



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20535

September 29, 1981

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commissioner Roberts

FROM: Forrest J. Remick *[Signature]*

SUBJECT: TENTATIVE SCHEDULES FOR WASTE CONFIDENCE PROCEEDING

Tentative Waste Confidence Proceeding Schedule

At the request of the Chairman, OPE has prepared the attached schedule for the future of the Waste Confidence proceeding. The key elements of this schedule--including the time required--were constructed on the basis of information received from the proceeding's Presiding Officer (Marshall Miller) and have been reviewed by the Working Group in the course of preparation of the draft schedule. We have used the Presiding Officer's recommendation of June 17, which the Chairman and Commissioner Ahearne voted to approve, as the basis for preparing these schedules through an oral presentation phase. This schedule provides for mandatory consolidation of parties (currently about 65) as required in order to keep oral presentations to a manageable set (perhaps no more than a dozen).

The Presiding Officer's June 17 recommendation calls for participants to prepare written submittals which are succinct summaries on the merits of the legal, technical and institutional issues raised in the proceedings. Also, we believe that the Commission's pre-hearing order should ask participants to comment on how several recent developments may have affected the basis for conclusions drawn in their previous position statements. On the basis of our analysis below, we believe that there is good reason for the Commission to highlight in its pre-hearing order its interest in obtaining the participants' views on DOE's spent fuel storage policy and on the implications of a policy to reprocessing. In that connection we would prepare specific questions proposed for inclusion in the Commission's pre-hearing order.

The Commission has reserved for itself decisions on the ultimate questions in this proceeding. If the Commission itself makes the decision in the proceeding, the Commission will need to make its own in-depth review of the record and Working Group products at the conclusion of the oral presentation,

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in preparation for its decision on next steps. In all of our scenarios, we have assumed that the Commission will take time (our estimate is roughly 90 days) after the oral arguments to decide whether it has sufficient information on which to base its decision; if it decides it does, what the nature of that decision should be (Scenario A) or if it decides it does not, what the Commission's next steps should be (Scenarios B and C).

In Scenario B, we assume that the Commission is able to narrow the focus of the proceeding to a subset of issues on the basis of the participants' summary written statements and oral presentations. On a subset of issues, the Commission might desire specific supplemental position statements containing updated information, revisions in plans, data, etc.

In Scenario C, we assume that the Commission decides it has been faced with irreconcilable conflicting evidence and decides it must seek further expert opinion--perhaps even impaneling a group to take testimony in an adjudicatory format.

In the course of preparing these schedules we have incorporated a considerable amount of time for Commission discussion and preparation of a decision. Depending upon other Commission workload and priorities, the Commission might elect to accelerate the proceeding. We have also included in these schedules provision for circulation for public comment of a draft Commission decision, and analysis of comments received before publishing a final Commission decision on Waste Confidence.

Recent Developments

Commissioner Ahearne asked the Working Group to consider whether it would be necessary for the Waste Confidence proceeding to consider reprocessed waste (Memorandum to Director, OPE, September 3, 1981). The NRDC motion of August 3, 1981 called attention to Kenneth Davis' testimony as marking a new policy course by DOE to reprocess rather than dispose of spent fuel. As a result NRDC urges the Presiding Officer to issue a summary disposition in the Proceeding for no confidence. Since Commissioner Ahearne's request to reconsider this issue, DOE and other participants has responded to NRDC's motion. DOE, supported by a number of other participants argues that the emerging policy course in favor of reprocessing "...will not impact the current program for developing a mined geologic repository." While we do not necessarily agree with DOE that a reprocessing course does not significantly affect the record, at this point we would not share the NRDC view that this and other developments affect the proceeding so fundamentally as to require summary disposition by the Presiding Officer for no confidence. Furthermore, the Presiding Officer does not have the authority to make a summary disposition of the proceeding. J

