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COMMISSION MEETING

Presentations by Participants on Proposed Amendments to Part 60

(Public Meeting)

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

PRESENTATIONS BY PARTICIPANTS ON PROPOSED
AMENDMENTS TO PART 60

PUBLIC MEETING

Nuclear Regulatory Commission
Room 1130
1717 "H" Street, N.W.
Washington, D.C.

Friday, January 24, 1986

The Commission met in open session, pursuant to
notice, at 9:30 o'clock a.m., NUNZIO J. PALLADINO, Chairman of
the Commission, presiding.

COMMISSIONERS PRESENT:

NUNZIO J. PALLADINO, Chairman of the Commission
THOMAS M. ROBERTS, Member of the Commission
JAMES K. ASSELSTINE, Member of the Commission
FREDERICK M. BERNTHAL, Member of the Commission
LANDO W. ZECH, JR., Member of the Commission
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CHAIRMAN PALLADINO: Good morning, ladies and gentlemen. This morning we are meeting with interested states, Indian tribes, industry groups, public interest groups and the Department of Energy to hear their comments on proposed changes to NRC regulation 10 CFR Part 60.

This regulation deals with licensing procedures for the disposal of high-level radioactive waste in geologic repositories. Of particular interest are proposed procedural amendments for dealing with site characterization and participation of states and Indian tribes.

By way of background licensing procedures for high-level radioactive waste geologic repositories were promulgated in final form on February 25, 1981. In publishing these procedures the Commission recognized that provisions of Part 60 dealing where participation might have to be changed in the future should the passage of pertinent legislation take place.

This did, in fact, occur with passage of the Nuclear Waste Policy Act of 1982 often referred to as the NWPA. The NWPA sets forth in considerable detail the roles and responsibilities of NRC, the Department of Energy, states and Indian tribes and the general public during the process of siting and development of geologic repositories.

The NWPA requires that DOE consult and cooperate
with states and Indian tribes at many specified points throughout the regulatory siting and development process. DOE is required to issue its site characterization plans for public comment, hold meetings to obtain further public comment and provide for funding of states and tribes to participate in and inform their residents about the process.

One year ago NRC published the proposed amendments for comment to conform to the NWPA and is currently considering final rulemaking. Before the Commission makes its final decision, we have agreed to listen to comments from various groups speaking today.

The states will start the presentation and will be allowed 25 minutes total. They will be followed by the Indian tribes who are allowed ten minutes. After that, we will have a ten minute break. After the break we will continue with the public interest groups for 15 minutes followed by DOE and Edison Electric Institute for five minutes each.

Before we start, let me ask are there any comments from other Commissioners?

(No response.)

CHAIRMAN PALLADINO: Then let me turn the meeting over to the state panel and I am not sure which one of you is going to speak first.

MR. MURPHY: I will, Mr. Chairman.

CHAIRMAN PALLADINO: Fine. Would you each identify
yourselves as you speak so that we can keep the record straight. We appreciate your being here.

MR. MURPHY: Thank you, Mr. Chairman. For the record I am Malachy Murphy, a special deputy attorney general for the State of Nevada. I first want to thank the Commission for the opportunity to be here today.

As you know, Nevada was one of the states which specifically requested this meeting and we appreciate the opportunity to make some comments directly to the Commission on these issues.

Even a cursory perusal of SECY-85-333 makes it clear that your staff has done a great deal of work on these proposed amendments and has given serious consideration to the comments earlier submitted by the states and other interested parties.

Indeed, in several instances as that document discloses, the staff revised the proposed amendments to reflect the concerns we identified. They have not fully adopted the states' positions however and accordingly, some of our concerns remain.

I will identify and discuss briefly four areas in which Nevada retains certain reservations regarding the proposed amendments, first, the so-called "decoupling" of Parts 2, 51 and 60; two, the elimination of the draft site characterization analysis; three, the host state's party
status in licensing; and four, the use of radioactive materials in trace amounts during site characterization. Nevada continues to feel that in order for the Commission to correctly integrate the NWPA into its regulatory framework in a way which guarantees the states their full rights and participation under that Act that it should promulgate all new rules reflecting passage of the NWPA, the procedural rules of Part 2 as well as Parts 51 and 60 in one rulemaking thereby guaranteeing a single integrated approach and tending to avoid any potential whatsoever for contradiction, inconsistency, misunderstanding or confusion. Under proposed section 60.17(c), the Director is to review the Department of Energy's site characterization plan and prepare a site characterization analysis with respect to that plan. This, of course, reflects the requirements of Section 113 of the Act. In the preparation of that site characterization analysis, the Director is to provide an opportunity with respect to any area to be characterized for the state in which such area is located and for affected Indian tribes to present their views on the site characterization plan and their suggestions with respect to comments thereon which may be made by NRC. Nothing in the proposal, however, requires the Director to give any consideration to the comments of the
potential host state or affected tribe. He must merely provide an opportunity to comment.

Under subsection (c), however, the Director may invite and consider the views of interested parties.

As the staff accurately points out the State of Nevada possesses considerable expertise in this area. Indeed in recent weeks literally because of the addition of full-time staff and new subcontractors, Nevada possesses even more expertise on site characterization, we think, than we did at the time of our submittal of earlier written comments.

We believe that expertise should not only be made available to the staff in preparing its site characterization analysis, but that the consideration of the state's comments should be required by rule.

Under the current proposal, there is no requirement that comments received from states, affected Indian tribes or other interested parties receive any substantive weight. Unless such a provision is included the state cannot be insured that its comments where appropriate will be heeded.

We feel confident that those comments will be heeded. That confidence stems from the fact that historically throughout this process the comments we have made and submitted to the staff and to the Commission have been given serious consideration. We are just asking, I guess, for a little pepper to be added to the salad in that the substantive
One further point in that regard, I am guessing in that respect but it would appear that the reason for the staff's position is the Congressional silence with respect to a draft site characterization analysis. In the original 10 CFR 60 which you promulgated prior to the passage of the NWPA, such a draft was required.

Congress, on the other hand, in passing the Act is merely silent in that respect. I would submit to the Commission that that silence should not be interpreted as any indication on Congress' part that a draft SCA is not appropriate and I think there is clearly discretion on the part of the Commission in that respect and we urge you to adhere to your earlier decision in the original 10 CFR 60 that such a draft analysis with the state and affected tribes and interested parties' ability to comment on that draft be preserved.

On page 11 of enclosure A to SECY-85-333 the staff makes the statement that under section 1139(a) of the Atomic Energy Act and I am quoting here, "there can be no question that the host state has a legal right to be a party" in a licensing proceeding. The staff also says that the tests of standing and again I am quoting "are clearly met for host state participation."
While this provides an added measure of comfort to the states, it does not provide the states with the absolute guarantee in the regulations themselves of complete party status from the very outset which is what we are requesting.

While I can agree that it is probably and indeed I think it is inconceivable to anybody in this room at this time that a host state's petition to intervene as a party in repository licensing would be denied, we are at least six and perhaps as many as eight or ten years away from the commencement of that proceeding.

The problem simply is that there will be different people in this room at this time. There will be different Commissioners and in many cases, there will be different members of your staff.

All we are asking is that the Commission formalize what I view to be the correct legal conclusion by the staff that the host state has an unquestionable legal right to full party status by merely placing appropriate language to that effect in the rule at this time.

At page 25 of enclosure B to SECO-85-332 the staff responds to comment number 20 which suggested that the rules should provide that NRC will concur in the use of radioactive tracers only if certain criteria are met.

In its response, the staff concludes that "it is not apparent" that the NWPA is intended to apply to tracer amounts
of radioactive materials. It is likewise I suggest not
apparent that it does not so apply. Both subsections (A) and
(B) of section 113(c)(2) refer to and I am quoting "any"
radioactive material.

While clearly that section was intended to prevent a
de facto unlicensed repository, we believe that it was also
intended to give the Commission some control by way of
concurrence over the use of any radioactive materials
whatsoever during the process of site characterization
including trace amounts.

We are informed, for example, that in one case a
contractor to the NNWSI plans to use trace amounts of cesium
and strontium 90 for experimental purposes to determine its
practicality simply because it has never been done before.

That should be viewed by the Commission as
unacceptable as it is by us. The Commission should review the
use of trace amounts of radioactive materials on a
case-by-case basis and should concur in such use only to the
extent absolutely necessary to provide data for the
preparation of the required environmental reports and license
application unless such material is clearly demonstrated to be
fully retrievable.

In conclusion, the Commission we feel should utilize
a total integrated approach in revising its rules to conform
to the requirements and provisions of the Act.
These rules should provide for full participation by affected states, defining their party status in any construction authorization at the outset. As part of the site characterization and pre-licensing activity, a potential host state should be entitled to comment on proposed NRC and DOE action as we are now and as we have been in the past with the expectation that comments will be heard and where meritorious, will be heeded.

In that respect, the site characterization analysis of the staff should be made available to the states and affected tribes in draft form and finalized only after the opportunity for state and tribal comment.

Finally, the Commission's rules should provide for the concurrence in the use of radioactive materials in trace amounts only when absolutely necessary.

Again, Mr. Chairman, we greatly appreciate the opportunity to be heard today. Thank you.

CHAIRMAN PALLADINO: Thank you very much. I suggest we go through all the speakers and then proceed with questions.

COMMISSIONER ASSELSTINE: Sounds good, yes.

CHAIRMAN PALLADINO: All right.

MR. FRISHMAN: Thank you, Mr. Chairman. My name is Steve Frishman and I am director of the Nuclear Waste Programs Office for the State of Texas.
We, too, appreciate the opportunity for this meeting. I think we have demonstrated in the past that these meetings can be productive for all parties and I hope that in the future we will be able to continue this format at times when we all agree that it is necessary and has a potential to be productive.

In order to avoid repetition and keep on our fast track here, first of all I would like to associate myself and the State of Texas with the comments made by Mr. Murphy for the State of Nevada.

I would like to expand on that in one area and mention another area that has been the subject of discussion and review already but just add a couple points to it.

First of all, I think it is important that the Commission recognize that the relations of the Commission in this project because I will only be speaking about this, the relations with the public by the Commission should not be constrained by the Nuclear Waste Policy Act.

I think what we are seeing here in some case is an effort to say that the Act really says all that is necessary in the particular areas that we are discussing. The Commission has the latitude to deal independently with the public and with affected parties outside of the Waste Policy Act.

I think that has been the source of our discussions...
since back in 1983 regarding policy and procedural changes to
this rule.

At this point I think in the effort to conform with
the Waste Policy Act it may be that what we are seeing as a
final rule here is even a step backward. Regarding the area
of the draft site characterization analysis we proposed back
in September of 1983 a method that we felt could provide
essentially the equivalent to a draft SCA process.

We are happy to note that a portion of that is
proposed in this final rule. We are unhappy to note that the
operative portion of it is not adopted. Just as Mr. Murphy
pointed out, we are seeing the ability to comment and we are
pleased to see that that ability to comment is evolving and it
has finally gotten up to something very similar to in fact the
rule language that we proposed in September 1983.

What is missing once again is the response element
to that meaning the knowledge of how the Commission and the
staff view the comments that come in and what is to be done
with those comments.

We see no security for ourselves at the level of
comment that is invited. We are pleased to see that some of
the "may" have been changed to "shall" but at the same time
where does it go and that is what we are looking for.

We want the ability to demonstrate to our
constituents and demonstrate to the Department of Energy that
our comments have, in fact, been either integrated into the
process or a statement of why they are not integrated. I
think they are equally important.

