off date such as the passage of the NWPA.

8. The system should contain all of DOE's drafts, hand written notes, marginal notations, etc.

9. The amended regulations should contain strong sanctions to insure that all relevant documents are entered into the

system. As a beginning, I suggest we take the position that a finding that DOE has withheld any relevant documents from the LSS should result in a denial of their license application.

Representatives from the State of Washington then introduced themselves including Charles B. Roe, Jr., Senior Assistant Attorney General, and Terry Husseman, Director of the Office of Nuclear Waste Management. They indicated that Narda Pierce, Assistant Attorney General, may also represent the State of Washington. The Washington representatives stated that they also intended to make a good faith effort to participate fully in these negotiations. They also indicated their support for the comments made by Nevada, emphasizing their position that this rulemaking not place any restrictions on traditional discovery processes.

Carl Sinderbrand, Assistant Attorney General, introduced himself as one of the members of Wisconsin's negotiating team, along with Robert Halstead from the Wisconsin Radioactive Waste Review Board (Mr. Halstead arrived later that day). Mr. Sinderbrand indicated that the Wisconsin intended to participate fully and in good faith. He raised a number of procedural concerns including: the efficacy of the Wisconsin/Minnesota coalition and the status of all "coalition" parties; whether any other parties will be added to the Committee and, if so, how; the definition of consensus as it relates to the need for tentative agreements by the parties before reaching a final agreement; and concerns about funding for non-DOE funded states. In addition to these procedural concerns, Wisconsin's representative indicated that he shared the substantive concerns raised by Nevada, and he added the following:

- o the cost of the LSS itself and the cost of this proceeding;
- o the timing of document entry and the need to have documents entered into the LSS as early as possible; and

the types of documents to be included in the LSS and the need to be as broadly inclusive as possible.

Eldon G. Kaul, Assistant Attorney General, State of Minnesota, introduced himself and indicated that Jocelyn Olsen, also from the Office of the Attorney General, will be Minnesota's representative to the committee. He stated that Minnesota shares all of the concerns raised by Wisconsin.

Michael H. Mobley, Director, Division of Radiological Health, introduced himself as Tennessee's spokesperson. He stated that although the LSS is not intended to be used in the licensing of the proposed Monitored Retrievable Storage (MRS) facility it is possible that the process leading to the LSS will be of benefit to Tennessee. Conversely, the MRS process to date and future impending actions may give Tennessee a unique position for input into the LSS proposal. Therefore, Tennessee has a significant interest in this rulemaking and is pleased to accept the NRC's invitation to participate as a "second tier" member of this advisory committee.

Renea Hicks, Assistant Attorney General, introduced himself as the spokesperson for the State of Texas. He noted that he will be participating as part of a coalition with Texas local government entities. Philip A. Niedzielski-Eichner, Executive Director of the Waste Deposit Impact Committee, introduced himself as the spokesperson for Texas local governments affected by this rulemaking and noted that others may also be representing Texas local governments. Mr. Niedzielski-Eichner added that the coalition arrangement with the state was satisfactory and that he had complete confidence in Mr. Hicks acting as the spokesperson. He urged that local governments from other states be invited to participate.

Steven P. Kraft, Director of the Edison Electric Institute's (EEI) Utility Nuclear Waste Management Group (UNWMG), introduced himself and the members of EEI's team including Nancy Montgomery,

UNWGM Program Manager, and attorney, Jay Silberg. He stated that EEI, through UNWGM, represents all of the utilities that are paying into the Nuclear Waste Fund. The companies that EEI/UNWGM represents are generally supportive of the repository program and their principal substantive concerns with this rulemaking relate to the cost of the LSS and changes to NRC's licensing procedure not being a source of delay. He questioned whether the LSS is the only means available to achieve the objectives outlined by the NRC. EEI believes there may be far simpler alternatives, such as using a central library with electronic information management capabilities. He stated that existing cost-benefit studies of the LSS are inadequate and that cost and feasibility issues will be of central concern to EEI.

EEI representatives also stated that they have serious concerns with this particular regulatory negotiation in that the committee itself, from their perspective, does not meet FACA requirements regarding balanced membership. He noted that EEI had sent a letter to the NRC stating these concerns with suggestions for how they could be remedied. In particular, EEI feels there is an imbalance between parties who can be said to be generally supportive of the repository program and those who are generally unsupportive, noting that of the non-federal parties, eleven are opposed and only one, EEI, is in favor of siting the HLW repository. He stated that EEI is disappointed that the National Association of Regulatory Utility Commissioners (NARUC) and the U.S. Council of Energy Awareness (USCEA) decided to take a seat on the second tier of the committee. He concluded by saying that, although EEI has serious concerns with this regulatory negotiation, it is committed to participating fully and in good faith.

Walter Perry, Assistant Attorney General, introduced himself as Oregon's representative. He stated that he was concerned about the coalition status of his state. He requested that NRC reconsider the participation structure it established pursuant to its August 5th notice, and that all three states which are part

of the same coalition as Oregon be granted independent status in these negotiations.

Michael Later, Attorney, and Bim Oliver, Utah Nuclear Waste Office, introduced themselves as the spokesperson and alternate for the State of Utah. They stated that Utah shared the concerns that had been raised by the representatives from other states placed in coalitions. They noted that the first round site in Utah was on the threshold of candidate site status. He concluded that the State of Utah should, therefore, have an independent seat in these negotiations.

John Green, Director of the Department of Energy and Transportation, introduced himself and the members of Mississippi's negotiating team including Lisa Spruill, Assistant Attorney General, and Don Christy, Nuclear Waste Office. He stated that Mississippi is optimistic about the prospects for a productive outcome to these negotiations even if a full consensus cannot be achieved. He noted that Mississippi met all of the NRC's criteria for an interested party to this rulemaking and requested that it be granted independent rather than coalition status along with all five of the states which have nominated sites. He stated his concern that DOE had previously failed to forward NWPA funding to his state in a timely fashion and that this may adversely affect Mississippi's participation in this process.

Jerome Saltzman, Director of the Policy and Outreach Division, Office of Civilian Radioactive Waste Management, U.S. Department of Energy (DOE), introduced himself as DOE's spokesperson. Stan Echols, Office of the General Counsel, introduced himself as DOE's alternate. Mr. Saltzman stated that DOE is optimistic that a consensus can be achieved on many, if not all of the important issues, but he cautioned the committee to be realistic about the capabilities of the LSS. He concluded by expressing his hope that this negotiated rulemaking may improve and strengthen the relationships between DOE and the parties who have had concerns about the repository program.

Melinda Kassen, Staff Attorney with the Environmental Defense Fund, and Brooks Yeager, Washington Representative of the Sierra Club, introduced themselves as members of the environmental coalition. They noted that a third member of their coalition, David Ortman of the Friends of the Earth's Northwest field office, was unable to attend the meeting and that his non-presence was an indication of one of their principal concerns-- participation funding. They stated their support of the conclusion reached in the convenor's report that the committee would be unbalanced without the participation of national environmental groups. They also objected to the characterization of their position on HLW siting issues as being anti-repository. They felt that such a characterization was both unfair and not particularly relevant to these negotiations.

