



UNITED STATES  
 NUCLEAR REGULATORY COMMISSION  
 ATOMIC SAFETY AND LICENSING APPEAL PANEL  
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Cameron

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 Docket No. \_\_\_\_\_  
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MEMORANDUM FOR: William J. Olmstead  
 Assistant General Counsel for  
 Rulemaking and Fuel Cycle  
 Office of the General Counsel

FROM: *AM* Alan S. Rosenthal, Chairman  
 Atomic Safety and Licensing  
 Appeal Panel

SUBJECT: ALTERNATIVE APPROACHES TO LICENSING A  
 GEOLOGIC REPOSITORY

At your request, I have reviewed the draft paper on the above-styled subject. In addition, it has been examined by other Appeal Panel members as well as the Panel counsel. Attached are the comments of Chris Kohl and Gary Edles, with which I am in essential agreement. I have these few additional observations of my own.

I find particularly troublesome the discussion on raising the threshold for certain contentions (pp. 7-8). To begin with, the discussion appears to be founded upon the unwarranted premise that the only possible parties to the proceeding will be NRC, DOE, States and Tribes. In actuality, as I understand it, any individual or organization able to satisfy the standing requirement of Section 189 of the Atomic Energy Act of 1954, as amended, will be entitled to seek intervention.

I think it highly likely that some endeavors along that line will be made. Even assuming that, as the paper seemingly would have it, the funding of a particular intervenor ensures that that intervenor will be "well-prepared and well-qualified," there thus is a substantial potential for the participation of unfunded intervenors. The paper should address the contention threshold question in that context.

More significant, I deem patently untenable the suggestion that, at least with regard to issues determined by the staff to have been "resolved" (whatever that means), it might be appropriate to apply the record reopening standard to the admissibility of contentions. Indeed, the only conceivable basis for adoption of that standard would

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be a desire not simply to "streamline" the licensing process but, additionally, to gut in large measure the adjudicatory segment of that process. Surely, the contention threshold can be raised without going to such a ridiculous extreme.

I have previously orally noted in a different context my general objection to the proposal to codify existing NRC practice respecting the use of the Federal Rules of Evidence. The passage of time has not altered my views in that regard. Insofar as the proposal relates specifically to the HLW proceeding, I am content to endorse Ms. Kohl's observations.

A few relatively minor editorial suggestions have been passed on to Mr. Cameron by telephone.

Attachments