So in the absence of a response mechanism and a sure
response mechanism, I think we, too, have to go back and
reiterate what we stated in September of 1983 and that is
that our preference is for a draft SCA.

Now a value of the response whether it be through a
draft SCA and an NRC response to comments and a draft SCA or
just response to comments without that draft, a real value
there that I see is that it will serve to broaden or even
bring to the forefront the regulatory and oversight
expectations of the public relative to how the NRC is viewing
the DOE's program at a stage in the program where what you say
is still not enforceable. It is really only recommendations.

It is important from our point of view that this
information of the expectations be clear and that there be
clear statements in response to those expectations in order
that all parties have a better sense of what the regulatory
atmosphere really is.

I don't believe that it is acceptable to have
topical meetings, have an exchange among even three sectors,
the NRC, the DOE and the affected states and tribes, I don't
believe that that is the place to air the expectations and get
considered responses. I think it must be done outside of that
context and it must be done in a way that has a much more
general view.

So if we are not to have a draft SCA, I am back to
where my last sets of comments I feel are still valid. We
must go into a comment response mode at some point.

Before I go on to this next one, anything that
affects the SCA we feel should be an effective process for the
SCA updates. We don't see any real difference in the SCA and
its updates just as we don't see any real difference in the
SCP and its updates. This is an evolutionary process and
there should be a responding evolutionary process that goes
with DOE continuing in its site characterization plan.

Now just very quickly on the relationship of the SCA
to shaft construction, again it is appearing to us that we are
going to be in a piece-mealing situation where although maybe
the shaft won't be started until the SCA is released, all the
understandings have been made before that in meetings between
the NRC and DOE staff whether states and tribes are present or
not.

The SCP under the Waste Policy Act is required to go
through a public review process. That process is compromised
if it is not a process that is entirely responsive to the
Waste Policy Act in the sense that the public also has a level
of responsibility to look at the entire issue of shaft
construction as well as the entire issue that incorporates
shaft construction which is site characterization.

So to come to early agreements and say that the shaft constraints or recommendations in an SCA are pretty well taken care of ahead of time so that a shaft can start the day you may drop an SCA on the table does not serve anything other than DOE's desire to fast track the schedule.

We have so far many examples of the failure of DOE's fast tracking to in fact arrive at benefits for the program or for anyone associated with the program. To bow to saving a little bit of time whether it be in the draft SCA or whether it be relative to when you start digging a hole in the ground, those benefits I don't think are going to be realized any more than the hurry-up benefits up to this point have been realized.

In each case it has resulted in a slow-down rather than a hurry-up.

COMMISSIONER BERNTHAL: In fairness to DOE, they are trying to meet a fast track schedule imposed by the Congress. I think it not quite fair to call the schedule that Congress laid down for them their schedule. They are trying to meet it. I think many people realize that that may be a difficult schedule to meet when Congress imposed it.

It is DOE's job to try to carry out that mandate. Whether or not they end up meeting it is another question.

MR. FRISHMAN: At this point the schedule has
1. disintegrated to a single milestone in DOE's mind. Everything
2. in that schedule has so far essentially not appeared on time.
3. All that is happening is 1998 is being held firm.

4. Our major concern through our discussions with you
5. and with DOE is that when you hold 1998 firm, everything else
6. gets compressed and from our view up until this point things
7. become compromised and when things become compromised, it is
8. to the detriment of the program.

9. So at this point and it is becoming more and more
10. evident to I think all of us anyway that holding to a schedule
11. most of which currently is of DOE's invention because they
12. didn't make the Congressional schedule, holding to that
13. schedule is artificial to the point of in fact compromising a
14. program.

15. I and some of your staff members were at a meeting
16. this week on quality assurance along with DOE. The theme of
17. that conference was you only get once chance. I firmly
18. believe that. I announced that approximately a year ago and I
19. am glad to see that other people are beginning to think that,
20. too.

21. If we don't come to some understanding of what is
22. reasonable in a technical program that one chance is going to
23. go by very, very quickly.

24. CHAIRMAN PALLADINO: Let me interrupt. You had over
25. ten minutes and I think you have basically concluded?
MR. FRISHMAN: I have concluded, yes, sir.

CHAIRMAN PALLADINO: Thank you. Let’s go on to the next speaker.

COMMISSIONER ASSELSTINE. Just before you do that, Joe, just one comment on the schedule. Fred, you are right.

Congress established a schedule but I think the Congress also said we are going to take a look at this as time progresses. We want a mission plan that discusses how you are going to get to the point where we have a successful repository constructed and ready to operate.

I think the Congress also said if you see problems with that schedule to the agencies, to DOE, you are to come back and tell us what the problems are and what needs to be done.

The clear message of the Act is that Congress wanted this job done. They laid out a possible schedule on how to get there but first and foremost, they said we want it done right. I think all of us have acknowledged, DOE as well as us, if there is any conflict at all between the doing the job right and getting it done properly and meeting a schedule, you always come down on the side of adjusting the schedule and doing things properly.

I think we have said that repeatedly. DOE has said that as well. You are right, there is a schedule. But I don’t think it is so hard and fast that if there were any
conflicts in doing things properly that the schedule ought to prevail.

CHAIRMAN PALLADINO: Nevertheless, I think the Congress set the tight schedule with the hope that it could be met and efforts should be made to meet it. Nevertheless, we can come back and pick that point up again. I wonder if we could go to the next speaker.

MR. SPURGIN: Thank you, Mr. Chairman. My name is Patrick Spurgin. I am the director of the Utah High Level Nuclear Waste Office. I would also like to express our appreciation for this opportunity to speak with the Commission about this subject.

Utah's participation in the nuclear waste program is directed toward two fundamental purposes. The first purpose is in accordance with traditional state role to protect and promote the health, safety and welfare of the citizens of the state.

The second purpose is to provide a basis for public confidence in the nuclear waste program through state participation in and review of that program. The obligation to pursue this goal is placed on the state by the terms of the Nuclear Waste Policy Act.

Of course, the Atomic Energy Act places primary authority for radiological health and safety with the Commission. Thus, under the Nuclear Waste Policy Act the
state's efforts to protect public health and safety and to participate in the program must be undertaken in a cooperative fashion with the Commission for both the states and the Commission to have legitimate duties and interests in this for.

The states, however, can discharge their responsibilities only if they have access to necessary information and access to the nuclear waste program decision making process.

Because the Commission will play an increasingly greater role in the nuclear waste program and through its licensing decisions will increasingly determine the program's nature and direction the rigor of the Commission's review of DOE activities is of great interest to the state.

The Commission's review of DOE activities can also provide a significant opportunity for state input into pre-decisional evaluations enhancing the state's legitimate pursuit of the purposes of the Nuclear Waste Policy Act.

Doubt concerning the credibility of the federal nuclear waste disposal effort is potentially a great impediment to the program and to the nuclear power industry generally.

Congress recognized in the Nuclear Waste Policy Act that minimizing political and legal opposition to the waste program by instilling public confidence in it would be
essential to the program's success.

Accordingly, the Act grants the states very broad participatory powers in the program in an effort to promote public confidence. This is promoted by enabling states to focus technical resources on pre-licensing and licensing activities in order to verify that actions have been taken on the basis of best knowledge and analysis.

Public confidence will be promoted by state opportunities to appropriately influence Commission and DOE decisions before they are made.

The nuclear waste program will thus proceed most rapidly and efficiently and most consistently with the spirit of the Act when the states are provided three basic opportunities.

These are, first, full access to the decision making process of DOE and the Commission; two, is the reasonable opportunity to voice state concerns within that process; and three, the opportunity for full and fair responses to the concerns that are raised in the process.

All of these considerations suggest that consistent with the spirit of the Nuclear Waste Policy Act the Commission should take a broad view of both its regulatory authority and its responsibility to further the participatory rights of the states.

Accordingly, we urge the Commission to re-evaluate
provisions of the proposed final 10 CFR Part 60 bearing upon
the Commission's site characterization analysis, the
Commission's review of site selection information, the
relationship of the completed site characterization analysis
to shaft sinking and the role of the states in licensing
proceedings after recommendation of a repository for
developing.

Each of these areas significantly affects the
state's ability to discharge their duties under the Nuclear

Steve and Mal have already discussed some of those
items that I mentioned earlier. With respect to the
Commission's review of site selection information, certain
activities which are part of the Commission's licensing
process under existing 10 CFR Part 60 have essentially been
removed by legislative fiat.

Those existing provisions of 10 CFR Part 60 which
require a discussion of site selection information in the site
characterization report were perceived presumably to be
related to health and safety issues when the existing rule was
promulgated.

Under the Nuclear Waste Policy Act, DOE is now
directed to provide general guidelines for site selection and
to describe the process by which sites were selected in
statutory environmental assessments.
Nonetheless while it may be that the format of the Commission's regulations must be altered to be made consistent with the Nuclear Waste Policy Act, the rationale for existing provisions for Commission review of health and safety issues associated with site selection still remains.

This suggests that the review of site selection information through EA review should be more than aspirational as is suggested in the supplementary information accompanying the proposed final rule.

If the Commission review of site selection information is important to health and safety issues, that review should remain in a defined and articulated manner in the Commission's licensing rules.

That concludes my statement but I do because of the relationship between the NRC and the states, I truly appreciate on behalf of the State of Utah this opportunity to address the Commission.

CHAIRMAN PALLADINO: Thank you very much.

Mr. Lehman.

MR. LEHMAN: Mr. Chairman and members of the Commission, I am Tom Lehman, Associate Director of the State of Minnesota, Washington office. Gregg Larson who is the director of Minnesota's High-Level Radioactive Waste Program is unable to be here today and I would like to take this opportunity to read his statement into the record.
Minnesota is grateful for this final opportunity to testify today on the Commission's proposed procedural amendments to 10 CFR 60. We hope that you will once again consider our views and recognize the special importance of your regulatory role in this repository siting process.

I wish to note for the record that the State of Minnesota submitted comments in this rulemaking on March 17, 1985. Our comments and those of other states have not been favorably addressed by the staff. Rather than restate those comments, I want to highlight some fundamental issues that are basic in this rulemaking.

The first issue concerns the authority of the Commission to review DOE siting decisions. In examining the staff position, it is clear to us that the staff continues to interpret Congressional silence with regard to existing 10 CFR 60 site selection review responsibilities as Congressional rejection of those responsibilities.

Although the Nuclear Waste Policy Act does not specifically identify site selection criteria in the list of items that constitute a site characterization plan, it does provide the Commission with the authority to request other information that it deems necessary.

Even if this were not the case, the NWPA does not in itself define the breadth of Commission authority in repository siting and licensing matters.
The staff has neglected other underlying statutory authority, most notably the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974. Both assign the Commission broad health, safety, environmental and licensing responsibilities sufficient to serve as a basis for formal review of the DOE's site selection process prior to the final choice of a site.

In addition, the Commission has site selection review authority under the National Environmental Policy Act.

This narrow interpretation is neither persuasive nor wise. The Commission must be willing to play a central role in the comparative analysis of sites and must consider not just the final site proposed for licensing, but also the range of choices that were available at each of the decision points in the site selection process.

By relegating the entire siting process to the DOE, the Commission unnecessarily surrenders its basic oversight authority, ignores its NEPA responsibility and risks the consequences of a flawed process and Environmental Impact Statement. Given the historical record of mismanaged and inept siting efforts, that risk is substantial.