As was noted in Edward Hanrahan's March 10 memorandum to Commissioner Ahearne, which addressed the extent to which the issue of reprocessing enters this proceeding, for the purpose of maintaining a reasonable basis for continued licensing of reactors, it is sufficient to consider whether spent fuel can and will be disposed of safely and whether it can be safely stored until disposal is available. DOE and other participants in their recent submissions stress that the Commission need only find that there is at least one safe method of storing or disposing of high level waste. We continue to believe that the centerline of the Waste Confidence proceeding should be on the safe storage and disposal of spent fuel as outlined in our March 10 memorandum. In particular, our view, now as then, is that even though a policy shift toward reprocessing is occurring, it would be more appropriate to consider reprocessing in a proceeding to license reprocessing and recycle facilities rather than in the Waste Confidence proceeding.

With respect to the earlier memorandum, we continue to endorse its analysis and content except in the following respects: it seems that DOE is much closer to adoption of a reprocessing policy than it was on March 10. However, no formal policy announcement has yet been made. In DOE's view, its program for identification and characterization of potential repository sites and the DOE program for dealing with institutional concerns do not depend on waste form. However, as the Working Group suggested in its March 10, 1981 memorandum to Commissioner Ahearne, supplementary information on engineering design and performance of the waste forms and associated packages would be needed if reprocessing of waste were to be considered in detail in this proceeding (this is a matter for the Commission itself to decide). It may be possible to permit DOE and other participants to address these issues in the context of oral presentations--perhaps augmented by some technical data supplied for the record following their presentation. In summary, we continue to believe that it would not be desirable to call for additional supplementation of the record by another round of position statements and cross-statements so long as the Commission's main objectives can be achieved. However, in light of DOE's increased interest in reprocessing, we recommend that the Commission specifically ask DOE and other participants to describe in more detail at the oral presentations how current plans with regard to reprocessing would affect the Commission's confidence. We think that this is the most efficient way to handle these issues.

Indeed, a central issue in the Waste Confidence proceeding is whether the Administration's developing change in policy to call for reprocessing of spent fuel has affected in a significant manner the Commission's ability to find whether "...it is reasonably probable that an offsite

fuel repository will be available...." by 2007.¹ The present record contains no information on the details of when reprocessing facilities would be available, the fraction of spent fuel to be reprocessed, or just how spent fuel would be stored pending its eventual reprocessing. By their argument in the submission of September 15, 1981, DOE contends implicitly that such information is not essential in order for the Commission to find confidence. Presumably, the Commission would develop its own judgment on the key issue of whether this information is essential as a result of consideration of the record in the proceeding and the oral presentations. If the Commission subsequently concludes that there is an essential information gap in the record on this issue, it might elect to either require supplemental information from the participants (i.e., statements and cross-statements) or if it became clear that things had changed too much to permit a legally sufficient finding of confidence, the Commission might elect to terminate the proceeding on the issue of the Commission's confidence in safe waste disposal as recommended by NRDC and require either (a) reactor licensing and spent fuel pool expansion proceedings to consider environmental impacts of on-site storage beyond expiration of operating licenses or (b) perform this environmental assessment of extended on-site storage generically.

In conclusion, the Working Group while recognizing that new developments in the waste management area inevitably occur with time for a lengthy proceeding and make the information base acquired earlier increasingly dated, believes that the judgment on further proceedings should be made by the Commission after it has considered the record and heard oral presentations by the participants on this point. In accordance with the Commission's instructions, (Commission Memorandum and Order of January 16, 1981) the Working Group has identified issues in controversy among the participants in the proceeding, but has refrained from making recommendations or expressing views regarding the conclusions which the Commission should itself reach on the issues. While the Commission may wish to consider to some extent in this proceeding the questions of when reprocessing facilities will be available, how much spent fuel will be reprocessed, and how spent fuel will be stored pending eventual reprocessing, it will certainly have to consider those questions in any case in the course of any licensing proceedings on reprocessing and recycle.