Attorney, Alice Hector, introduced herself as the spokesperson for the Texas Nuclear Waste Task Force which includes number of local citizen and commodity interest groups potentially affected by the first round repository. She introduced Don Hancock who will be serving as her alternate. She indicated that she was participating from a position of cautious skepticism and was concerned that meeting the three year licensing timeframe not be the primary motivating factor to this rulemaking. Rather, it should be improvements in the quality of discovery. She also noted that it will be impossible for this group to anticipate the technological advances which may occur between now and the initiation of the HLW licensing process and that the group should therefore develop an approach which places a premium on flexibility. Finally, she indicated that she shares the same concerns that the environmental coalition has with respect to funding. She stated that the organizations that she represents will be unable to participate without some form of assistance from NRC or some other entity.

Attorney, Dean Tousley, introduced himself as the spokesperson for the Yakima Indian Nation. Nancy Hobbes will serve as his alternate. He stated that the Yakima's take their

participation very seriously. They have had a problem with obtaining information about repository issues since the program came into existence over four years ago. However, they are optimistic that the proposed LSS can help to alleviate these problems and are interested in establishing the system as soon as possible. One of their primary concerns will be who should administer this system.

Attorney, Dan Hester, introduced himself as the spokesperson for the Confederated Tribes of the Umatilla Reservation. He stated that the Umatilla Tribe is committed to participating in a good faith effort to resolve LSS issues. He expressed some frustration with prior efforts to gain access to DOE information and stated that one of the Umatilla's primary concerns in this rulemaking is that all parties be given full access to all relevant information. Secondly, the Umatilla Tribe is concerned about the security of culturally sensitive information which might be placed into the LSS. And thirdly, he suggested that with all the possible legislative changes which may be occurring, the Committee should develop ways to bring other parties into the negotiations.

Ron Halfmoon, Program Manager of the Nez Perce Nuclear Waste Program, and Kevin Gover, Special Counsel to the Nez Perce Nuclear Waste Program, introduced themselves as the spokesperson and alternate for the Nez Perce Tribe and stated that they did not wish to make an opening statement at this time.

Fred Haag, from the New York State Power Commission, introduced himself as a representative of the National Association of Regulatory Utility Commissioners (NARUC). He described NARUC as an organization which represents the interests of utility ratepayer who fund all of the costs of the repository program. He distributed a written statement from NARUC and indicated that its primary concern is that the public obtain full value for every dollar spent on this program. He indicated that NARUC had not taken a formal position on the LSS but had previously raised concerns about the need to reduce the number of

documents which would be handled in the HLW licensing proceeding. In particular, NARUC is concerned with the time it will take to put each the estimated 16 million documents into the system could itself be astronomical. As stated in their prior comments, NARUC feels NRC should consider a multi-step licensing process. Mr. Haag indicated that NARUC will be unable to participate as a first tier participant and that this was regrettable because ratepayers would not be adequately represented as a result. He asked the Committee to permit NARUC to reserve the right to participate fully as a first tier member at a later date.

Robert Holden, from the the National Congress of American Indians (NCAI), introduced himself as NCAI's representative. He described NCAI as representing the interests of tribes affected by the siting of the second round repository and by the transportation of nuclear wastes for purposes of this negotiated rulemaking. He indicated that NCAI will ensure that long standing treaty documents be recognized as relevant to this proceeding and the licensing process itself. He noted that second round tribes had previously been afforded inequitable treatment by the DOE viz a viz the states. NCAI remained concerned that similar mistreatment not occur in the participation structure for this negotiated rulemaking. Finally, he indicated his support for the concerns raised by the representative of the Umatilla Tribe about culturally sensitive information, particularly information on indian burial sites, in that reburial may be culturally unacceptable for many tribes.

Cheryl Runyon, from the National Conference of State Legislatures (NCSL), introduced herself as NCSL's representative on the second tier of the Committee. She described her role as a scrivener to the various state legislatures which are affected and potentially affected by HLW siting and transportation issues in general and LSS issues in particular.

PARTICIPATION AND FUNDING ISSUES

After all of the members of the committee introduced themselves, Mr. Bellman explained how the issues raised in the opening statements would be addressed. First, he noted that procedural issues (e.g., the nature of consensus and the need for tentative agreements before a final agreement and issues related to adding members to the committee) will be addressed in the discussion of organizational protocols. Second, all of the substantive issues will be addressed in the negotiations themselves, including the development of an issues list as part of the agenda for this first meeting. Finally, Mr. Bellman suggested that the concerns raised regarding the use of coalitions and the need for participant funding be addressed with those parties individually, rather than the full committee.

Regarding the participation structure of the committee, Mr. Bellman acknowledged that some of the coalitions were imposed, whereas others were formed at the suggestion of various parties. Neither he nor the NRC has ever assumed that establishing these coalitions could be done easily or automatically. He explained, however, that he was attempting to respond to some very practical concerns regarding the manageability of this effort. Furthermore, he acknowledged that coalescing itself can be considered to be a compromise for many parties with both negative and positive connotations.

A committee member from Wisconsin asked how the final decision on these coalitions will be made. Mr. Bellman responded that he preferred that the decision be based on its acceptability rather than its authority. He indicated his desire to talk privately with those who have raised concerns about their coalition status in order to further explore those concerns.

In further discussions the difference between coalitions established solely for the purpose of this rulemaking and membership organizations such as EEI, the Sierra Club and NCAI was noted. Mr. Bellman explained that he was attempting to limit

the number of parties at the table and that in doing so, he was not only concerned about manageability, but also responding to concerns that had been raised over equal treatment between states and tribes. He explained that an individual committee member within a coalition, be they a spokesperson or an alternate, should not feel inhibited about participating in committee discussions. It was always intended that all members of each "team" be permitted to speak and make their opinions known.

A representative for EEI noted that this approach seemed to be much more informal than what seemed to be called for in the suggested protocols.

Representatives of the States of Mississippi, Utah and Oregon agreed to meet with Mr. Bellman to discuss their concerns in more detail.

With respect to the issue of "FACA balance," Mr. Bellman noted that EEI had received a formal response from NRC. He suggested that all of the participants need to be constantly aware of the limitations of this effort and that there are many reasons why these negotiations might fail, some which he had already catalogued in his convenor report to the NRC. He urged the committee to keep their concerns focused on issues related to LSS development and noted that if the committee was unable to discipline itself in this fashion, there is little chance of achieving consensus on the substantive.

PRELIMINARY PUBLIC COMMENTS

The facilitator then provided an opportunity for members of the public to comment, particularly anyone who thought they should be a member of the committee.

Steven Bradhurst, from Nye County, Nevada, introduced himself and questioned why there were no other local government entities invited other than Texas local governments. Mr. Bellman responded by describing the process that was used to conduct the convening phase feasibility assessment whereby he and the members

of his team relied very heavily on leads provided by the people they talked to. In the case of local governments, they questioned state government officials about the need to contact local governments and proceeded accordingly. Mr. Bellman suggested that if Nye County feels that it should be a party to these negotiations, it should make this known. Furthermore, he noted that the committee itself will be addressing issues related to how additional parties may be permitted to join the committee as part of its organizational protocols.

Mr. Bradhust stated that he was not surprised that Nevada state officials had not suggested contacting local governments. He explained that he had been in contact with local government representatives from other areas affected by nuclear waste siting issues, such as the Mid-Columbia Consortium and local governments in Tennessee, and that he would like these entities to be invited to participate as first tier participants along with Nye County.

With no other members of the public wishing to comment, the committee decided to break for lunch.