The second issue concerns the perception of the staff that the states and tribes have the resources and expertise sufficient for participation in the siting program at a level equivalent with the Commission and the DOE.
The fact that the NWPA guarantees public participation, that frequent technical meetings in Washington are open to the public and interested parties, and a NRC/DOE procedural agreement has been signed should not serve as a convenient excuse for the elimination of formal mechanisms for public involvement in the Commission's work.

These mechanisms are most often the focus of public attention. There is a significant difference in the type of notice, the information distribution and the response requirements between informal NRC/DOE technical meetings in Washington and the formal review that would accompany release of an NRC site characterization analysis.

The Commission's expertise with concurrence on the siting guidelines should have demonstrated that even when opportunities for public participation are numerous, there is no certainty that the responsible agency will be responsive.

The Commission's unique role as a regulator provides a status different from that of the states and tribes. It was only after the Commission actively sought change in the guidelines that the DOE began to respond.

The repository siting schedule again appears to be more important than procedural and institutional aspects of the program. While the DOE abandons the schedule at will, the Commission staff imply that a 90-day public comment period could hinder DOE compliance with NWPA deadlines.
It is unfortunate that catch-up on the schedule must come at the expense of state, tribal and interested public involvement in the process.

We do not agree with the staff that the public comment period is not needed because the Commission will be fully aware of all the relevant issues and concerns. Not only is this an arrogant assumption, but it ignores the importance of public gain through access to Commission information, expertise and conclusions.

Furthermore, the expectation that the states, tribes and public would formally review the Commission’s draft site characterization analysis would contribute to a more rigorous analysis by the Commission.

It also will lend some semblance of Commission independence to what often looks like a cooperative venture between a regulator and the future license applicant.

Rather than discourage such public interaction, the Commission should welcome the mutually beneficial effects that would accompany formal public review and comment on a draft site characterization analysis as contemplated in the existing rules.

The third issue concerns the timing of shaft construction and the need for a prohibition on such construction until after the Commission, states and tribes have reviewed the SCP and DOE has considered the comments.
Because the staff endorses the view that construction must await DOE consideration of the comments on the SCP, we are puzzled by the reluctance to state this in the proposed amendments.

Despite the DOE Mission Plan agreement that sufficient time must elapse for review of the SCP, there are numerous examples of DOE proposed short-cuts, such as limited work authorization and premature determinations of site suitability, some of which reversed previous DOE positions.

We do not share the commission's confidence that DOE commitment will be adhered to in the face of schedule delays. Our cynicism is reinforced by the Commission and the DOE desire to avoid even a 90-day review period for the site characterization analysis.

Finally, the staff questions the need for a declaration of an absolute right to participate in the licensing proceedings of the Commission. While we would like to believe that our concern is unwarranted with respect to this issue, the Commission's action on the question of preliminary determination of site suitability, the recent decision to hold unrecorded gatherings without soliciting public comment and the staff proposal to alter the Commission's rules of practice for licensing proceedings lead us to the conclusion that such a declaration is necessary.

We understand that minor changes may be necessary.
to ensure 10 CFR 60 conformance with the NWPA, but the proposed procedural amendments go beyond what is required. We urge that they be reconsidered.

Thank you.

CHAIRMAN PALLADINO: Thank you, Mr. Larsen. We will now go on to the next speaker.

MR. PROVOST: Mr. Chairman and members of the Commission, for the record I am Don Provost, technical director of the State of Washington Office of High-Level Nuclear Waste Management.

Thank you for inviting me to present the State of Washington views on the proposed amendments to 10 CFR 60 which deals with site characterization and participation of state and Indian tribes.

Before I make specific comments, I will briefly discuss our earlier participation with NRC. Our first major involvement was with the 1982 site characterization report on the Basalt Waste Isolation Project. State representatives had routine discussions with NRC staff.

We were pleased by the excellent work from NRC staff. The draft site characterization analysis together with comparable reports from the State of Washington, affected tribes and USGS influenced the U.S. Department of Energy to significantly improve the BWIP project.

During the process of NRC concurrence in the USDoe
siting guidelines, the Commission listened to the states and tribes, considered their comments and made an independent determination. We appreciated NRC's fair and independent role.

However, we were very concerned when NRC reversed their position on the timing of the preliminary determination of potential high-level waste repositories.

Recently, we were neither notified about this meeting nor sent the relevant supporting material. This apparent change in approach is a serious concern to us. The opportunity and procedures for comment now appear to be substantially reduced from those we experience earlier.

This brief discussion of our interactions with NRC is intended to give a rationale for why we did not comment on the proposed rule published on January 17, 1985 but asked to testify at this hearing.

In general, we support the testimony presented by the other states and affected tribes. However, we do have several specific comments on high priority issues.

They are, number one, draft site characterization analysis, there is a strong need for states and affected tribes to have an opportunity to participate effectively in the NRC review of the SCP.

More importantly, it is important that issues come to closure between a draft and final site characterization
analysis. For example, several issues raised in the site
classification are not yet resolved. Examples are quality
assurance management and performance allocation. These are
raised in the SCP but have not been resolved. Major
technical and policy issues must be resolved as early as
possible.

Another issue is shaft sinking. The State of
Washington does not plan to fully staff its technical review
team unless and until the president selects Hanford for site
classification. It is my understanding that other states
and tribes are taking a similar approach.

This means that we are not now budgeted and do not
have the technical staff to fully participate in the NRC/USDOE
meetings to resolve shaft related issues. The only
opportunity for thorough and meaningful state, tribal and
public discussion will take place during the SCP comment
period.

Under the Act, states and tribes have consultation
rights. To be meaningful, such consultation must be held
before federal decisions are locked in concrete.

In a related matter, we are concerned that the
surface site characterization activities continue at Hanford
even though the EA's are not in final form and the SCP is
delayed for at least a year. Again, the Nuclear Waste Policy
Act requires a thorough and meaningful review by the states,
I tribes and the public. This has not occurred at the
federally-owned sites.

Standing of the states and tribes in a licensing
hearing, a host state and affected tribes are entitled to full
party status at the outset of the NRC proceedings and an
absolute right of participation in NRC licensing proceedings
should be declared by 10 CFR Part 60.

In summary, the State of Washington strongly
recommends that NRC not decrease current procedures relating
to the participation of states and Indian tribes.

CHAIRMAN PALLADINO: Thank you very much.

Mr. Provost. I guess we are ready for questions. I wanted to
ask you one question. You say you didn't receive notice of
this meeting? You must have received some notice, you are
here.

MR. PROVOST: We had a phone call from other
interested parties who indicated that the meeting was being
set and they had received information that we had not been
mailed. So it is our feeling that all the parties that are
involved should have had exactly the same notice and sent
information at the same time. We had to call and make our own
arrangements for the meeting and came in late.

CHAIRMAN PALLADINO: We will check into that.

MR. PROVOST: It takes at least five days for the
mail to get to us anyway so we are already at a disadvantage.
CHAIRMAN PALLADINO: Sometimes we make fast decisions to hold meetings but we will try to be considerate in the future or at least more considerate.

Let me ask one question and anyone of you is free to answer. It is my understanding that the proposed amendments provide for comments by the host state and affected Indian tribes before the Tina site characterization analysis. I was curious or interested in why you feel that is not enough opportunity for comment.

MR. FRISHMAN: I think we do see that as a valid opportunity for comment. The issue is the disposition of those comments and our understanding of the extent to which those comments receive considered attention to the extent of being incorporated or knowing why they were not incorporated so that we can all move forward with an understanding of what the evolving view of site characterization is on the part of the Commission as well as our own view, as well as DOE's view.

We could find a way and I have already figured out the way to make it essentially a working process anyway and it becomes rather chaotic and probably more consumptive of resources than just a straight draft. We can do something very simply by making those comments, with those comments request a response and request a timely response under the provisions of the Nuclear Waste Policy Act.

We get that timely response and then we forward it
to the DOE. That would work essentially the same way. But what it does then is it casts an image of antagonism among between affected parties and the Commission... an image that is projected, there becomes... an her image at some fraternalism between... or and the Department of

... is, I don't think is a very happy situation but it is very easy to do.

MR. MURPHY. May I make a further comment.

Mr. Chairman?

CHAIRMAN PALLADINO. Surely.

MR. MURPHY: It is our understanding that the states under the staff proposal, that the states will be afforded the opportunity to comment in the sense of making suggestions to the director as to what should be contained in the site characterization analysis while it is in draft form at the staff level.

But the opportunity to comment on the substance of the site characterization analysis does not arise under the proposed amendments until the SCA is delivered to DOE and we are just concerned that at that point in time the train is so far out of the station that it will be virtually impossible to get it back in and decouple any of the cars.

So what we are suggesting and we appreciate the opportunity to suggest to the staff what should be contained
in the site characterization analysis. We just think we ought to have the opportunity to comment upon what the staff finally does come up with in draft form before it is delivered to DOE.

CHAIRMAN PALLADINO: Let me read one sentence or maybe it is two sentences, I am not sure, "under a change that is reflected in the final rule that is recommended here NRC would provide opportunity before publication of the SCA for the host state and affected Indian tribes to present their views on the DOE SCP and their suggestions with respect to comments thereon which may be made by NRC."

Maybe that isn't good enough in your view but I just want to make sure I understood why.

MR. MURPHY: That is correct, Mr. Chairman. We are entitled under that to comment on the Department of Energy's site characterization plan. What we are asking for is the opportunity to comment as well on the staff's response to the site characterization plan which is the site characterization analysis before it is delivered to DOE.

MR. SPURGIN: I would add to that that we would be looking for the response which I think is probably the most important, one of the more important aspects of it, I should say.

The response is critical for the public confidence purposes if you will that the state is supposed to serve under the terms of the Act.
CHAIRMAN PALLADINO: Let me turn to my colleagues to see if they have other questions. Jim, do you want to start?

COMMISSIONER ASSELTINE: I have a few.

CHAIRMAN PALLADINO: Do you have some, Tom?

COMMISSIONER ROBERTS: No.

COMMISSIONER ASSELTINE: Let me start with the broader proposition that I think some of you mentioned. When I read the staff's paper I get the flavor that the reason why some of the modifications are being proposed, modifications to the rule that the Commission had previously adopted, was because when they looked at the Nuclear Waste Policy Act, the Nuclear Waste Policy Act did not specifically require some of these things. Therefore, the staff's view is that they should take them out of the Commission's rule.

I think one of you made the point that the staff seems to be under the impression that because Congress did not mention it specifically or include it, therefore, the Congress disapproved of those things.

I guess my recollection was somewhat different from the time that the Congress considered the Act. In fact, I had recalled that the Congress was quite aware of what the Agency had done both on the technical side and on the procedural side and if anything, there were some statements or comments endorsing the kinds of approaches that the Commission had adopted.
Is that your recollection? I know a lot of you all were involved in the process as well, that far from disapproving of some of those things the Congress had recognized that this Agency had gone quite far in putting in place both its technical requirements and the process by which it would deal with both the Department of Energy and the states in this early informal stage.

MR. FISHMAN: Yes. I am not aware of any intent in the writing of the Waste Policy Act to limit the ability of the Commission. I don't think there are exclusionary statements there. I don't think there was an exclusionary intent.

As I stated in my opening comments the NRC is not constrained by the Waste Policy Act. It is guided, yes and the requirement to conform the rule to the Act is, I think, a legitimate approach and not one that was meant to limit.

COMMISSIONER ASSELSTINE: Yes. Pat, you made the point I think on the draft site characterization analysis that we are better off if we try to talk to the states and here from the states informally before the Agency takes its final position on something.

MR. SPURGIN: Even if I didn't say it, I basically agree with that.

(Laughter.)