Attachment:

As stated

cc: Marshall Miller	Harold Denton
Samuel Chilk	John Davis
Leonard Bickwit	Robert Minogue
William Dircks	Howard Shapar

¹In a concurring opinion in Minnesota v. NRC, Circuit Judge Tamm wrote that "There must be a determination whether it is reasonably probable that an offsite fuel repository will be available when the operating license of the nuclear plant in question expires." The full court said that it "...contemplates consideration on remand of the specific problem isolated by petitioners - determining whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plant's operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates."

ATTACHMENT

	<u>Time Estimated</u>	<u>Approximate Date of Action</u>
1. Oral presentations		
-- Commission issues second prehearing order for procedures for remainder of hearings	30 days	(Oct. 81)
-- Voluntary consolidation of participants and notification of Commission. Subsequently, participants prepare and submit written statements with succinct summaries on "the merits of the legal, technical and institutional issues raised in the proceedings" (44 FR 61374). Also, submit proposed questions for use by Commission.	60 days	(Dec. 81)
-- Possible order for consolidation (if necessary).	30 days	(Jan. 82)
-- Oral presentations to Commission. Commissioners may ask questions of participants (or from other sources, e.g., Commissioner's staff, Working Group, etc.). Time limit of 30 to 45 minutes per presentation.	2 1/2 days	(Jan. 82)
2. Commission completes review of record of oral presentations, the Working Group critique and summaries and the participants' direct and cross statements. Conducts Commission discussion sessions (as needed).	90 days	(Apr. 82)
3. Possible alternative decision paths following oral presentations to the Commission and completion of Commission review of record		
A. Commission decides no supplementary information needed		
1) Commission provides guidance for preparation of draft decision	0 days	Result of step 2 above)
*2) Commission (or designated staff) prepares and issues draft decision for public comment	90 days	(Jul. 82)
*3) Deadline for receipt of public comments	60 days	(Sep. 82)
*4) Analysis of public comment and additional Commission consideration to develop final decision	90 days	(Jan. 83)

* These steps are optional. The Commission could, upon receiving the draft decision from the staff, proceed directly to the issuance of a final rule. The staff would require approximately 90 days to prepare the draft decision.

5) Commission issues final rule

B. Commission decides supplementary information (on a limited number of issues) should be requested from participants

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| 1) Commission request issued for additional information | 0 days
(Result of step 2 above) | (Apr, 82) |
| 2) Participants' prepare and submit responses for added information | 90 days | (Jul, 82) |
| 3) Analysis by designated staff or supplementary information | 120 days | (Nov, 82) |
| 4) Commission discussion and provision of guidance to designated staff for preparation of draft decision | 60 days | (Jan, 83) |
| *5) Commission (or designated staff) prepares and issues draft decision for public comment | 90 days | (Apr, 83) |
| *6) Deadline for receipt of public comments | 60 days | (Jun, 83) |
| *7) Analysis of public comments and additional Commission consideration to develop and issue final decision | 90 days | (Oct, 83) |
| 8) Commission issues final decision | | |

C. Commission decides it needs expert assistance (e.g., a "blue-ribbon" panel) on a specific set of issues

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| 1) Commission request issued for expert assistance | 90 days**
(Result of step 2) | (Jul, 82) |
| 2) Experts prepare and submit responses to specific issues in controversy | 120 days | (Nov, 82) |
| 3) Analysis of experts' response | 120 days | (Mar, 82) |

* These steps are options. The Commission upon receiving the draft decision from the staff, proceed directly to the issuance of a final rule. The staff would require approximately 90 days to prepare the draft decision.

** The 90 day period allows time for the Commission to select members of the panel, perform the necessary contracting, etc.

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| 4) | Commission discussion and provision of guidance to staff for preparation of draft decision | 60 days | (May, 83) |
| *5) | Commission prepares and issues draft decision for public comment | 90 days | (Aug, 83) |
| *6) | Deadline for receipt of public comments | 60 days | (Oct, 83) |
| *7) | Analysis of public comments and additional Commission consideration to develop and issue a final decision | 45 days | (Feb, 84) |
| 8) | Commission issues final decision | | |