ORGANIZATIONAL PROTOCOLS

Upon returning from lunch, the committee began its discussion of the organizational protocols. The facilitator explained that the "Suggested Protocols" which had been mailed to the committee members in advance of the meeting were only intended to serve as the basis for discussion rather than any predetermined outcome. He noted that many of the items were based on protocols that had been used in other regulatory negotiation efforts. Other items were included at the suggestion of committee members. He emphasized that as the facilitator, he did not consider all of the items listed as being essential to the success of the process. The committee should feel free to remove items or to add items if it felt it was appropriate. Finally, Mr. Bellman suggested that the committee begin with the definition of consensus (Section II.A. of the "Suggested

Protocols") and come back to the question of a mission statement (Section I.A. of the "Suggested Protocols").

(The following section of these minutes is an attempt to highlight the important elements of the committee's discussion of each item in the suggested protocols. The language changes, deletions and additions to the organizational protocols tentatively agreed upon by the committee at its first meeting are appended hereto as Attachment 3 - "Revised Draft Protocols." The tentative agreements which are incorporated in this attachment will be discussed further at the next working meeting of the committee.)

The Definition of Consensus

The facilitator explained that this section of the protocols (see Section II.A. of the "Suggested Protocols" and Section I.A. of the "Revised Draft Protocols" - Attachment 3) proposes that the committee operate by consensus and the definition for consensus be "no dissent by any member." It was clarified that "no dissent" is not a unanimity rule whereby every member must affirmatively indicate their assent. Thus, the proposed definition does not require voting but gives each member veto power. This power must, however, be exercised in order to block consensus.

As described further by the facilitator, when an item is proposed for consensus there are three possible responses: 1) assent; 2) dissent; and 3) silence. In exercising the right to dissent, the facilitator explained, it will be incumbent upon the dissenting member to indicate the reasons why it has dissented in order for the other members of the committee to respond.

E EI representatives indicated concern with the sheer number of parties with veto rights and suggested something approaching "block consensus." This would require organizing all first tier participants into "voting blocks" or subgroupings, where each subgroup would have veto power but the subgroup itself may operate by something less than consensus (e.g., majority rule).

It was further explained that these voting blocks could be organized according to each parties' prior position on repository siting issues.

Several committee members suggested that it would be unwise to make any kind of assumptions about the alignment of any other parties' interests on LSS issues on the basis of prior positions on siting issues.

A member from the environmental coalition suggested that the proposed definition of consensus be viewed as an approach which provides for a strong defense of minority positions (i.e., no member can be "outvoted" by the majority). It was thought that this definition should help to ameliorate any concerns about an imbalanced committee because a single dissent from any member will prevent the committee from reaching consensus.

A member of the committee from the State of Washington expressed his concern that some committee members might be satisfied to sit out the negotiations by not expressing dissent (i.e., remaining silent on items proposed for consensus) and then "sand bagging" the process by stating their dissent at the very end. In particular, he felt that that silence should not be the functional equivalent of consent and suggested that the committee use a unanimity rule, where all members had to affirmatively indicate whether they agreed or disagreed with an item proposed for consensus. It was further suggested that this approach need not be taken on all items proposed for consensus, but only those which were major items of critical importance to the progress of the negotiations.

A committee member from the State of Nevada disagreed with this suggestion and argued that there is and will be an important need for some parties to remain silent on some issues. This member felt that the negotiations will not be successful if every member has to clearly indicate whether they agree or disagree with major items proposed for consensus. According to this member silent assent will serve as a form of protection for some members, and a means for this committee to make progress towards

completing its goals.

The spokesperson for the NRC stated that NRC will need an accurate record of the committee's discussions and, in particular, that the "votes" of the committee or at least the reasons for dissent should be recorded. It was suggested that the need for an accurate record be discussed in relation to the section of the protocols that addresses minutes of committee meetings.

A member of the environmental coalition expressed a concern that absent committee members will not be able to express their views on an item proposed for consensus. The Utah delegation shared this concern and indicated that their understanding of the proposed definition of no dissent, combined with the use of coalitions, would empower coalition members to act on behalf of other coalition members. In the case of sovereign states, this member felt that this will simply not be possible.

The EEI representative described the process for consensus decisionmaking used by EEI's membership as being a "sense of the group." He did not suggest this kind of style or approach be used in this committee but questioned the facilitator as to how the no dissent rule would be put into operation. The facilitator responded by saying that when an item is proposed for consensus, by either the facilitator or a member of the committee, the facilitator would ask if there is any dissent. At that point there would not be any voting, nor would it be as informal as "a sense of the group." Rather, the facilitator would look around the room to see if any member is indicating dissent. Silence would be taken as an indication that there is not dissent. Thus, this definition implies a certain responsibility for each member to speak up if they would like exercise their right to dissent.

In the case of coalitions, the facilitator indicated that he would rely on the good faith and professionalism of the coalition spokesperson to represent, as faithfully as possible, the positions of other coalition members. If a coalition spokesperson was unsure of the position of other coalition

members, they should state this in the form of a tentative dissent until the views of the absent member could be determined.

A member of the committee from Wisconsin suggested a three staged process of consensus decisionmaking to address some of the concerns. The first stage would include tentative "working" agreements. The second stage would allow for committee members to consult with their constituents and/or the members of their coalition who were absent to obtain their views on the proposed consensus. The third stage would include revisions to or a confirmation of the tentative consensus reached at a previous meeting or meetings. Included in this third stage would be a clear and adequate notice to all members of the committee as to what items will be addressed and presented for consensus at upcoming committee meetings.

The facilitator elaborated on another suggestion from Wisconsin describing an approach whereby even the third stage of consensus decisionmaking described above could be of a tentative nature in that the committee could set forth in its protocols something to the effect that "nothing is agreed upon until everything is agreed upon." Using this approach, all tentative agreements would be brought together at the end of the process and be put to the committee for a final consensus. The facilitator stressed the importance of clear agreements, however, even if they are of a tentative nature, to avoid the problem of having to renegotiate every agreement at the end of the process. Committee members generally responded positively to this approach.

A committee member from EEI asked whether the no dissent rule would apply to the members of its organization in the same way that it would apply to the members of coalitions within these negotiations and suggested that it should. Another discussion then ensued about the difference between EEI and other membership organizations (e.g., the Sierra Club and the NCAI) who are parties to this negotiation, and members of coalitions established for the purposes of this negotiation. Several

committee members stated that these two types of entities are not analogous and the internal arrangements for decisionmaking in membership organizations was not an appropriate subject for the organizational protocols of this regulatory negotiation. The facilitator noted that the committee is operating on the assumption that the participating organizations as well as the individuals who are participating as members, have what might be called representative capacity with respect to their constituents.

The spokesperson for the NRC stated that it was not NRC expectation that agreements made by the individuals who represent membership organizations would bind the members of their organization, as opposed to the organization itself, any more than agreements made by state representatives would bind the citizens of that state. Other committee members acknowledged that they all have a similar problem and that care must be taken to allow for sufficient time for the members of the committee to check back with their constituents.

The facilitator then recapped the discussion by stating that the three stages of consensus decisionmaking will be made explicit in the minutes and, if necessary in other sections of the protocols, including the approach that nothing is agreed upon until everything is agreed upon. He then asked if there was any dissent from the language proposed in Section II.A. of the "Suggested Protocols." The committee then (tentatively) agreed to the following:

- o To keep the language for the definition of consensus as it is in the "Suggested Protocols," with the addition of one sentence which deals with the tentative nature of agreements (see Section I.A. of "Revised Draft Protocols" - Attachment 3).
- o To add the phrase "adequate notice" to the section of the protocols pertaining to scheduling (see Section VII.A. of

Attachment 3).