COMMISSIONER ASSELSTINE: One of the things I wanted
to explore is we have have some experience with this process and Don, I wonder if you could talk a little bit about the process, the existing process, that we used in looking at the original draft site characterization report from DOE on the Hanford site.

My impression was that both in terms of an informal discussion in advance of the Commission issuing its draft site characterization analysis and the mere fact that the NRC would put on the table a draft document that others would then have to respond to worked fairly effectively, but I would be interested in your perceptions of that as well.

MR. PROVOST: I think that was a very good process and was a very meaningful process that raised the level of understanding of the BWIP Project a great deal and got a lot of technical and policy issues on the table and we had informal discussions with NRC staff during the process of the developing the SCA and had interchanges during that process.

Then it came out and it had a very good effect, getting that out, getting comments and I think that there were not a great deal of comments on the SCA itself but was a very effective one of putting out there for everybody to comment and then large things, many things were surfaced and many things accomplished but yet, some very basic things were not. They are still not resolved today.

COMMISSIONER ASSELSTINE: Yes. I appreciate that
but I guess the sense that I had had from basically all parties was that the existing process that the staff is now proposing to change had actually worked pretty well.

MR. PROVOST: Very well.

COMMISSIONER ASSELSTINE: It didn't delay things.

It didn't drag the process out but instead surfaced some issues so that they could be resolved early on rather than later on in the process. It may not have gotten all of them, you may not have gotten all of them settled yet but at least they started to get surfaced fairly early through the use of informal discussions and the draft document.

MR. PROVOST: Yes, and very clearly in the record they were identified so they are there. That is the thing we appreciated.

COMMISSIONER ASSELSTINE: It almost seems to me that that is going to advance the process rather than just relying on a final document that may not elicit the kinds of reactions and responses that are needed.

MR. MURPHY: May I make a comment on this question of delay and I realize that should be a concern both to the Department and the Commission. The only delay involved in site characterization which the site characterization plan affects is the sinking of the exploratory shaft itself. The Act says before proceeding to sink shafts, et cetera.

Any other activity associated with site
characterization can commence immediately upon the president's approval of a site recommendation. Indeed in our case and in Hanford's case they are characterizing our site already.

There is no question about it. The only thing that hasn't been done on Yucoa Mountain is sink a shaft and so the only thing that is going to be delayed by 90 days, in allowing the states 90 days to comment or 60 or whatever appropriate comment period is selected, is the sinking of a shaft and it is probably going to take them that much time to get the material and equipment at the site to get things ready to go anyway.

CHAIRMAN PALLADINO: Let me make a comment without taking sides or whether we should or should not do it. A 90-day comment period is not limited to 90 days. It takes time to get it out and then there is the 90 days and then reading them, assimilating, deciding what is going to be done about them so the 90 days becomes more like six to seven months.

I am not saying that may not be worthwhile. I am just pointing out the comment period is not limited just to the particular period in which we receive the comments.

Go ahead.

MR. MURPHY: I am finished. Thank you.

COMMISSIONER ASSELSTINE: I had a question on the role of the host state as a party. What benefits or
advantages do you see to the states and also to the affected
Indian tribes I guess as well and we will hear from them later
of saying up front in the regulations that the host state and
affected tribes are recognized as parties to this proceeding
even before we get to the formal proceeding stage several
years from now? What benefit do you think that provides to
the states?

Mr. Murphy: It provides an assurance to the states
that they are going to be full participants in that licensing
process and it also as a party it gives the states standing
for want of a better word to participate and even though the
Act itself does, I think, to be considered a full party in all
of the informal pre-application kind of interchanges between
any applicant before the Commission and the Commission staff.

As I said, Commissioner Asselstine, it is
inconceivable to me and I am sure it is to everybody else in
the room that the State of Nevada would not be entitled to
full party status in the event that Yucca Mountain is
selected. I just want to see another nail in the coffin.

That is all.

Commissioner Asselstine: All right.

Mr. Spurgin: I would add that even though you can't
come to a situation where that might happen not being able
to tell the future and potential changes in circumstances,
there is nonetheless an uncertainty and the removal of any
uncertainty which doesn’t cost anybody anything I think you
have to look on favorably.

COMMISSIONER ASSELTINE: All right. On the Part 51
changes, I am sympathetic to the view you expressed about
looking at this thing as a whole and in fact I think several
of us are. As I recall, I think, Commissioner Zech had
started an effort to get the staff to move that process
forward.

It would be useful at some point to hear where the
staff is. I think Lando, you proposed that they ought to get
that stuff done in March. If we could move that forward and
get a chance to look at how the whole package fits together, I
am sympathetic with that view. It seems to make sense to me.

CHAIRMAN PALLADINO: It is not clear though to me
why you think they should be handled together.

MR. MURPHY: Just to avoid any potential for any
inconsistency whatsoever between any of the three parts.

CHAIRMAN PALLADINO: Well, if handling them together
would guarantee that, maybe that would be an advantage. Often
we fall into traps. I was just interested in your thoughts on
that if you have any.

COMMISSIONER ASSELTINE: I guess the final area
where I have a question is on the relationship of the shaft
sinking to the full understanding of the site characterization
plan.
Is it because the shaft sinking is a major construction activity that has the potential to affect what is done with the site and how characterization proceeds? Is that your principal concern in terms of wanting to make sure that there is a full understanding of what is proposed for site characterization and how the shaft fits in, construction work fits in with that that drives the linkage question?

MR. PROVOST: Maybe I can explain the Hanford. It is a saturated site and sinking the shaft will in a technical basis severely affect the hydrologic baseline and it also affects -- well, once you do that it affects all of the tests.

So from a technical one, once you sink that shaft you had better understand your baseline. You have to understand a lot of things going all the way through it. Especially in our case, we think it is a very major technical one besides the issues that you raised.

It affects all the tests later on so you have to know what is going on.

MR. FRISHMAN: I see it as potentially -- and I agree with what Don says -- I see it potentially even going farther than that and that is a choice of a location for a shaft itself is very important in the integrity of the site and relative to the question of whether the exploratory shaft or shafts become ultimately even possible as repository shaft or shafts.
I think there is a real possibility here of compromising a site with a shaft. Now just because you don't have the spectrum of thought and knowledge that everyone collectively might be capable of providing, we have some concerns about the potential shaft locations at the Deal Smith County Site.

One was suggested in the draft EA. What I hear is that that is moving around or has been moved around in the contractor's minds anyway and I have yet to see a rationale for anyone of the possible locations for the shaft and here it is, I have some real questions about it.

I don't have a mechanism right now to even raise those questions other than in the informal conference and then it becomes not really -- that is a small issue when you are talking about shafts, where it is and the potential to compromise.

When you get into the technical meeting on the shafts, you are talking much more about the mechanics of the shaft itself.

COMMISSIONER BERNTHAL: What are the nature of the questions that you have right now about the current location? Are you talking about surface questions or geophysical questions?

MR. FRISHMAN: I am talking geologic questions because the current proposed location is very close to a
boundary of the designated identified site, very close to a boundary.

I have some questions about the logic of that given the gradient of the deep aquifer as well as the gradient of the near surface aquifers and whether, in fact, that shaft if it becomes a working repository shaft may in fact increase or require a necessity to increase the controlled area outside of the current identified site. There are geotechnical questions regarding where that shaft is best located.

There is another question that is still very much an open question and I know that the architect engineer right now has a milestone report due or it has already been submitted. We have not been able to find it having to do with whether in fact an exploratory shaft can be used as a repository shaft and then if it is not used, how do you seal it? Can you get the integrity of that to the point where it looks like the host rock? The answer is no but you have to do a lot more thinking than just say no.

It becomes a question of its ultimate use, its ultimate license ability, whether it is used or not used. The shaft itself to me has a very great potential to compromise a site and I think it is worth all the scrutiny in front rather than rushing to start digging.

CHAIRMAN PALLADINO: All right. Any more questions?

COMMISSIONER ASSELSTINE: Just one comment. The
sense I have is that both our staff and DOE are basically in agreement with that, that there are a lot of sensitive issues about shaft construction, that that really is a very significant aspect of the overall plan for site characterization, the only difference being what you all want to see as a formal recognition that that has to be part of this process and the process has to lead to the identification of concerns and response to those comments before proceeding with the construction of the shaft whereas DOE and the staff are saying well, we will rely on an informal assurance that they won't start on that. Is that basically right?

MR. FRISHMAN: Somewhere the plan has to be integrated to the point where you can look at the whole thing and say does one piece of it make sense relative to the other. I am sure that it is intended to do that. It is just that for purposes of time, once again there is a whole sector that is getting the disadvantage of being in a hurry.

CHAIRMAN PALLADINO: Fred, do you have any questions?

COMMISSIONER BERNTHAL: I don't really have many questions beyond what have already been asked. I have to say that the thought that you want to think very carefully that you are sinking a shaft in the right place, that you are going to gather the maximum amount of information, the maximum amount of significant information, those seem like very valid
It was not so clear to me at the outset of these comments about great caution before you go ahead and sink a shaft and I guess what you are saying is much like before you start building a house, you want to make sure you are building in the right spot.

I wasn't quite so sure though how to view this business of sinking an exploratory shaft in the larger picture of activities that generally are carried out for a variety of other purposes. I am really getting back to the comment that you made, Mr. Provost.

Is this by its nature a truly extraordinary engineering event in the area in the State of Washington we are talking about here? Has nothing comparable either as a collection of other shaft sinkings for other purposes or perhaps other activities ever been carried out?

It sounded like you were arguing that the very sinking of the shaft would somehow disturb the science and the ability to gather data and the nature of the aquifer or whatever else might be. It is almost an uncertainty principle of geology, I guess, that once you start observing you change the picture. I didn't quite understand that.

MR. PROVOST: Again, the Hanford is probably the most complex geology and hydrology of any of the sites and everything from mounding the water from defense activities on
the site to understanding that whole area, for example, let me give you an example.

In the site characterization report basically what was done in the previous one and an awful lot of information was provided there, a lot of comments came in, a lot of suggestions but recently now based on the information they have recently gathered, USDoe recently gathered, at least the contractors like in Texas are looking at possibly moving the shaft location because of stresses underground.

There are places where there are high stresses underground and it would be very dangerous to workers and others with less. Of course, we feel that they should be taking the safest spot but yet we have heard nothing about it officially. We know they are working on it and discussing it and apparently we won’t hear about it until if it shows either probably in the site characterization plan.

This illustrates the difficulty since 1982 they have been looking at this and they have had a drill rig on site for several years so they have been pretty much chosen. They are very comfortable with it but now they are looking at the data and they are considering changing that.

It is something that takes time and we want them to take the time to make sure that they pick the right spot. If they choose to go there, they should take that time and have others look at it. So it is not only the hydrology, the
geology, as you say it has never been done in our area at all.

COMMISSIONER BERNTHAL: In all of the activities that have been carried in that area, there is nothing that would remotely disturb, it sounded like you were saying perhaps irreversibly, alter the system whatever that is with the shaft sinking.

MR. PROVOST: Both staffs agree that your hydrologic baseline will change considerably once you drop that and you have to have time to do that. The delays have helped them get a better baseline than you would have had originally but now with this other information on stresses and everything else, it just takes time to get it right.

COMMISSIONER BERNTHAL: That is all I have. Thank you.

CHAIRMAN PALLADINO: Thank you. Commissioner Zech.

COMMISSIONER ZECH: Just a couple of comments. First of all, I appreciate very much your comments here this morning and I would encourage you to continue your close working relationship with our staff and encourage you also to continue your efforts with DOE.

