



POLICY ISSUE
(Information)

January 26, 1988

SECY-88-28

For: The Commissioners

From: William C. Parler
General Counsel

Subject: CHANGE IN COMPOSITION OF THE HIGH-LEVEL WASTE
LICENSING SUPPORT SYSTEM ADVISORY COMMITTEE

Purpose: To inform the Commission of a change in the
composition of the High-Level Waste
Licensing Support System Advsiory Committee

Discussion: On August 5, 1987 (52 Fed. Reg. 29024),
the Commission announced the formation of
an advisory committee ("negotiating
committee") to develop recommendations for
revision of the Commission's Rules of
Practice in 10 CFR Part 2 related to the
adjudicatory proceeding for the issuance of
a license for a geologic repository for the
disposal of high-level waste (HLW).
Specifically, the committee is attempting
to negotiate a consensus on the procedures
for the submission and management of
records and documents for the HLW licensing
proceeding. These revisions relate to the
development of an information management

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system (the "Licensing Support System" or "LSS") that would contain all of the data supporting the DOE license application, as well as all of the potentially relevant documents generated by the NRC and other parties to the licensing proceeding.

The negotiating committee has met monthly since September, 1987. Considerable progress has been made in defining and prioritizing the relevant rulemaking issues, and in developing a consensus on those issues. Recent amendments to the Nuclear Waste Policy Act have changed the site selection process for a HLW repository, narrowing the parties that may be affected by the LSS rulemaking. Consequently, the staff is revising the composition of the committee to reflect this change.

The Nuclear Policy Amendments Act of 1987

On December 22, 1987, the President signed into law a bill amending the Nuclear Waste Policy Act (the Nuclear Waste Policy Amendments Act of 1987, Pub. L. No. 100-203). The new law provides for a phase-out of site-specific activities at all first round candidate sites other than the Yucca Mountain site in Nevada within ninety days of enactment. If the Yucca Mountain site is found to be unsuitable for a geologic repository, new legislative authority would be needed to begin characterization of any other site. In regard to the second geologic repository, no site-specific activity can be conducted unless specifically authorized by Congress. Such authorization cannot be considered until the Secretary of Energy reports to Congress. This report will not be submitted until January 1, 2007, at the earliest. The legislation nullifies the Department of Energy (DOE) proposal to locate a Monitored Retrievable Storage facility (MRS) on the

Clinch River in Oak Ridge, Tennessee, as well as any of the alternative sites in the proposal. The Secretary of Energy is authorized to site, construct, and operate an MRS. However, the Secretary may not select a site for an MRS until after a number of conditions have been met, including--

- o after the report and recommendation of the independent MRS Review Commission is submitted to Congress on June 1, 1989;
- o after the Secretary evaluates potentially suitable MRS sites;
- o after the Secretary recommends to the President the approval of a site for the development of a repository.

The primary effect of the legislation is to focus the Department of Energy's site characterization efforts on a single site in Nevada to determine its suitability as a site for a geologic repository. Efforts in regard to other first round candidate sites for a geologic repository, and the search for candidate sites for a second geologic repository, have been terminated. The Commission's selection of the participants for the original negotiating committee was based upon the wide range of first and second round sites that were possible candidates for the location of a geologic repository under the existing statutory framework. With the change in the statutory framework, the staff now believes it is appropriate to revise the composition of the negotiating committee to reflect the focus on characterizing the Nevada site. The staff plans to formally notify the current participants of the change through notice in the Federal Register (Attachment A). In addition, the Conservation Foundation (the facilitator for the negotiating committee), has personally contacted each participant to alert them to the revised composition of the committee.

A few participants expressed concerns over lack of continued representation on the new committee. However, their concerns related to the possibility that site characterization might demonstrate that the Nevada site was unsuitable for a repository, or on issues peripheral to the suitability of the site to isolate wastes such as transportation. Following discussion with participants about these concerns and the Commission's rationale for revising the committee, and after assuring them that they could request membership should it appear subsequently that they had an affected interest, they made no objection to the proposed revision. These former participants have also been encouraged to convey any remaining concerns on the rulemaking issues to the new committee at future meetings.

The members of the revised committee are--

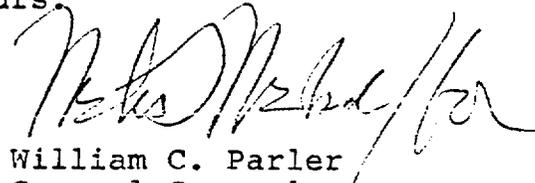
- o State of Nevada
- o a coalition of Nevada local governments
- o Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly), representing a coalition of nonprofit environmental groups
- o Edison Electric Institute and the Utility Nuclear Waste Management group (jointly), representing the nuclear industry
- o Department of Energy
- o Nuclear Regulatory Commission

Additional membership on the new committee will be governed by committee protocols. As a preliminary step in the formation of the revised committee, the staff intends to meet with potential members of the new committee.

In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1, the staff will submit an amended charter for the negotiating committee to the General Services Administration to reflect the change in committee composition. The staff does not anticipate that this change will substantially affect the schedule for the negotiated rulemaking.

Coordination:

NMSS concurs.



William C. Parler
General Counsel

Attachment:
Federal Register Notice

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10 CFR PART 2

HIGH-LEVEL WASTE LICENSING SUPPORT SYSTEM ADVISORY COMMITTEE (NEGOTIATED RULEMAKING); NOTICE OF CHANGE IN COMPOSITION OF ADVISORY COMMITTEE

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the change in composition of the High-Level Waste Licensing Support System Advisory Committee.