The Use of Work Groups

Section II.B. of the "Suggested Protocols" addresses the use of work groups and subcommittees. In response to a question posed by a member of the committee as to what these work groups and subcommittees will be used for, the facilitator explained that this section was not meant to imply that work groups and subcommittees would in fact be used.

One member asked why it was necessary to include the sentence about work groups operating by consensus. It was explained that the intent was to encourage members to express their true intentions at work group meetings and to commit themselves, albeit in a tentative fashion, so that proposals could be made to the full committee without having the members of the subcommittee or work group which is presenting the proposal reverse themselves in the full committee meeting. The committee then agreed to strike this sentence but to abide by its intent.

Several committee members expressed concerns about subcommittee meetings not being scheduled simultaneously, as is sometimes done by the DOE. It was agreed that this should be avoided.

A representative from DOE asked whether there will be a formal record kept of subcommittee meetings and suggested that there might be some merit to having closed subcommittee meetings. The NRC spokesperson noted that the language in the suggested protocols which stated "work groups are not authorized to make decisions for the committee as a whole" meant that the FOIA requirement for a notice and record could be avoided. He also stated that NRC does not wish to have any of the subcommittee, work group, or full committee meetings associated with this process be closed meetings. He noted that this is not only a problem for the NRC, but is very likely a problem for some state representatives as well. The committee tentatively agreed that all subcommittee and work group meetings, as well as full

committee meetings, will be open public meetings.

Meeting Agendas, Committee Dissolution, and the Use of Caucuses

These three subjects were included in the "Decision Making" section of the protocols (see Sections II.C.-F. of the "suggested Protocols and Sections I.C.-E. of the "Revised Draft Protocols"). The committee agreed to leave the language regarding preparation of meeting agendas intact and made slight changes to the wording for committee dissolution and the use of caucuses (these changes are reflected in Attachment 3).

The committee agreed that either the committee itself or the NRC shall have the discretion to dissolve the committee.

With respect to the use of caucuses, it was clarified that any member of the committee, which includes alternates as well as spokespersons can request the facilitator call a caucus for the purpose of internal, private consultation with whomever the member chooses. A question was raised whether a caucus could at some point be legally construed as a committee meeting and thereby be subject to the open meeting requirement. It was generally agreed that caucuses are not likely to include a large number of members. It was also agreed that the committee member requesting a caucus should specify the estimated length of time for the caucus as a courtesy to the other committee members.

Participation

The next section of the protocols addressed issues related to participation structure of the advisory committee (see Section III of the "Suggested Protocols" and Section II of the "Revised Draft Protocols" - Attachment 3).

Subsection A of this section of the protocols establishes a three tiered structure of participation for this advisory committee including the advisory committee itself as the first tier, entities who will participate in committee discussion but not in consensus as the second tier, and the members of the

general public as the third tier. The wording for this section was approved by the committee without any changes.

The wording of Subsection B was changed by the committee to specify that first tier participants should identify a spokesperson and alternates, rather than a single alternate. The committee agreed to strike Subsection D because it was redundant and to make the language of other subsections consistent with Subsection A respecting spokespersons and alternates. It was also clarified that spokespersons will serve as the official member of the committee for the purpose of determining consensus, but spokespersons and alternates can both participate in committee discussions.

Adding New Members

The subject of adding new members to the committee, which is part of the participation section of the protocols received considerable attention (see Section III.F. of the "Suggested Protocols" and Section II.E. of the "Revised Draft Protocols").

It was asked of NRC what the term "within the confines of the FACA charter" meant with respect to approving requests for membership. NRC representatives responded that this term was probably intended to mean that any parties which request membership must be aware that the committee was established pursuant to the Federal Advisory Committee Act and that they therefore must agree to abide by these requirements if their request for membership is to be deemed acceptable.

Several members expressed concern about having a request for new membership be decided by consensus. The principal concern was that this approach could mean that one member of the committee could effectively block a request for membership. Several suggestions were made to address this issue including, NRC deciding on its own and/or the committee deciding on the basis of a majority vote rather than consensus. In responding to the first alternative, NRC representatives stated that they may have a problem with that approach because it could require the

agency to go through a time consuming formal Federal Register notice and internal approval process.

Another concern centered on the need for conditional approvals of requests for participation. One committee member suggested that parties requesting membership should be required to accept the committee's protocols and whatever else the committee may have been agreed upon at the time of the request.

The spokesperson for the NRC referred the committee to the language in the Federal Register which states that the "NRC believes the Committee is adequate and will evaluate new requests (as they are submitted)." In elaborating upon this statement, the NRC spokesperson explained that NRC did not foresee creating a new seat or whole new interest groups in response to requests for participation that are made after this first organizational meeting. Rather, the NRC envisioned that requesting parties would be asked to join existing coalitions or to join with existing parties to form new coalitions.

In responding to this, the Wisconsin representative reminded the committee that the committee had not yet acted upon or endorsed the use of coalitions. This led to another discussion of how and why the coalitions were established. In explaining the rationale behind the creation of the coalitions, the facilitator noted that there are four coalitions including:

- 1) the "environmental coalition" consisting of the Sierra Club, Environmental Defense Fund and Friends of the Earth;
- 2) Minnesota and Wisconsin representing second round states;
- 3) Utah, Mississippi and Oregon representing states (other than Washington, Texas and Nevada) affected by the siting of the first round repository; and
- 4) Texas state and local governments.

The facilitator also noted that the committee includes two membership organizations which are participating as independent parties in the first tier--EEI and NCAI. He explained that the overall structure of participation was certainly not without faults and logical inconsistencies, but it represents an attempted balance between the need to ensure manageability and the need to be sensitive to factors such as the equitable treatment of states and tribes. He further elaborated on this by stating that manageability had as much to do with the possibility of a geometric increase in the numbers of parties who might request membership, as it did with the actual numbers of individuals, including spokespersons and alternates, who will participate in committee meetings under the current structure.

The spokesperson for Wisconsin suggested that if the NRC was concerned about equivalent treatment between states and tribes, coalitions of states such as Wisconsin and Minnesota were not analogous or equivalent to NCAI. The facilitator acknowledged this and explained that the convening team had approached various "umbrella" and "membership" organizations, such as the National Governors' Association and the National Conference of State Legislatures (NCSL), who might play the same role as NCAI, but they were not willing or able to do so. The coalition approach was seen as the next best approach.

The Wisconsin representatives responded by suggesting that the symbolic importance of sovereignty and independent status may be as important as equivalent treatment between states and tribes. Furthermore, he expressed his frustration that the problem of equivalent treatment had been created by DOE's handling of second round tribes. He felt that it was unfortunate that this had carried over to this negotiation and expressed his concern that this not jeopardize the participation of states which have been forced into coalitions.

NRC representatives acknowledged that there is still a problem that must be addressed concerning the acceptability of

the coalitions. They suggested that this problem be addressed separately with those parties rather than in the full committee.

The representative of Texas local governments expressed his opinion that there is a balance between each party's desire for independent participation status and the recognition of sovereignty versus each party's desire to reach an agreement. He suggested that it may be necessary for one desire to be subordinated to the other and asked the other committee members whether the status questions were more important than making the process work.

The spokesperson for EEI suggested that all coalitions be dissolved and all parties that were part of a coalition be named as independent first tier participants.