I appreciate the fact that the states should clearly be involved and your comments this morning I think is something that we should listen to and take very seriously. I think that our efforts are to conduct our business in the most responsible manner we possibly can recognizing the very
serious and important effort this is for our country and we should try to resolve our problems as early on as some of you pointed out as we possibly can and continue working very closely together.

Some of the earlier comments regarding making sure that your comments are heard and are carefully reviewed and I believe the term was used where meritorious heeded, certainly I agree with that.

I think that is part of what we are all trying to do. Naturally there is going to be differences of judgment as regards to what is meritorious, what is necessary and so forth but those are things that we ought to do in my view anyway as openly and honestly as we possibly can recognizing that people are going to differ.

But the exchange with the states and Indian tribes and all involved in this important endeavor, I think is extremely important recognizing that we are probably not going to end up satisfying everyone or perhaps not as many people as we would like, but we simply must do it as responsibly as we can. I think that is what the Commission’s effort is and I think that is what DOE is trying to do also.

The states also should continue their efforts to be involved and to influence the process to the degree they can and recognizing that eventually the decisions will be made but I appreciate very much your comments and I think the
Commission as well as our staff should take them aboard and review them very carefully so I thank you very much for your continuing efforts on the part of your fellow citizens of our country and I think that we are making progress and we should continue to work closely together.

CHAIRMAN PALLADINO: Thank you very much gentlemen. We appreciate your being here and we will certainly consider your comments.

(PANEL excused.)

CHAIRMAN PALLADINO: Now I wonder if we might have the representatives of the Yakima Indian Nation and the National Congress of American Indians join us here at the table.

Do you plan to go first, Mr. Tousley?

MR. TOUSLEY: It makes no difference.

CHAIRMAN PALLADINO: Well, you are listed first on my sheet of paper so why don't we go ahead. That way I can keep track of the times.

MR. TOUSLEY: Thank you, Mr. Chairman. I am Dean Tousley, an attorney for the Yakima Indian Nation.

On behalf of the Yakima Nation, I thank you for granting our request for this meeting. The Yakimas feel that the amendments to 10 CFR Part 60 have profound implications for the Commission's responsibilities in this important national program and for the success of the program itself.
We continue to have two primary concerns about this Act, the elimination of the draft site characterization analysis and the Commission refusal to review DOE's site selection process.

With respect to the draft SCA's, the staff argues that interactions between DOE and the states and tribes and the ability of states and tribes to participate in meetings between DOE and NRC among other things eliminates the need for NRC circulation of draft SCA's for public comment.

Unfortunately, I have to report that the promise of full participation in these meetings is not being realized. At the outset of a recent BWIP hydrology coordination meeting, DOE announced a policy limiting the participation of state and tribal representatives in such meetings to an opportunity to make comments at the end of the meeting.

The NRC's chief representative protested this policy but to no avail. One of our technical consultants made extensive comments at the end of the meeting but our people felt generally that they were unable to participate effectively in the meeting because of their exclusion from the give and take of the technical exchange.

In light of this and other manifestations of DOE's attitude about state and tribal participation, it is improper for the Commission to use the supposed ability to participate as an excuse for curtailing its own interactions with states.
and tribes, including the circulation of a draft SCA.

In the place of a draft SCA, the staff has added language calling for the director to provide an opportunity for the states and affected Indian tribes to present their views on the SCP and their suggestions with respect to NRC comments.

It is unclear what kind of opportunity the director is to provide, that is, whether written or oral comments at a meeting. The timing of this opportunity is also unclear yet quite important. If it is scheduled too early, we will not yet be familiar with the SCP and if too late, the ability to influence the SCA will be compromised.

Moreover, comments to the Commission staff would be much more meaningful if commentors had a draft or at least an outline of NRC's views to reflect upon. Preferably the Yakima's would like to continue to see a draft SCA with a full opportunity to comment. At a minimum, we urge you to further amend this provision so that the stated opportunity to present tribal and state views is held a reasonable time following the staff's circulation of at least an annotated outline of its SCA.

With respect to Commission review of the OUE site selection process, this is even more important to the Yakima Nation. The NWPA clearly provides that NRC authority to promulgate technical requirements and criteria is pursuant to
other provisions of law such as the Atomic Energy Act and the Energy Reorganization Act. Thus, Congress did not intend in the NWPA to prescribe the scope of NRC review of DOE's repository program.

Because of its crucial bearing on the adequate of a repository, the siting process goes to the essence of NRC's mandated public health and safety and environmental protection responsibilities under the relevant statutes.

For NRC to decline to fully review that process would be a basic abdication of those responsibilities.

Moreover, the Commission's responsibilities under NEPA require it to engage in evaluation of alternatives as a part of its licensing process. Although NWPA section 114(f) prescribes the choices from which the NEPA alternatives must be selected, it does not prescribe that those alternatives are automatically suitable for NEPA purposes.

It is the Commission's responsibility to analyze the alternatives and to decide whether they are suitable as the agency ultimately responsible for NEPA compliance. NEPA and the NWPA certainly are not satisfied by DOE's approach to the preliminary determination of suitability which is now to be made prior to characterization when it is the merest of unsubstantiated allegations.

Finally, the language of the Act itself provides that NRC need not curtail its review of the site selection
process. Section 114(f) states that and this is a quote,

"Nothing in this Act shall be construed to amend or otherwise
detract from the licensing requirements of the nuclear
Regulatory commission as established in title II of the Energy
Reorganization Act of 1974."

Congress did not intend its failure to explicitly
incorporate all of the details of Part 60 in the Act to be
construed as implicit rejections of them. Where Congress was
silent on the subject already addressed by Part 60, Congress
intended that NRC licensing and regulatory requirements should
not be affected.

One of the regulatory requirements in place when
Congress passed the NWPA was the requirement for NRC review of
the site selection process. Now it is the Commission's
conclusion that the NWPA by omission somehow proscribes its
review of DOE site selection process is incorrect.

As discussed above, the Commission's responsibilities
under its organic statutes and NEPA require such a review and
the NWPA is entirely consistent with those requirements.

A member of your staff told me in confidence that
the staff was very disappointed in the way DOE weighed all the
post-closure guidelines equally for all the sites but that the
staff felt constrained against forcefully stating this
objection because of the Commission's position.

DOE and the country have been done a great
disservice by this unnecessary reluctance to state valid technical objections to the most critical aspect of the EA's, an aspect which the Commission has compelling legal and policy reasons to comment upon.

In conclusion, it is quite possible for the federal government's efforts to dispose of high-level radioactive wastes to fail yet again in spite of the NWPA. If that happens, it will almost certainly be because of the inadequacies of DOE's site selection process and the lack of effective regulation of that process by NRC.

We urge you to help prevent another waste program failure by retaining your proper active role in reviewing the repository site selection process and by retaining the most extensive possible interactions with states and affected Indian tribes.

The Commission staff, most notably the Policy and Program Control Branch, is doing a very commendable job at those interactions, much better than DOE. If the Commission declines to exercise its authority where it is needed, however, the Commission's credibility will suffer just as DOE's has and the waste program will be seriously threatened. In the absence of credibility somewhere in the government, this program cannot succeed.

Thank you very much.

CHAIRMAN PALLADINO: Thank you. We will next hear
from Susan Harjo. You may proceed.

MS. HAHJO: Thank you. I am Susan Harjo and I am Cheyenne and Creek and I am a citizen of the Cheyenne and Arapaho tribes in the State of Oklahoma. I am also the director of the National Congress of American Indians and you have our prepared statement before you, I understand, and we are also submitting a prepared statement on behalf of the Nez Perce tribe in Idaho for the record and I believe you have both statements there.

We wish to join the previous witnesses, both Mr. Tousley and the state witnesses, in urging that public commenting on the draft site characterization analysis be provided for in the final rule. Such commenting we agree with the previous witnesses is not precluded by the Nuclear Waste Policy Act and is permissible under the general NRC authority.

With specific regard to Indian nations, the NRC as an instrumentality of the trustee, United States, is a partner in the government-wide fiduciary responsibility to Indian nations and that responsibility includes taking actions regarding the beneficiary Indian tribes that would actually benefit the Indian tribes.

All too often the actions of many U.S. agencies, the old Indian agents up through modern times, have not benefited the beneficiary Indian nations and that is the agreement that has been made. That is the law of this land that there is
this trust relationship, there is a fiduciary obligation. NRC shares in that.

Our requests here are so modest as to be really the bare minimum I would think that NRC could do to carry out its historic responsibility as part of the United States government.

We are only asking for three things, that there be allowed a comment period on the SCA draft, that you not change the rule to limit Indian tribes and Indian organizations at this point by saying that those designations should be changed to affected Indian tribes and we have also included a symbolic request that if the Commission staff is going to incorrectly capitalize the "s" in state then it should capitalize the "t" incorrectly in tribe.

(Laughter.)

MS. HARJO: It is just the sort of perceptual thing that does make a difference in federal agencies because it looks like great big states, little bitty tribes; great big responsibility to the states and diminutive responsibility to the tribes. I think we can do that and that is a real easy one.

CHAIRMAN PALLADINO: We will do better.

MS. HARJO: Mr. Tousley has expressed his concern about the Department of Energy and I would like to make our point about not changing the term to affected Indian tribe at
this point and discuss a bit what is happening in the Department of the Interior where the Secretary of the Interior has responsibility for determining affected tribe status. There is no one in the whole of the Bureau of Indian Affairs who is even assigned to this matter. You can't find an individual who has responsibility, day-to-day responsibility, even if it is only one day out of 30 for this matter.

COMMISSIONER BERNTHAL: Why not?

MS. HAKJO: Why not is an excellent question. There was a very good fellow who was there handling a number of issues that he wasn't being permitted to handle including hazardous waste sites in the trust responsibility area, an office of the Bureau of Indian Affairs, and he used to attend meetings at the Department of Energy I know and was very up on the issue. He has been shipped somewhere to the west of D.C. and we don't know where. I don't mean banished. I think he can be found but he is not a person now in charge and there is a void.

COMMISSIONER BERNTHAL: I think they let him out.

(Laughter.)

MS. HAKJO: They permitted him to escape. Still, an issue this important would it seem need at least one person at one desk where the mail stops to be accountable in the agency that is designated as determining affected tribe status.
One of the problems that has been created, the Coeur d'Alene tribe, I understand you have received a separate communication from them about having been denied affected tribe status because they do not fit into the strict language of the Act which defines affected Indian tribe to include one, any tribe on whose reservation a nuclear waste site is proposed or two, any tribe whose possessor or usage rights to lands outside the reservation as defined by Congressionally ratified treaties may be effected by such a site.

Now the Coeur d'Alene's do not have specific Congressionally ratified treaties but their reservation is designated as a reservation and they enjoy all the attributes under law of Indian country. They are treated for all practical purposes as a reservation. It is just that they were established under a different mechanism, under an executive order.

Our history spans, of course, the entire history of the United States so we go through these many policy and writing fads of Congress and we know that sometimes it is really sloppy and here we have the Coeur d'Alene tribe which is fully federally recognized for all other purposes being excluded because of the treaty language.

On the other hand, we have the Passamaquoddy Tribe and Penobscot Nation in the State of Maine being included in for NWPA purposes by DOE even though the legislative history
is clear that the fad at the time in 1980 was to say in that particular committee, the House Interior Committee, they didn’t want Indian territory referred to as reservations for that period of time.