SUMMARY: The Nuclear Regulatory Commission is changing the composition of the High-level Waste Licensing Support System Advisory Committee. This advisory committee was established to develop recommendations for revision of the Commission's Rules of Practice (10 CFR Part 2) related to the adjudicatory proceeding for issuance of a license for the disposal of high-level waste (HLW) in a geologic repository. Specifically, the committee is attempting to negotiate a consensus on the procedures for the submission and management of records and documents for the HLW licensing proceeding. Recent amendments to the Nuclear Waste Policy Act have changed the site selection process for a HLW repository, narrowing the parties that may be affected by this rulemaking. Consequently, the Commission has revised the composition of the committee to reflect this change.

DATE: The next meeting of the revised HLW Licensing Support System Advisory Committee will be held on February 11 and 12, 1988, beginning at 9:30 a.m., at the Conservation Foundation, 1250 24th Street, Washington D.C. 20037. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

NRC Staff

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SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987 (52 Fed. Reg. 29024), the Commission announced the formation of an advisory committee ("negotiating committee") to develop recommendations for revision of the Commission's Rules of Practice in 10 CFR Part 2 related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level waste (HLW). Specifically, the committee is attempting to negotiate a consensus on the procedures for the submission and management of records and documents for the HLW licensing proceeding. These revisions relate to the development of an information management system (the "Licensing Support System" or "LSS") that would contain all of the data supporting the DOE license application, as well as all of the potentially relevant documents generated by the NPC and other parties to the licensing proceeding. Implementation of this system was intended to accomplish the following objectives--

- to facilitate discovery by providing comprehensive and easy access to potentially relevant licensing information;
- 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;
- to facilitate review of the relevant licensing information by all parties and eventually the boards through the provision, to the extent practicable, of full text search capability;
- to reduce the time associated with the physical submission of motions and other documents associated with the licensing proceeding by providing for the electronic transmission of these documents;

As stated in the August 5, 1987 Federal Register Notice, the Commission considered parties for membership on the negotiating committee on the basis of (1) whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. The Commission also noted its concern that the negotiating committee be kept to a manageable size in order to maximize the potential for arriving at a consensus.

Based on the above criteria, the Commission invited the following groups to participate on the negotiating committee--

- (1) State of Nevada
- (2) State of Washington

- (3) State of Texas
- (4) Yakima Indian Nation
- (5) Nez Perce Indian Tribe
- (6) Confederated Tribes of the Umatilla Indian Reservation
- (7) Department of Energy
- (8) National Congress of American Indians
- (9) Utah, Oregon, and Mississippi (jointly)
- (10) Minnesota and Wisconsin (jointly)
- (11) The Sierra Club, Environmental Defense Fund, and Friends of the Earth (jointly)
- (12) Nuclear Waste Task Force, representing a coalition of local Texas nongovernmental groups
- (13) Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly)
- (14) Nuclear Regulatory Commission
- (15) U.S. Council for Energy Awareness
- (16) National Conference of State Legislatures
- (17) National Association of Regulatory Utility Commissioners
- (18) State of Tennessee
- (19) Penobscot Indian Nation

A coalition of local governments from the State of Nevada was added at a later date. The negotiating committee has met monthly since September, 1987. Considerable progress has been made in defining and prioritizing the relevant rulemaking issues, and in developing a consensus on those issues.

The Nuclear Waste Policy Amendments Act of 1987

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would be needed to begin characterization of any other site. In regard to the second geologic repository, no site-specific activity can be conducted unless specifically authorized by Congress. Such authorization cannot be considered until the Secretary of Energy reports to Congress. This report will not be submitted until January 1, 2007, at the earliest. The legislation nullifies the Department of Energy (DOE) proposal to locate a Monitored Retrievable Storage facility (MRS) on the Clinch River in Oak Ridge, Tennessee, as well as any of the alternative sites in the proposal. The Secretary of Energy is authorized to site, construct, and operate an MRS. However, the Secretary may not select a site for an MRS until after a number of conditions are met, including--

- . after the report and recommendation of the independent MRS Review Commission is submitted to Congress on June 1, 1989
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- . Edison Electric Institute and the Utility Nuclear Waste Management Group (jointly), representing the nuclear industry
- . Department of Energy
- . Nuclear Regulatory Commission

Additional membership on the new committee will be governed by committee protocols. The Commission expresses its appreciation to all former participants for their service on the negotiating committee. Their participation has provided a solid foundation for the continuing work of the

new committee. In addition, the Commission would welcome any former committee members to convey any remaining concerns on the rulemaking issues to the committee at future meetings.

Federal Advisory Committee Act

In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 1, the Commission has submitted an amended charter for the negotiating committee to the General Services Administration that reflects the change in committee composition. In accordance with the Commission's regulations in 10 CFR Part 7, advance notice of negotiating committee meetings will be provided in the Federal Register, the meetings of the full negotiating committee will be open to the public, members of the public will be able to submit written or oral statements to the committee, and detailed minutes of each meeting will be made available for public review and copying.

The next meeting of the negotiating committee is scheduled for February 11 and 12, 1988.

Dated at Washington, D.C. this day of , 1988.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley, Director
Division of Rules and Procedures
Office of Administration and Resources
Management