The facilitator stated that the regulatory negotiation process has virtue mainly because of its voluntary nature. It will work only if the parties want it to work. If the parties do not want it to work they will find any number of reasons for it not to work and this will become a self-fulfilling prophesy.

It being the end of the day, the facilitator suggested that the committee adjourn. It was noted that the committee had not yet resolved Section III.F. of the "Suggested Protocols." It was clarified that the resolution of this ground rule is a separate issue from the coalition issue. That is, regardless of how the coalition issue is resolved, the parties who have been named as members of coalitions would not necessarily have to re-petition the NRC or the committee to become a member.

DAY TWO - September 17, 1987

Caucus Report on Coalition Status

Having met with the facilitator and the NRC and together in a caucus prior to the start of the full committee session, the spokespersons and alternates from the States of Mississippi, Utah and Oregon presented suggested language changes to Section III.C.

of the "Suggested protocols" to address their concerns regarding coalition status. The committee agreed to make these changes and come back to the issue of coalitions after each party had a chance to consult with its constituency (see Section II.C. of "Revised Draft Protocols" - Attachment 3).

Adding New Members

The committee focused again on the question of how new members should be added to the committee. The discussion centered on three issues:

- o the need to condition the approval of participation requests on acceptance of the protocols and whatever else the committee may have agreed upon at the time of the request;
- o the need to avoid one member being able to veto a request for participation; and
- o the need to have an alternative to relying completely on either the committee or the NRC to approve such a request.

After a brief discussion, the committee agreed to language changes which resulted in participation requests being approved by a two-thirds vote of all committee members present or through appointment by the NRC. In addition, the language allowed for conditions to be placed on the approval (see Section II.E. of "Revised Draft Protocols" - Attachment 3).

Section III.G. was revised slightly to allow members to invite specialists to participate in work groups as well as full group meetings (see Section II.F. of the "Revised Draft Protocols").

Committee Meetings

The next section of the protocols covers issues related to committee meetings (see Section IV of the "Suggested Protocols" and Section III of the "revised Draft Protocols - Attachment 3). The committee agreed to keep the language in Subsection A intact and to strike Subsections B and D entirely.

Minutes

In discussing Subsection C of this section of the protocols, which addresses the use of minutes, DOE suggested that the committee keep a verbatim record of its meetings and questioned why the NRC did not wish to develop transcripts of committee meetings. NRC representatives responded that transcribing recordings of these meetings would be possible if the committee decided that it was necessary. Representatives from the State of Nevada indicated they were opposed to tape recordings. The facilitator added that a stenographer or tape recorder might have a chilling effect on the discussions.

An environmental coalition member suggested that a possible compromise might be to have the meetings recorded but to develop written transcripts only when requested by the committee.

The NRC stated that it was sufficient for them that minutes be kept and the meetings remain open to the public. The NRC spokesperson used the analogy to contracts law where the indicia of whether and what agreements were reached will be the text of the contract, or in this case the proposed rule.

The Wisconsin representative suggested that tape recording encourages posturing and, when transcribing tapes, it is very difficult to determine who said what. He thought that such an approach was more appropriate to a legal proceeding than a negotiation. Several members stated that the minutes should be the primary vehicle to reflect the full breadth and variety of opinions expressed at committee meetings and that these minutes should meet with the approval of the full committee before they

become "final."

The DOE representatives withdrew their suggestion that an official transcript be kept but asked NRC to consider doing so if NRC thought it was essential. Representatives of the Nez Perce and NCAI indicated that they were in favor of recording meetings.

The committee then tentatively agreed to specific language changes reflecting their stated concerns (see Section III.B. of Attachment 3). The committee also agreed that the minutes should reflect the positions taken and opinions expressed by each party to the negotiations (i.e., the organizational entities which are represented in the membership of the committee) on the issues under discussion but need not attribute statements to specific individuals.

Agreements

The next section of the protocols covers commitments by committee members respecting the types of agreements which may be reached (see Section V of the "Suggested Protocols" and Section IV of the "Revised Draft Protocols" - Attachment 3).

In response to a question from the environmental coalition, the facilitator clarified that this whole section attempts to address the final product of the committee's efforts rather than any tentative agreements or interim products.

In discussing Subsection A, EEI noted that requiring signatures on a final written statement negates the benefits of silent assent discussed earlier. The committee agreed to remove the requirement for signatures but maintain the goal of a written product which includes preamble and proposed rule language ready for publication in the Federal Register.

The language proposed for Subsection B establishes a commitment on the part of committee members not to comment negatively on the NRC's notice of proposed rulemaking in the event that the committee reaches a final consensus. Nevada representatives noted that the suggested approach lessens the

freedom of parties who assent by silence to dissent at a later date. The facilitator confirmed that this was the intent of this language. He explained that this ground rule is essentially a quid pro quo in that the NRC has agreed to publish whatever rule language upon which the committee agreed.

DOE agreed with this approach and suggested that the language be strengthened even further to limit the ability of parties to comment negatively on a proposed rule which is based on a committee consensus.

NRC stated that it is not concerned about litigation on this rule because it has an extremely high rate of success in defending procedural rules such as this one. NRC also noted that it intends to proceed with the development of a rule even if there are one or two holdouts. In such an event, the rule will attempt to reflect as much of a consensus as is possible. However, a rule that is based on a true consensus is imminently more beneficial to NRC than something short of this. Furthermore, the NRC stated that it had no objection to minor comments being made on a notice of proposed rulemaking that is based on an ostensible committee consensus, but will not look kindly upon a party to these negotiations making strong negative comments on the consensus-based rule if that party had not previously made their positions known in the negotiations.

The committee agreed to language changes which reflected its intent to limit the ability of committee members to comment negatively on consensus-based rule language (see Section IV.B. of Attachment 3). Also, the NRC agreed that it will inform the members whether the committee had addressed all issues that would be included in the proposed rule before the committee reaches any final agreements.

The committee also agreed to language changes to Subsection C which, in the event of less than a final consensus on all issues, would require the NRC to publish any rule language that had been agreed upon, but allow committee members to comment negatively on those aspects of such a proposed rule that are not

based on a final consensus (see Section IV.C. of Attachment 3).

Remaining Protocols

The committee went very quickly through the remaining sections of the "Suggested Protocols" striking many subsections which it agreed were unnecessary (see Sections V, VI and VII of the "Revised Draft Protocols" - Attachment 3).

The facilitator asked whether the committee would like to include something about opportunities for public comment. The committee expressed some concern about oral public comments taking up a significant amount of time. The NRC noted that it is legally obligated to provide members of the public an opportunity to file written comments on committee proceedings. It was agreed that the committee would provide brief opportunities for public comment at the end of meetings, or at other appropriate times, whenever the committee decided it could afford to do so (see Section III.A. of Attachment 3).

Mission Statement

In returning to Section I of the "Suggested Protocols," the committee decided it did not wish to include a mission statement in the protocols and directed the facilitator to strike this section from the draft.

DEVELOPMENT OF AN ISSUES LIST

After a break for lunch the committee began its discussion of substantive issues with the goal of developing a preliminary issues list. Matthew A. Low, a member of the facilitation team, distributed a document entitled "LSS - Framework for Negotiations." This document became the focus of the committee's discussion which is summarized below. (The document distributed at the meeting has been revised to reflect the changes and additions tentatively agreed upon by the committee. This revised version is attached hereto as Attachment 4 -- "Revised Issues

List and Framework for Negotiations.")

