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March 17, 1987

OFFICE OF THE SECRETARY
DOCKETING SERVICE
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Mr. Samuel J. Chilk, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chilk:

This is in response to the announcement in the December 18, 1986 Federal Register (Vol. 51, No. 243, p. 45338) of the Nuclear Regulatory Commission's (NRC) Notice of Intent to form an advisory committee under the Federal Advisory Committee Act. These comments are submitted on behalf of the National Association of Regulatory Utility Commissioners (NARUC) Subcommittee on Nuclear Waste Disposal. The NARUC regrets that because of other commitments, it was unable to meet the filing date of February 17, 1987. The NARUC does, however, want to have this letter included in the docket as an expression of our interest and concern in this matter and to preserve our right to participate at a later date.

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty states engaged in the economic and safety regulation of carriers and utilities. The mission of the NARUC is to serve the public interest by seeking to improve the quality and effectiveness of public regulation in America. More specifically, the NARUC is composed of the state officials charged with the duty of regulating the retail rates and services of electric utilities within their respective jurisdictions. These officials have the obligation under state law to assure the establishment and maintenance of electric utility service as may be required by the public convenience and necessity, and to ensure that such service is provided at rates and conditions which are just, reasonable and nondiscriminatory for all consumers.

The NARUC's responsibilities are nationwide and represent a broad spectrum unique to it as an organization. In the statutory language of the Congress, the NARUC is "the national organization of the state commissions" responsible for economic and safety regulation of the intrastate operation of carriers and utilities. See for example, 49 U.S.C. sec. 11506. Moreover, federal courts have recognized that the NARUC is a proper party to represent the collective interest

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of the state regulatory commissions. See for example, United States of America v. Southern Motor Carrier Rate Conference, et al., 467 F.Supp. 471 (N.D. Ga. 1979), aff. 672 F.2d 469 (5th Cir. Unit "B" 1982); aff. en banc 702 F.2d 532 (5th Cir. Unit "B" 1983), rev. U.S., 85, L.Ed.2d 36 (1985). See also Indianapolis Power and Light Co. v. Interstate Commerce Commission, 587 F.2d 1098 (7th Cir. 1982); and Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1976).

The program to dispose of commercial spent nuclear fuel under the Nuclear Waste Policy Act of 1982 is funded entirely by ratepayers. Our interest is in obtaining full value for the ratepayer dollars that go into this effort while, of course, ensuring that the public health is protected and safety is assured.

The NARUC has repeatedly emphasized that the ratepayers currently are the source of all funding for the disposal of spent fuel. The utility simply collects money from ratepayers which is passed on to the fund. We, therefore, are particularly pleased that the Notice of Intent identified ratepayers as an interest affected by the rulemaking. In previous meetings with the Nuclear Regulatory Commissioners, the NARUC Subcommittee has emphasized that the ratepayers are the ones who will benefit from an efficient licensing process. We met with four Commissioners at a formal session of the Nuclear Regulatory Commission on April 15, 1986 and then with Chairman Zech and Commissioner Carr on February 24, 1987. In addition, we have maintained regular contact with the Commission through its representation at our scheduled meetings. Our staff has also established and maintained contact with NRC staff.

We have brought to the attention of the Commission several issues which we believe are important to the timely, efficient and ultimately correct licensing decision-making of the NRC. These are issues which, in the interest of prudence, we also believe must be included in the agenda of the proposed advisory council.

When the Subcommittee met with the Commissioners, we raised the following issue which is relevant to the Notice of Intent: Is it feasible to establish a document retrieval system for the licensing process that will handle 300,000 to 400,000 documents on behalf of the NRC with 40 times that amount to be attributed to the Department of Energy? Are so many documents necessary? If this number of documents represents the state-of-the-art in electronic information storage and retrievable systems, are there alternatives that could rely on a more prosaic method of information handling? We believe the Commissioners were impressed and rightfully concerned with the magnitude of the task, and its feasibility, and would look to the NRC staff to provide ways to limit the number of documents and to review the feasibility of the program as it is presently proposed. The NARUC recommends that this issue be resolved prior to, or concurrent with, the activity of the advisory committee.

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Another issue that the Subcommittee brought to the attention of the Commissioners was the suitability of the traditional two-step licensing method used for nuclear plants, i.e., construction permit followed by operating license, as the model for the waste repository. There are inherent differences between licensing a nuclear plant and a geological repository. Among the differences are the emphasis on engineered structures vs earth science, the project length of 40 years versus 10,000 years, the inherent legal and institutional differences when NRC licenses another federal agency versus a utility and, of course, the nature of the up-front funding by ratepayers versus later opportunity for public service commissions to rule on the prudence of the investment. As a consequence, we recommend that the advisory committee also consider the application of a different licensing procedure involving a multi-step process in which the NRC would sign off on discrete aspects of the repository as the data is received.

As for full participation in the advisory council, the NARUC has determined that it cannot voluntarily commit the substantial added time, attention and financial costs that would be required to discharge its responsibilities. We regret such a conclusion, since we believe that our ratepayers' interests are not served by other interest groups. For example, delays in the licensing process, even unavoidable ones, that may occur or be proposed will aid some parties, not injure many others, but will always have an adverse impact, in part, on ratepayers. Another example is the issues we have raised with the Commission and have reiterated in this letter; we believe that few, if any, other parties may raise such matters.

In conclusion, while the NARUC's resources will not permit our full participation in the advisory committee, we would like to preserve the right to participate at a later date if the interests of our ratepayers appear to necessitate our changing our decision. Thank you for the opportunity to respond to your intended program plans.

Sincerely,



Edwyna G. Anderson
Chairperson, NARUC
Committee on Electricity
Chairperson, Subcommittee on
Nuclear Waste Disposal

cc: Chairman Lando W. Zech
Commissioner Thomas M. Roberts
Commissioner James K. Asselstine
Commissioner Frederick M. Bernthal
Commissioner Kenneth M. Carr