So three acts that I worked on were not called reservations and so they are included but here we have all references to reservations. So we have inappropriate inclusions, unjust exclusions, sloppiness in the writing, sloppiness and even perhaps inattention in the Department of the Interior as to these designations.

Leaving the terms as they are, Indian tribe and tribal organization is not going to create a real problem for anyone in NRC or DOE and would allow for some of these problems that I have mentioned to be sorted out and would not close your option to changing this rule to specifically affected Indian tribe as these things get sorted out.

Unless I am missing something really major, it seems like this, too, is a very easy one.

CHAIRMAN PALLADINO: I am trying to understand --

MS. HARJO: I am, too.

CHAIRMAN PALLADINO: I am not quite sure that I got what you would like us to do.

MS. HARJO: The proposal is to change at this point the term, "Indian tribe" and "Indian tribal organization" to "affected Indian tribe" or "affected Indian tribes." At this
point with so much confusion about who is an affected Indian tribe and who is not and so much of that being sorted out now and the tribes being so far behind the states in this process and rushing to catch up, it is our feeling that if you change to affected Indian tribe you would be unjustly excluding some tribes from this process.

CHAIRMAN PALLADINO: That is where I am having difficulty. I thought you were recommending that we change to it.

MS. HARJO: No.

COMMISSIONER ASSELSTINE: I think you are saying stick with the existing definitions in the regulations.

MS. HARJO: Right, for the moment.

COMMISSIONER ASSELSTINE: For the moment, until some of these questions get sorted out.

MS. HARJO: That is right, and somewhere down the road obviously it would be changed but at this point, that might preclude some of the really valuable consultative ability of those tribes and you might just be closing your own doors to dealing with the tribes.

CHAIRMAN PALLADINO: All right. Did you say you had one other point?

MS. HARJO: I probably did, but I don't. Thank you.

(Laughter.)

CHAIRMAN PALLADINO: Thank you. I guess we are open
for questions. One comment I might make and this applies to all of us. We have a balance to make in trying to meet the schedule that the Congress set forth and making sure that everybody is properly heard and that is a balance we keep on trying to achieve. So while we have a tendency to lean toward giving everybody their say, I think there is a point at which we have to make a decision that we ought to close ranks and get on with the job.

I think one of the other areas that we are faced with is the judgment that is needed in deciding what comment should be reflected in the change in the regulation and which ones don't and there is a feeling, I gather, and maybe it doesn't come from your presentation as much as it did from the states' presentations, that if we don't follow the suggested comment, that we haven't given it attention.

So I guess I am saying, yes, we need to give consideration to all the comments and we should allow time for the comments but it isn't possible to agree to bring all the comments in.

Let me see if others have comments? Commissioner Roberts?

COMMISSIONER ROBERTS: No.

CHAIRMAN PALLADINO: Jim, do you have anything?

COMMISSIONER ASSELSTINE: One comment and one question.
I would say the comment is you are going to need to bear with us a bit. Dealing with Indian tribes is not something this agency has had a lot of experience and practice with and I think it is a learning experience for us as well as for you all in this area.

I would also say that people who worked on the legislation on the Hill also were people who in some instances were not involved in detail in legislation affecting the federal government's special relationship with the Indian tribes and there may well be some things that we need to surface, whether we do it or the Department of Energy goes it, or the Congress on its own initiative takes a look at some of these things like the definitions of which tribes were included and weren't and was it a conscious decision that that was the right balance to strike.

I think your comments are well taken on those kinds of questions and they are things that we probably ought to look at and the Department of Energy ought to look at as well as the Department of Interior.

I agree with Fred that his question earlier sure seems to make sense to have somebody at the Department of the Interior that is following this and helping the tribes with their special interest and concern in this area.

The question I had basically goes to your points, Dean, on reviewing the DOE site selection process. If I
understood you right, your point was that basically the
Commission has to do that at some point in this process to
carry out our NEPA responsibilities. We are going to have to
look at the alternate sites that were considered in the
process that was used to identify and select the alternatives
that were considered even though the number may be fixed.

MR. TOUSLEY: That's right.

COMMISSIONER ASSELSTINE: If that is the case, are
you basically saying that the earlier the agency focuses on
that problem the better. If there are difficulties in the
site selection process, it is a lot better to know about those
in the early informal stage than later on in the more formal
hearing stage and that the site characterization plan
logically presents a useful time at which to make that kind of
review. Is that basically the sense of what you were
saying?

MR. TOUSLEY: That's right. It is not just more
useful early. It is practically use less late. There is
really very little you can do if you get a license application
for a repository and the alternatives aren't suitable. You
are really in a bad situation at that point. Now is the time
when you can influence that decision.

COMMISSIONER ASSELSTINE: So on the delay side, we
may be a lot better off in terms of avoiding delay --

MR. TOUSLEY. Exactly.
COMMISSIONER ASSELSTINE: -- and we should focus on that issue and get it resolved as much as we can early on in the process.

MR. TOUSLEY: Exactly. I would just like to add in response to the Chairman's comment a minute ago, I think the history of federal efforts to dispose of nuclear waste indicates that there is no place where it is better to take a little bit of extra time to hear what everybody has to say than in this program.

Past efforts have failed both because of the lack of technical credibility and because of the lack of public confidence and taking that time is what is going to help create that confidence.

CHAIRMAN PALLADINO. I agree with you on that. I think that has been the reason for failure and I hope it isn't the reason for failure or I hope there is no failure in the future and that we go forward. We all have to face where and how do we close ranks.

COMMISSIONER ASSELSTINE: That is all I had, Joe.

CHAIRMAN PALLADINO: All right. Fred, do you have a comment?

COMMISSIONER BERNTHAL: No.

CHAIRMAN PALLADINO. Lando.

COMMISSIONER ZECH: No. I would just like to thank the panel members.
CHAIRMAN PALLADINO: Thank you. We appreciate your giving us your comments and as I said before, we will give them careful consideration.

(Panel excused.)

CHAIRMAN PALLADINO: I am going to declare a ten minute recess at this point. Please be prompt in returning so we can get on with the other speakers.

(Whereupon, a short recess was taken.)

CHAIRMAN PALLADINO: Ladies and gentlemen, I wonder if we could begin to take our seats. I suggest we get started. Commissioner Zech will be on his way here shortly.

This is a continuation of our discussion on Part 6U and we now are going to have presentations by Mr. Herrick and Mr. McGranery representing public interest groups.

Mr. Herrick, do you want to start?

MR. BERRICK: Thank you, Mr. Chairman. I am David Herrick, Director of the Nuclear Waste and Safety Project of the Environmental Policy Institute. I am here this morning not only on behalf of my own organization but also on behalf of the Natural Resources Defense Council. Mr. Dan Reicher of the Council regrets that he cannot be here this morning. He was called to Ohio to consult with state officials about some of the more recent problems at the Fernald DOE Feed Materials Facility.

I want to thank you on behalf of both of our
organizations for the opportunity to testify this morning.

Let me begin briefly by stating that I think it is helpful that the SELY paper in the package before the Commission was distributed to participants this morning. It gives us an idea of the kinds of issues that the Commission is focussing in on and allows us to make more meaningful comments.

I think there are a number of questions raised by portions of the package that are more detailed than we should get into at the moment and let me just mention a couple of examples.

On page nine of the proposed rule the package states that Part 60 is exempt from NEPA under Section 121 of the Nuclear Waste Policy Act. I think you will find that that section only exempts the promulgation of technical requirements specifically required by section 121 and doesn't extent to all of Part 60 rulemakings including this one.

Another example is the statement in Enclosure B, Comment two it is stated that the EPA assurance requirements are not relevant to repositories licensed by the Commission. I think you will find in going through the EPA rulemaking package a presumption that NRC will in fact insure that the objectives of all assurance requirements promulgated in their final high-level waste regulations be accomplished by amendment to 10 CFR Part 60 making those assurance requirements very relevant.
With the expectation that we will be allowed to submit a more detailed statement for the record, let me get to some more general issues before the Commission today.

In particular, the central issue here really is the degree to which the NRC will be involved in the repository site selection process. I don't think you have heard very much today that raises very many questions about the overall licensing aspects of the Commission's rule.

But what we are really concerned with here this morning is the early stages of the process, the site selection aspects of the DOE program.

In some regard the shift of most concern to me and to our organizations is this shift from a more formal structured relationship between NRC and DOE as articulated in the current version of Part 60 to a more informal ad hoc relationship proposed in the rule.

In doing so, the NRC argues that Congress deliberately excluded from the Nuclear Waste Policy Act the site selection review role now contained in Part 60.

Perhaps a more accurate reading of the Nuclear Waste Policy Act is that the statute is silent on some specific issues such as the draft site characterization assessment.

Congress could have directed the NRC to conform Part 60 of the Nuclear Waste Policy Act as it customarily does in legislation and did not do so and as Mr. Tousley pointed out earlier this
morning. Section 114 now specifically states that the Waste Policy Act is not intended to detract or to limit other authorities that the Nuclear Regulatory Commission has. To some extent we believe that NRC has over read, it may use that word, the Waste Policy Act in attempting to fashion a rationale for the changes it is making in this proposed rule and that has been a long standing compliant of ours.

In general, the NRC has repeatedly attempted to assure us that it is not abandoning its role in the pre-licensing stage, the site selection stage. If I may quote from the draft preamble, "In regard to the generalized concern that NRC should be involved in the site selection process, it is noted that the NRC has played an important role in this process and will continue to do so."

Our concern inadequately conveyed I think in the SECY paper is that while we are gratified by these assurances, we are not satisfied by the entirely ad hoc nature of this new relationship.

Similarly we recognize that the current proposal revises references to the Procedural Agreement, but the fact remains that the Procedural Agreement and other ad hoc protocols will now govern much of the NRC's new role. Such arrangements do not provide the assurances that the NRC's site selection participation now articulated clearly in Part 60
will be fully and identifiably accountable.

The NRC staff has to a substantial extent attempted
to gloss over these fundamental concerns preferring to direct
the Commission’s attention to more discrete tangential
alterations to Part 60.

For example, the NRC staff has construed our
insistence that the NRC explicitly specify NRC’s role in Part
b narrower issues such as what is in the site
characterization plan and whether we have this simultaneous
promulgation of Part 51 and Part 60.

The point I want to make here is that it is not the
form of the review. We are not raising the question as to
whether or not the site characterization plan or the SCA must
address all of the aspects of the site review.

If those aspects are now encompassed in the
Environmental Assessment as the staff contends, line. That
does not negate the necessity in Part 60 for then spelling out
this new rule. One of the concerns has been that we are
getting into an area where specific functions for early site
review are going to be carried out that just simply are not
being codified.

It is not really a question of is it in the SCP. We
don’t necessarily care if it is in the SCP as long as within
the rule itself, it is clear how these functions are going to
be carried out. It should be in the EA and that should be
handled as part of the Commission's comments on the EA and
let's put in a provision in Part 60 that spells out that that
is how it will be handled and outline the scope of how the NRC
will comment on the EA's.

CHAIRMAN PALLADINO: Do you think the old rule was
better in this regard?

MR. BERNICK: The old rule established principle and
a process for addressing this early site review if that
needs to be changed to bring us into strict technical
conformance with the Waste Policy Act, fine, but we think that
the principle and the necessity for that early site review
needs to be retained.

If we are moving it around to a different specific
DOE function, that is understandable but that does not mean
that we should drop it from the codified regulations. We
think it is important that it be retained in the codified
regulations.