In presenting the document, Mr. Low explained that the listed issues had been identified through interviews with the parties during the convening phase and through review of NRC documents. The issues were organized into the following four categories:

- o LSS Threshold Issues;
- o LSS Document Entry and Use;
- o LSS Administration, Oversight and Security; and
- o LSS Design Parameters

Mr. Low further explained that the first category -- LSS Threshold Issues -- was intended to include those issues which must be addressed before the committee could get to the more detailed issues listed in the other three categories. He explained that these "threshold" issues were likely to be the subject of important discussions and agreements among the members of the committee, but they may or may not result in actual rule language. Whereas, the remaining three categories of issues will likely result in agreements that are translated into rule language. Mr. Low then went through the list, briefly describing the meaning of each item.

At the conclusion of Mr. Low's presentation, a Nevada representative asked whether the term "threshold issues" was meant to include all "make or break issues." If so, he suggested that the issue of who should administer the LSS be included in this category.

DOE responded that they recognized the importance of this issue but they asked the committee to hold their judgments in abeyance, for the time being, in order to give the committee a chance to address the issues in a logical sequence. In

particular, they suggested that the committee must first agree on the objectives and parameters of the system before it can agree on who should administer the system. They also expressed their hope that the perceptions of committee members will change during the course of these negotiations.

Wisconsin's representative agreed that the issue of LSS administration is a highly sensitive issue which might be better resolved after such issues as the timing of document entry are resolved.

Nevada representatives suggested that the issue of LSS administration could in large part be resolved right now. They asked DOE representatives whether they had been empowered by the Secretary to negotiate on all issues and whether DOE had any pre-established position on who should administer the LSS.

DOE responded that, from their perspective, all issues are negotiable, that no position paper exists within the agency and they were not locked into any position on any issue. They asked the Nevada representatives whether they were asking them to lock into a position at this early stage of the negotiations.

Nevada representatives responded that if the DOE is saying that it will run the system and we are all here to negotiate how the system should be designed, this was unacceptable. DOE responded that they were not saying this, nor is DOE placing any other conditions on its participation. Nevada indicated their acceptance of this response.

An environmental coalition representative stated their concern that the committee not put the issue of LSS administration on the back burner if events at DOE may overrun the committee's efforts. The issue of how this rulemaking and DOE's current LSS activities relate to one another was seen as very important (see Issue A-3 in Attachment 4).

The NRC stated that, from their perspective, it is absolutely essential that the issues be addressed sequentially. The example used was that if the committee agreed that the LSS

should take the place of or be part of the docket for the licensing process, NRC will not let the administration of the docket out of their control.

Wisconsin suggested that, although both NRC and DOE have stated that everything is negotiable, it would be very helpful for both agencies to make a brief presentation to the committee on the status of ongoing LSS activities and any initial positions they might have regarding the key "threshold" issues. Other committee members indicated their support for this suggestion.

DOE responded that there is nothing in their current LSS procurement that would preclude their system from meeting the requirements or guidelines which might be imposed through this rulemaking. Furthermore, they restated their position that DOE will abide by the results of this rulemaking in designing its licensing support information management system.

The committee requested that information on current LSS activities at DOE and NRC be included in the upcoming technical training. DOE responded that it may not be possible to provide the committee with all of the details of its current procurement because final decisions had not yet been made. DOE did indicate, however, that it would very much like to make an extensive presentation to the committee at its November meeting.

Turning its attention back to the issues list, the committee agreed to change the title given to the first set of issues from "threshold" issues to "preliminary" issues. The committee then went through each section of the document adding issues to each section as they went along. These changes are reflected in Attachment 4.

TRAINING NEEDS

In anticipation of its next meeting, the committee discussed its information and training needs. The facilitator explained that three separate training sessions were scheduled, including negotiations training, legal training and technical training.

The objective of the technical training, in particular, is to give committee members an understanding of the fundamentals. It will be geared toward educating laypeople and to helping committee members know enough to be able to ask the right questions. The facilitator then asked the committee what, in particular, they would like to see addressed in the training sessions.

With respect to the technical training, the committee requested that it include information on:

- o What has been the experience with systems designed to handle large volumes of documents? Describe examples such as:
 - the Securities and Exchange system;
 - the patent trademark system;
 - the Juris system; and
 - the system set up to handle the asbestos litigation.

- o Where does the current technology stand, what is the "cutting edge" of technological capability in this area, what can be done and at what cost?

- o What are the factors that must be considered in assessing feasibility?

With respect to the legal training one member asked that it include information on NRC's and DOE's concept of proprietary information. No specific requests were made for what should be included in the negotiation training, although committee members did ask what would likely be included in this training session. The facilitator briefly described the purpose and approach to be used in this training session.

SCHEDULING FUTURE MEETINGS

The committee scheduled dates for its meetings through the month of May, 1988. The dates and general locations of these meetings are as follows:

October 15-16, Washington, D.C.*

November 19-20, Denver, CO

December 14-15, Washington, D.C.

January 25-26, Denver, CO

February 11-12, Washington, D.C.

March 23-24, Denver, CO

April 18-19, Washington, D.C.

May 18-19, Washington, D.C.

The meetings to be held in Washington D.C. will usually be held at the offices of The Conservation Foundation located at 1250 Twenty-Fourth Street, N.W., Suite 500, Washington, D.C. Arrangements for a meeting space for the Denver meetings will be made by the facilitator. Confirmation of meeting space arrangements for all meetings will be provided to the members of the committee prior to each meeting and to the general public through the Federal Register.

* The committee set aside three possible days for this meeting/training session. It has now been confirmed that October 15-16 will be the date for this meeting/training session. It will be held at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, VA.

PUBLIC COMMENT

Before ending the meeting, the facilitator asked if there were any members of the public who would like to comment on the committee's proceedings.

Steven Bradhurst, representing Nye County, Nevada, stated that he had been in contact with representatives of several other local governments affected by the siting of the first round repository and the MRS facility. He stressed the significance of local government's interest in the siting issue and in the issues to be addressed in this rulemaking. He recommended that the committee invite all affected local governments to participate in this process, and to set aside one seat that could be shared by these local governments.

Mr. Bradhurst was asked by a representative of the environmental coalition whether Nye County would be willing to participate as a member of a coalition with the State of Nevada, in the same way that Texas local governments are participating in a coalition with the State of Texas. Mr. Bradhurst responded that he had no problem with the individuals who are representing the State of Nevada but, due to recent actions recently taken by the Nevada state legislature, he did not feel that Nevada local government interests would be best served through such an arrangement.

Mr. Bradhurst was then asked whether Nye County had responded to the NRC's Federal Register notices. He stated that it had not and that the county did not make a practice of reading the Federal Register. He added that, to his knowledge, the county had not been informed of this process by either the NRC, the DOE, the state or by the convenor/facilitator.

Mr. Bradhurst was asked whether participating in the second tier would be sufficient and he indicated that it would not.

A representative from EEI asked Mr. Bradhurst whether he was making a formal request of the committee and, if so, to state

precisely what was being requested. Mr. Bradhurst responded that he is requesting that Nye County be given a seat on the first tier of participation, and that other affected local governments be invited to share this seat as a coalition of local governments.

The spokesperson for the NRC stated that NRC has always welcomed local government participation in this process. He stated that he did not want to decide on this request now and asked Mr. Bradhurst to state his request for participation in writing, as a formal representative of Nye County, rather than as a verbal recommendation that the committee invite the participation of the entities he described. Other members agreed that this request should be made in writing and that the committee should handle it in the manner agreed upon in the protocols.