COMMISSIONER BERNTHAL: Let me be very candid and
straight forward about what the perception is on at least my
part for what Congress had in mind and meant to do and whether
or not that was a clear understanding at the time, it seems to
me that that is the clear understanding today on the part of
many members of the Congress or at least, I think, we have to
concede that there is this broad perception that the NRC
should confine its role to the role as reviewer and commenter.
where we said review and comment and concurrence where we said
concurrence and that we do not intend and did not intend the
NRC to become the bottleneck in this process.

I am speaking very plainly. I think that is the
atmosphere that exists today. I am not saying it is right or
wrong or making a judgment. I am telling you that that is the
perception that one gathers sitting on this side of the table.

Why shouldn't we be responsive to that? There is
the very clear message, it seems to me that runs through this
when one goes to the Hill and hearings and generally what is
being said. Again without being judgmental or saying anybody
is right or wrong in the assessment of our role and the
perceptions that are being transmitted our role, how do you
respond to that?

MR. VERRICK: I guess I would respect by saying I
think at this juncture, the staff is recommending changes that
over react to that concern about being the bottleneck.

For example, dropping this draft site
characterization assessment. I think the staff and perhaps
the Commission itself believes that it would be a lightening
rod, that that type of process would be a bottleneck. We
don't see it that way in the sense that under the current
requirement, let's say if the Commission were to insist that
DOE wait, it is not even an insistence by the NRC that DOE
actually respond
1 I guess it is just a question of degree. I don't
2 think people are saying the NRC ought to start licensing
3 early. That was a presumption that the Commission itself
4 sought to avoid when it originally issued the current version
5 of Part 60 that you would not get into a limited work
6 authorization or early site review process, that the
7 Commission would review in some detail what the Department of
8 Energy's activities were going to be and that would be done on
9 this sort of formal basis with identifiable documents and
10 identifiable comment process.
11 It was not that the Commission was going to begin a
12 licensing proceeding and the licensing proceeding would not
13 start until DOE actually walked in the door with a licensing
14 document. I don't think we are suggesting that that needs to
15 be changed.
16 I think what we are suggesting is that the original
17 formulation of Part 60 which required specific issues to be
18 raised, such as the site characterization activities, to be
19 raised to a specific identifiable level requiring the
20 Commission at that time regardless of what informal
21 communications is going on, regardless of the schedule and
22 internal program that DOE was following, that there would be
23 an identifiable point at which the Commission would satisfy
24 itself with the assistance of outside comment that all the
25 issues were addressed before the step in the process would
I don't think we are talking about additional bottlenecks. I think we are trying to preserve the informal nature of NRC's role. We are not talking about getting into a licensing process but I think there is a lot of scope short of getting into the licensing process in terms of assuring that the Commission's role is an identifiable one, not just for this Commission but for future Commissions.

COMMISSIONER BERNICK: I appreciate your comment.

I am sorry to interrupt.

CHAIRMAN PALLADINO: That is all right. I did, too, so I don't blame you. I blame myself. But nevertheless, I think it is important when we get a point we want to discuss, we do it. Did you have more?

MR. BERNICK: I had a few more comments if I may.

CHAIRMAN PALLADINO: All right.

MR. BERNICK: Just carrying on this point, to a large extent the staff has insisted in this rulemaking of the necessity for these informal relationships for a long and very deeply involved relationship with the DOE and the NRC to make sure these issues are aired.

I don't think there is a disagreement on our part or on the staff's part about the importance of an involvement in those early stages. I think the importance is whether or not there are identifiable decision points or points in the
process where the informal process comes to some kind of an identifiable review point

We would argue that the informal process so far has been hampered by the lack of clear codified procedural To some extent if you look at the environmental assessment comments which is sort of the most recent embodiment of the current Part 60 site review process, the NRC deliberately restricted the scope of its comments on the EA's and therefore its review of the DOE site selection process.

It did not get into some of the site ranking issues and the comparative merits of one site versus the another, so to some extent the Commission is limiting, in the absence of a more clearly defined policy and I would say a policy at odds with current regulations, the scope of its review.

That is at the heart of our concern about the sort of the ad hoc nature of the Commission review of this area. We think that really ought to be nailed down in Part 60.

Let me just make one final statement about the draft site characterization assessment. One of the points I really would like to impress upon you and it was not entirely brought up this morning in your previous conversation is that I think that the staff to some extent has sort of overly embellished the site characterization assessment and this ongoing process that is supposed to ensure from that.

The site characterization assessment and plan is not
really a living document. We are not really going to have
the opportunity to come back. I see, in my personal view, the
site characterization assessment as really being a definitive
statement by the NRC on the information necessary to obtain a
license and I think that it will restrict going forward requests, considerations, intervenors' many challenges
on what information is necessary.

DOE now for the salt sites is only going to have eight months or is only scheduling eight months of in situ testing.

We are not really talking about a multi-year process
of evolution, re-examination, re-visiting these kinds of
issues. It is really going to be as somebody said earlier a
one-shot deal and I think that the analysis is also going to
have broader legal implications for the kinds of questions
that can be raised without the adequacy of data.

People, I think, will come back and say, "The NRC
signed off on a site characterization analysis. This is what
they told us was required to get the license." You can't come
back in and say that it is inadequate and the NRC staff, I
believe, throughout this process will have trouble coming back
and raising a new issue or trying to get existing issues
revisited having the Commission once articulated, "This is
what I thought program was supposed to have done."

COMMISSIONER BERNTHAL: As a scientist I share your

chagrin on hearing numbers like that and all I can say is that

it seems to be the nature of the way we do business not only

in this agency but in the government generally that process

now takes precedence over substance and that is only

exemplified by comments like you made. It is going to be

eight months really to do the real science and the rest of the

time Lord knows what we will be doing. That troubles me as

well.

CHAIRMAN PALLADINO: Does that conclude your

comments?

MR. BERRICK: Yes. I would like the opportunity to

submit a more detailed statement if that would be agreeable.

CHAIRMAN PALLADINO: When might we get that?

MR. BERRICK: If you give me a week perhaps, I don't

know but there may be other members who are participating

today who would want to submit additional comments.

CHAIRMAN PALLADINO: All right. I will bring that

up later. I think we could certainly afford something like a

week. Thank you, Mr. Berrick. Mr. McGranery, please proceed.

MR. MCGRANEY: Mr. Chairman and Commissioners, my

name is Jim McGranery. I am here today representing

Scientists and Engineers for Secure Energy. Today's

presentation was scheduled to be delivered by SE-2's Executive
Director, Miro Todorovich. Since he is unable to be here, I wish to ask your permission to speak in his stead and present a summary of SE-2's position. I would also appreciate your consent for the written text of our remarks to be entered into the record at this hearing.

CHAIRMAN PALLADINO: All right.

MR MOHRANER: There are two principles which form the basis for our technical and legal comments. First, in the pre-construction permit application stage which I emphasize here, Congress gave primary responsibility to the Department of Energy and limited the NRC participation to review and comment except in two particular cases where NRC concurrence is required.

This is a much different role than the NRC foresaw for itself in the original version of 10 CFR Part 60.

Therefore, the adjustment to this diminished status is understandably difficult. We compliment the NRC on its efforts to pare the expansive role foreseen down to the role actually assigned by Congress.

However, as we explain below, further restraint is appropriate if not legally required.

The second principle which we have in mind is that Congress legislated as the primary purpose of the Act a schedule for the siting, construction and operation of repositories which Congress determined was adequate to provide
reasonable assurance of adequate health, safety and environmental protection to the public.

We suggest that the Commission is legally obligated to restrain any tendency to an expansive interpretation of its role in the site characterization process when such an interpretation may tend to violate the Congressionally-mandated schedule and especially now when we are already behind that schedule.

Our principal area of concern is in proposed 10 CFR Part 60.18 which defines the NRC's implementation of its responsibility to review and comment on the DOE SCP. Congress provided for NRC review and comment on the SCP without indicating any public participation in that effort while explicitly providing for public comments to the DOE on the SCP.

Thus, the Commission has no responsibility to seek public participation in the development of its comments and if it decides it has the authority due to the lack of an explicit prohibition, it should carefully limit that participation to avoid further delay in the legislated schedule.

For that reason, we recommend that the invitation for comment on the SCP in proposed 60.18(b) require comments within 45 days after the close of the relevant DOE public hearings.

This would allow for public participation concurrent
with the normal NRC review schedule. No time limit is
currently in the regulations. In this connection, we also
note that there is language in 60.18(c) that should be
transferred to subparagraph (b) so that the same invitation
goes out to the whole world at the same time.

Section 60.18(f) is a vestige of the pro-Act concept
of draft and final SCAs and should probably be deleted.
Interested persons have never before needed any regulatory
authority for writing to the NRC at any time on any subject
and certainly would not now suddenly feel constrained.

On the other hand, such a formal invitation may be
argued to confer some formal but undefined status on such post
hoc comments.

In short, we can see no good resulting from this
additional, formal procedure but we can imagine complaints
charging lack of good faith because the NRC fails to respond
to a real or spurious objection which is now reiterated for a
third or fourth or fifth time.

In this connection, we have reference to all of the
previous procedural opportunities which the various interested
parties have to make comments to the NRC and DOE.

In the last sentence of proposed section 60.18(g),
DOE is quote "required," closed quote, to address any topic,
quote, "Requested of the Director" closed quote, in the
semi-annual reports. There is simply no statutory authority
for the NRC to impose such a requirement at this stage

although DOE may and we are confident would cooperate with the

NRC in providing information on germane issues.

We also note that in the provision stating that the

SCP shall contain any other information required by the

Commission, the word “required” should not read as a license

for intellectual curiosity, but rather in the sense of “needed

for its responsibilities related to site characterization

under the Act.

In similar fashion, proposed section 60.18(h) is not

authorized by the Act but is the subject of the DOE/NRC

Procedural Agreement. For this reason, it may not be

appropriate to NRC regulations especially if the Procedural

Agreement is not cited as authority.

Probably the single most unnecessary burdensome and

perilous provisions in the proposed rules are in the last

sentence of proposed section 60.18(i) and the first sentence

of proposed section 60.18(j).

These provisions require the invitation of State,

Tribe and public comment on all comments which the Director

makes to DOE on site characterization. Such provisions are

administratively impossible to comply with unless we were to

require at least memoranda if not taped recordings of all

conversations between the DOE and NRC staffs at all levels.

Then the Federal Register would be overwhelmed with
notice of invitations for comment. Moreover, we believe these provisions as well as others go well beyond if not violate the DOE/NRC Procedural Agreement.

We believe that the above-suggested revisions would not hamper effective and more than adequate participation by interested persons in the spirit of the Act, but would avoid a procedural morass, avoid further frustration of the Act's schedule and be more in keeping with the Commission's limited role in the site characterization process.

Aside from some minor legal suggestions attached as an addendum, we have only one further legal comment. We do not believe that the final rule, its background, comments or statement of consideration should express any opinion on DOE's authority to sink a shall before receiving and considering NRC comments on the SCP.

It is DOE's responsibility, not NRC's, to interpret the DOE statutory authority and defend that interpretation during the site characterization process. On the other hand, the NRC observation that it may be prudent for DOE to await such comments to avoid difficulties in subsequent licensing seems totally appropriate and helpful.

That concludes our oral presentation. I would be happy to answer any questions or try to answer any questions which the Commission may have.

CHAIRMAN PALLADINO: Thank you You make a number
of interesting points that are different from some of those that we heard up to the moment. I am trying to phrase the question and maybe I will phrase it first for Mr. Herrick and then I will come back to you, Mr. Macgregory.

If I understood your comments Mr. Herrick, we should use the current Part 60 procedures unless the Act really requires that we make a change. Is that a fair summary of your statement?