The representative of Texas local non-governmental groups asked whether it might be necessary to provide a special notice to these affected local governments. NRC responded that it will find out what, if any, notification had already been sent to these entities. The committee agreed not to respond to this request until it had been received in writing. Mr. Bellman, suggested that Mr. Bradhurst address the letter to him, in his role as chairman of the committee, and send a copy to the NRC.

With no other members of the public wishing to make a comment, the meeting was adjourned.

ATTACHMENT 1

ATTENDANCE LIST
HLW LICENSING SUPPORT SYSTEM ADVISORY COMMITTEE MEETING

September 16-17, 1987
Washington, D.C.

Committee Members and Alternates

William Olmstead
Office of the General Counsel
U.S. Nuclear Regulatory Commission

Francis X. Cameron
Office of the General Counsel
U.S. Nuclear Regulatory Commission

Robert Holden
National Congress of American Indians

Dr. Edward Smith
National Congress of American Indians

Ronald T. Halfmoon
Nuclear Waste Program
Nez Perce Tribe

Kevin Gover
Special Counsel
Nez Perce Nuclear Waste Program

Alice Hector
Attorney for the Texas Nuclear
Waste Task Force
Hector and Associates

Don Hancock
Consultant to the Texas Nuclear
Waste Task Force

Dan Hester
Attorney for the Confederated Tribes
of the Umatilla Reservation
Fredericks & Pelcyger

Renea Hicks
Assistant Attorney General
State of Texas

Phillip A. Niedzielski-Eichner
Executive Director
Waste Deposit Impact Committee
of Deaf Smith County

Terry Husseman
Director
Office of Nuclear Waste Management
State of Washington

Charles B. Roe, Jr.
Senior Assistant Attorney General
State of Washington

Melinda Kassen
Environmental Defense Fund

Brooks B. Yeager
Sierra Club

Carl A. Sinderbrand
Office of the Attorney General
State of Wisconsin

Robert Halstead
Radioactive Waste Review Board
State of Wisconsin

Steven P. Kraft
Edison Electric Institute
Utility Nuclear Waste Management Group

Nancy Montgomery
Edison Electric Institute
Utility Nuclear Waste Management Group

Jay Silberg
Attorney for EEI/UNWGM
Shaw, Pittman, Potts & Trowbridge

Harry W. Swainston
Deputy Attorney General
State of Nevada

Mal Murphy
Special Deputy Attorney General
State of Nevada

James Davenport
Special Deputy Attorney General
State of Nevada

Michael M. Later
Special Attorney
State of Utah

Bim Oliver
High-Level Nuclear Waste Office

State of Utah

Eldon Kaul
Office of the Attorney General
State of Minnesota

Walter Perry
Department of Justice
State of Oregon

Jerome Saltzman
Policy and Outreach Division
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy

Stan Echols
Office of the General Counsel
U.S. Department of Energy

John W. Green
Department of Energy and Transportation
State of Mississippi

Lisa A. Spruill
Office of the Attorney General
State of Mississippi

Don Christy
Nuclear Waste Office
State of Mississippi

Dean R. Tousley
Yakima Indian Nation
Harmon & Weiss

Fred G. Haag
National Association of Regulatory
Utility Commissioners

Michael H. Mobley
Division of Radiological Health
State of Tennessee

Cheryl Runyon
National Conference of
State Legislatures

Facilitators

Howard S. Bellman
The Conservation Foundation

Timothy J. Mealey

The Conservation Foundation

Matthew A. Low
TLI Systems

Kirk Balcom
TechLaw, Incorporated

Executive Secretary

Donnie Grimsley
Division of Rules and Records, ADM
U.S. Nuclear Regulatory Commission

ATTACHMENT 2

ATTENDANCE LIST
HLW LICENSING SUPPORT SYSTEM ADVISORY COMMITTEE MEETING

September 16-17, 1987
Washington, D.C.

Members of the General Public
and Other Agency Representatives

Phil Altomare
U.S. Nuclear Regulatory Commission

Kenneth Kalman
U.S. Nuclear Regulatory Commission

David L. Meyer
U.S. Nuclear Regulator Commission

J.P. Knight
U.S. Department of Energy

Arnie Wight
Principled Negotiation, Inc.

David Stevens
DWS Company

Alan Silver
TRW

Charles Spence
OVERSITE

Avi Bender
U.S. Nuclear Regulator Commission

Edward Regnier
U.S. Department of Energy

Barbara Cermey
U.S. Department of Energy

Bob McPherson
Weston, Inc

Besty Shelburne
U.S. Nuclear Regulator Commission

Stephen Spector
SWRI

Carol Blackston
U.S. Department of Energy

Charles Head
U.S. Department of Energy

Yoshihiro Noguchi
Chubu E.P. C.

Thomas Scarbrough
U.S. Nuclear Regulator Commission

Bernard M. Bordenick
U.S. Nuclear Regulator Commission

Nancy Still
U.S. Nuclear Regulator Commission

Steven Bradhurst
Nye County, Nevada

Delbert L. Devin
Castro, Parmer, Swisher
Counties Repository Assessment Commission

Dale Winders
Castro, Parmer, Swisher
Counties Repository Assessment Commission

Charles Smith
U.S. Department of Energy

Patricia Van Nelson
Roy F. Weston, Inc.

John Teare
Gannett Newspapers

David Prestemon
U.S. Nuclear Regulator Commission

John Hoyle
Office of the Secretary
U.S. Nuclear Regulator Commission

John Potter
Nuclear Licensing Reports

W. Richard Pierce
Science Applications International Corp.

ATTACHMENT 3

NUCLEAR REGULATORY COMMISSION
HLW LICENSING SUPPORT SYSTEM ADVISORY COMMITTEE

----- FINAL -----
Organizational Protocols

I. DECISION MAKING

A. The Committee will operate by consensus, meaning that Committee decisions can be considered to have achieved consensus only if there is no dissent by any member. Thus, no member can be outvoted. Members should not block or withhold consensus unless they have serious reservations with the approach or solution which is proposed for consensus. All consensus agreements reached during the negotiations are assumed to be tentative agreements until the committee agrees to make them final agreements.

B. Smaller work groups or subcommittees may be formed to address specific issues and to make recommendations to the full Committee. Work groups are open to any member of the Committee or his or her designee. Work groups are not authorized to make decisions for the Committee as a whole. Work group meetings may be held between the full sessions and each Committee member will be notified of all work group meetings.

C. The facilitator will be responsible for developing an agenda for all meetings of the full Committee. This agenda will be developed in consultation with the members of the Committee.

D. The Nuclear Regulatory Commission or the Advisory Committee shall have the discretion to dissolve the committee if either determines that an impasse has been reached or that the activities of the committee are not being carried out in the public interest.

E. Caucuses for the purposes of internal consultation and decision making can be requested of the facilitator at any time by any member of the committee.

II. PARTICIPATION

A. The HLW Licensing Support System regulatory negotiation process includes three tiers of participation. The first tier consists of the Advisory Committee itself and the organizations and entities (i.e., parties) who are represented in the membership of the Committee. The second tier includes parties who it is hoped will send representatives to attend committee meetings but will not participate in a final consensus. The third tier includes the general public.

B. First tier participants will identify a principal spokesperson and alternates. Spokespersons will represent such participants for purposes of determining consensus. Alternates will serve as spokespersons in the absence of the principal spokesperson.

C. Several parties will participate on the Committee as part of a coalition. Coalitions will hold a single "seat" on the Committee. Coalition members will have independent authority to speak on the merits of a proposed consensus. Members of coalitions which adopt a requirement of unanimous consent may individually express consent or dissent for the purpose of determining whether the Committee has achieved consensus.

D. Second tier participants will be encouraged to attend and participate in full Committee meetings and work group sessions. The views of second tier participants will be considered by the Committee in developing a consensus but shall not determine whether a consensus has been reached by the Committee. Second tier participants shall identify a spokesperson and alternates.

E. After the Committee has been formally established at its first organizational meeting, additional members may join the Committee by an affirmative vote of two-thirds of the Committee members present or by appointment by the NRC, under such conditions which may be established at the time.

F. Members may invite specialists to participate in full committee sessions or work groups.

III. COMMITTEE MEETINGS

A. The negotiations will be conducted under the Federal Advisory Committee Act (FACA). All meetings of the full Committee will be announced in the Federal Register prior to the meeting and will be open to the public. Work group meeting will also be open to the public. Members of the public will be permitted to file written comments on committee proceedings and brief opportunities for oral public comment will be made available at the discretion of the committee.

B. Minutes of Committee meetings will be kept by the facilitator and, after review and approval by the Committee, will be made available to the public.

IV. AGREEMENT

A. The goal of the Committee is to develop a written statement to include preamble and proposed rule language ready for publication in the Federal Register which reflects a final consensus by the Committee.

B. If the Committee reaches a final consensus on all issues which includes preamble and proposed rule language ready for publication in the Federal Register, the NRC will use this consensus language in its notice of proposed rulemaking. Unless otherwise agreed upon at the close of the negotiations, Committee

members will refrain from commenting negatively on the consensus-based language.

C. To the extent that the committee does not reach a final consensus on some or all issues, NRC will draft a notice of proposed rulemaking consistent with any final agreements that were reached. Committee members shall retain their right to comment negatively on those aspects of such a notice of proposed rulemaking that are not based on a final consensus.

VI. SAFEGUARDS FOR THE MEMBERS

A. All members must act in good faith in all aspects of these negotiations.

B. Any member may withdraw from the negotiations at any time without prejudice.

VII. SCHEDULE

A. Committee meetings will be scheduled with sufficient time and adequate notice between meetings to provide members with an opportunity to conduct work group meetings and intra-coalition negotiations, and to consult with and obtain advice, direction and instructions from their constituents/organizations to enable them to present proposals and make commitments at future Committee meetings.

B. Unless otherwise agreed upon, the negotiations will be completed by June 30, 1988.

VIII. FACILITATORS

A. Howard S. Bellman will serve as the principal neutral facilitator of these negotiations. Mr. Bellman will be assisted by Timothy J. Mealey, Matthew A. Low and Kirk Balcom.

B. The facilitators will serve at the discretion of the Committee members. They will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing draft and final minutes, and helping the parties resolve their differences and achieve a consensus on the issues to be addressed by the Committee.

C. The facilitators will provide logistical support to the Committee and be available to facilitate all full Committee and work group negotiation sessions. If requested and as resources permit, the facilitators will also be available to facilitate intra-coalition negotiation sessions and caucuses.

ATTACHMENT 4

REVISED ISSUES LIST AND FRAMEWORK FOR NEGOTIATIONS

SUBSET A: LSS PRELIMINARY ISSUES

SUBSET B: LSS DOCUMENT ENTRY AND USE

SUBSET C: LSS ADMINISTRATION, OVERSIGHT AND SECURITY

SUBSET D: LSS DESIGN PARAMETERS

A: LSS PRELIMINARY ISSUES

1. WHAT ARE THE OBJECTIVES FOR THE LSS?
2. WHAT ARE THE OBJECTIVES OF THIS RULE?
3. WHAT TYPES OF RULE CHANGES ARE NEEDED TO ACCOMMODATE THE LSS?
4. HOW DO THE NRC RULEMAKING AND CURRENT DOE LSS EFFORTS RELATE TO ONE ANOTHER?
5. WHEN WILL NRC HAVE PART 2 JURISDICTION OVER DOE?
6. WHAT ARE SOME ALTERNATIVES TO THE LSS THAT WILL ACCOMPLISH THE SAME OBJECTIVES?
7. WHAT ARE SOME ESTIMATES OF THE COSTS AND BENEFITS OF THE LSS AND ALTERNATIVES TO LSS?

B: LSS ENTRY AND USE

1. WHAT DOCUMENTS WILL BE ENTERED?
2. WHAT INFORMATION WILL BE ENTERED?
3. IS THERE A NEED TO DEFINE THE RELEVANCY OF DOCUMENTS TO BE ENTERED INTO THE LSS?
4. WHAT RULES APPLY TO DOCUMENT GENERATION?
5. WHAT RULE APPLY TO DOCUMENTS PREVIOUSLY GENERATED?
6. SHOULD HANDWRITTEN NOTES BE AVAILABLE ON THE LSS AND, IF SO, HOW?
7. WHO IS RESPONSIBLE FOR DOCUMENT ENTRY?
8. WHEN WILL DOCUMENTS BE ENTERED?
9. WHAT QA/QC PROCEDURES APPLY TO DOCUMENT ENTRY?
10. WHAT ARE THE REQUIREMENTS FOR AND WHO WILL HAVE ACCESS TO THE LSS?
11. WHEN WILL LSS BE AVAILABLE FOR ACCESS?
12. WHERE WILL LSS ACCESS TERMINALS BE LOCATED?
13. WHAT WILL ACCESS COST THE USER?
14. WHAT HAPPENS IF DOCUMENTS ARE NOT IN THE LSS?
15. WHAT HAPPENS IF LSS ENTRY PROCEDURES ARE NOT FOLLOWED?
16. IF SANCTIONS ARE IMPOSED, WHEN WILL THEY BE IMPOSED?
17. SHOULD IT BE POSSIBLE TO MODIFY DOCUMENTS IN THE LSS AND, IF SO, HOW?

C: LSS ADMINISTRATION, OVERSIGHT AND SECURITY

1. HOW AND BY WHOM SHOULD THE LSS BE ADMINISTERED?
2. HOW SHOULD COMPLIANCE WITH LSS PROCEDURES BE MONITORED AND ENFORCED?
3. WHAT MEASURES ARE NECESSARY FOR LSS SECURITY?
4. WHAT PROCEDURES/SYSTEMS CAN BE ESTABLISHED TO ENSURE LSS SECURITY DURING THE INTERIM PERIOD?
5. WHETHER AND, IF SO, HOW PROPRIETARY, PRIVILEGED AND CULTURALLY SENSITIVE INFORMATION SHOULD BE ENTERED INTO THE LSS?
6. HOW WILL DISPUTES BE RESOLVED DURING THE DEVELOPMENT OF THE LSS AND WHILE IT IS IN USE?
7. IS THERE A NEED FOR CONTINUING OVERSIGHT OF LSS ADMINISTRATION?

D: LSS DESIGN PARAMETERS

1. SHOULD SYSTEM PERFORMANCE PARAMETERS BE DEVELOPED?
2. SHOULD DOCUMENT ENTRY PARAMETERS BE SPECIFIED IN THE RULE?
3. SHOULD TYPES OF FULL TEXT SOFTWARE/HARDWARE SYSTEMS BE SELECTED?
4. CAN THE SYSTEM BE DESIGNED SO THE USER CAN DOWN LOAD DOCUMENTS FOR THEIR OWN USE?