MR. HERRICK: I think that is correct. I would take that one step further which is to say that we believe that Part 60 as currently promulgated established the correct role for the Commission in terms of the scope of the issues it reviews at the site selection stage.

If strict conformance to the Waste Policy Act requires that some of those activities that previously were going to be part of the review of the site characterization plan now become part of the review of some other statutorily required document such as the Environmental Assessment, that is okay as long as the basic scope of the review is retained.

Part of our basic concern is that when we go back and see, for example, the scope of the Commission's comments on the EA's which the staff in the proposed rule, the preamble to the proposed rule of these changes, stated is now the appropriate level to address some of these issues, we see the scope being limited from what is now in the current
So the basic thrust is the principles, the scope of the review articulated in the original rule is the appropriate scope and the appropriate types of issues to be reviewed. Those should be retained. If that means some fine tuning in the process, that is certainly appropriate.

CHAIRMAN PALLADIO: Now Mr. McGranery, on the other hand, you indicated that the Act does very severely restrict and limit NRC's role and that keeping some of these opportunities for additional comments in there would be contrary to the Act. Is that a fair representation?

MR. McGRANERY: I think that it would not only be contrary to the Act, but would exacerbate a problem that Commissioner Bernthal and you have already addressed, namely that this seems to be turning into a lawyer's game as opposed to a scientific and engineering exercise.

We are getting a lot of formalism, a lot of procedures, some of which as I point out I think are impossible to actually comply with whether or not legislatively authorized and we are ignoring the main focus, namely, the development and construction and operation of the repositories.

This is the same game which was played with the Commission back in the early days of table S-3 and the Commission stuck to its guns there as to limitations on the
procedural rights according to the statute and it took five
years but the Commission won in the Supreme Court.

These procedural tangles here that are being
developed is really a matter of giving up everything that was
won and frustrating the smooth operation of the Agency

CHAIRMAN PALLADINO: I understand your point. It is
trying to achieve that ripe balance that gives us the
problem. Did you want to make a comment?

MR. BERKICK: I just wanted to respond to that in
the sense that I think to some extent we are over exaggerating
the issue here on things like the draft site characterization
and we are basically talking about whether or not we are going
to send the manuscript out for peer review before we publish
it. I guess I am not sure to echo things that Mr. Provost
said earlier, I am not sure that what we are not striving for
here is quality in the process and to make sure that all of
the issues that need to be covered are covered before DOE goes
ahead with something as critical as sinking the site
characterization shaft.

I think the Commission from the earliest iterations
of Part 60 identifies that activity as being very critical. I
don't think to follow on my earlier conversation with
Commissioner Bernthal that we are trying to create new
issues. We are fighting about the same decision points,
whether or not prior to sinking the shaft the Commission bring
to a head its views of whether or not DOE is following a
program and going to sink a shaft according to certain kinds
of parameters that will insure one, that information necessary
for licensing can and will be obtained, and two, the integrity
of the site is preserved.

That was fundamental to the original iterations of
Part B0 I think it is just a question of how much of that we
are going to preserve. I don't think we are talking about
opening up new issues or raising new questions for the
Commission to consider. We are still talking about exactly
the same issues.

CHAIRMAN PALLADINO. Thank you. One more comment
and then I will go to questions.

MR. MCGRANEY: If I may respond to that very
briefly. This is the question that the Commission always
faces, namely, how many bites of the apple. The Act spoke of
an EA We have created a draft EA and an EA. The Act did not
require these technical meetings between NRC and DOE and
certainly did not address the public nature and chance for
participation therein.

You have created that also which will provide tens
if not hundreds of opportunities for comment. You will always
no matter what you give, no matter how fair you try to be, you
will always be asked for one more procedural step and whether
it is the chance to submit additional comments or
what-have-you, always one more and you will get more tied up
in the process rather than in your true engineering and
scientific responsibilities so that you can be a useful
advisor to DOE at this stage and later a judge.

CHAIRMAN PALLADINO: Let me turn to my colleagues.

Commissioner Roberts.

COMMISSIONER ROBERTS: No questions.

CHAIRMAN PALLADINO: Jim.

COMMISSIONER ASESLTINE: Maybe just a brief

comment. I don't think given the hour I will go into a lot of

questions.

(Commissioner Bernal exited the meeting.)

COMMISSIONER ASESLTINE: I guess the comment is,

Jim, I think your principles that you cite from your reading

of the Act, with all due respect, I just think you are

mis-reading what the Congress had in mind and let me tell you

why

First, it seems to me that we are not trying to

overly legalize the process. What we are trying to do is
de-legalize it to the extent that we can. If there is one

thing that was clear of the position of this Agency before the

Congress it was that we have to go through a formal licensing

process for this repository.

We, the Agency, thought that the best way to make

that process work given the unique characteristics of
repository development was to have an effective informal process before we got into hearings with lots of lawyers and all of the trappings to try to iron out as many issues as we could, surface the issues up, make sure that we had the information that we needed to make a licensing decision and make sure that as many issues as could be identified were identified, surfaced and addressed.

What we told the Congress more than anything else, I think, was that if that informal process works and at the time we had basically laid out what that process was going to contain, then we thought we could meet our obligation to make a licensing decision on an expeditious basis and we were quite clear to the Congress that the only way that process was going to work once we got into the hearing phase was if this informal process worked effectively.

I think the Congress bought that lock, stock and barrel. They were aware of what was in our procedural requirements. They were aware of what was in our technical rules and I think that by in large what the Act has is an endorsement of that pre-hearing informal process. I think the Congress took the Commission at its word and said, you have mapped out a process here and go do it.

What I read in the difference between review and comment and concurrence was that there were a few places in particular where the Congress was a bit uncomfortable in just
relying on the informal nature of that process and they said at those points we really want the NRC to sign off formally on a couple of these key elements.

By in large I think the debate here is I guess I would agree with Dave is not over momentous issues, it is how are we are going to make that informal process work and work effectively to surface issues, get them identified and get them addressed so that once we get into the formal process, once the lawyers take over, there is a minimum potential for disruption and delay and stretching out this whole process.

I would also say that I guess I disagree that the setting of the schedule represented a Congressional judgment on what was needed to provide adequate protection for the health and safety of the public. I don't think the Congress likes to substitute its judgment on that kind of question for the judgment of this Agency and I see what the Congress doing is basically saying, "We want an aggressive schedule. We want to see a repository within this time frame. We think it is do-able although we think it is also very ambitious, but the burden ultimately is on the agencies that are involved both DOE and the NRC as well as other agencies to make that process work and what they think needs to be done in that process has to be spelled out in a mission plan and then if there are changes to that, the agencies have to come back to us and tell us."
I really don't view that as substituting the health and safety judgments that this Agency has to make as it goes along.

So I guess on those two points, I have a different view of what the Congress had in mind and what is embodied in the Act. I think we would be in the worst possible situation if we had this informal process go forward not function the way we told the Congress we had in mind only to find out that we have major problems that then have to be considered in a formal licensing proceeding where it is much more difficult, I think you will agree given our experience in the reactor area, to try to settle some of those kinds of issues.

It is going to be a much tougher and more lengthy process if we don't make this informal process work to identify and address those concerns. So I guess that is more of a comment than a question.

MR. McGIRANERY: If I may respond very, very briefly, first, as to my second principle as to the schedule and the finding that it is consistent with the health, safety and environmental protection of the public, that I am afraid is unarguable. That is the precise language of Section 111(b)(1) of the Act.

Getting to the more important issue, I think that what the regulations are doing is squaring the circle. You have mentioned several times and I would be totally in favor
of informal resolutions, informal contacts. That is the nature of the development of scientific and engineering answers.

Our problem is that this regulation formalizes these things unlike anything else has ever been formalized before creating an endless series of requirements for Federal Register notices and responses and reviews never-ending.

To accomplish your purpose which I think is a very good one, all the regulation needs to state here is that the staff under the director shall consult with the states, tribes and interested members of the public. That would do the job.

CHAIRMAN PALLADINO: All right. Thank you. Let me see if Commission Zech has any questions?

COMMISSIONER ZECH. Just a brief comment, I think it is important that we hear all the various view and I think Mr. McGranery has given us a different perspective than we have heard this morning.

I think it is important that we listen to all the views and I don't want to prolong this any further except to say that I appreciate his views and those of Mr. Herrick, also. I think it is important that we listen to all of them and I am inclined to say that I think your perception that we are overly legalistic and procedurally oriented here is certainly a concern of mine at this Agency, also.

We are involved in public health and safety and
substance and content are very, very important and something we should be focusing our attention on so I think your comments in that regard are very appropriate.

CHAIRMAN PALLADINO All right. Thank you. Thank you very much, gentlemen. We appreciate your coming and giving us the benefit of your thoughts.

(PANEL excused)

CHAIRMAN PALLADINO Now I wonder if we could have the representatives from the Department of Energy join us at the table.

COMMISSIONER ASSELSTINE: One of those guys looks familiar!

(Laughter)

CHAIRMAN PALLADINO: Who is going to speak first?

MR. STEIN: I am, Mr. Chairman.

CHAIRMAN PALLADINO: All right. Would you identify yourself for the record, please?

MR. STEIN: Yes. Mr. Chairman and Commissioners, I am pleased to have the opportunity to participate on behalf of the DOE in the NRC's consideration of the amendment to 10 CFR Part 60 procedural rule.

I am Ralph Stein of the Department. I am the director of the engineering and geotechnology division.

Accompanying me today is Mr. Jim Knight on my right who is the director of the licensing and regulatory division.
On January 17, 1985 the NRC published in the Federal Register a request for public comment on the proposed amendments to the procedural rule, 10 CFR 80. These proposed amendments were intended to bring the regulations in line with the Nuclear Waste Policy Act of 1982.

On March 21, 1985 the DOE provided NRC with comments on the proposed amendments along with some recommended changes.

(Commissioner Bernthal re-enters the meeting.)

MR. STEIN: Basically the Department agrees with the proposed amendment and believes that it is an appropriate modification of the rule to reflect the provisions of the Act. As I noted the Department did however have some comments and recommended changes for the proposed amendment.

We continue to recommend that the Commission adopt these changes. In particular, we urge the Commission to adopt the suggested change which would commit the Commission to provide comments on exploratory shaft and shaft sinking within 40 days after receipt of the site characterization plan for public comment.

This schedule is consistent with our mission plan schedule and our ability to meet the requirements of the Act. We do recognize, of course, that these earlier comments by the Commission on the exploratory shaft would be contingent on the Department providing early and complete information on...
exploratory shaft to the Commission and receiving their comments on our exploratory shaft plans and programs. We would intend to adopt these comments as appropriate in the site characterization plan. At this point I would like to note that DOE has work in progress on the site characterization plans.

This work is based on the annotated outline for the site characterization plans which was agreed to by the NRC staff in meetings with the staff. However, the annotated outline is based on the assumption that the site characterization process will occur essentially as presented in the rule now before the Commission.

Until the final rule is promulgated, there will be uncertainty as to the applicability of the work being done to prepare the site characterization plans. Should there be significant changes to the amendment, portions of the annotated outline and the work being done according to the annotated outline may need revision. A delay in issuance of the site characterization plans would likely result. Should the final rule not be promulgated at the time the site characterization plan is issued, the site characterization plan or plans may be in non-compliance with the existing regulations.

Thus, from the Department's point of view it is
essential to the DCE program that the final rule be issued as promptly as possible.

Basically, those are the comments that I wanted to make here this morning. In summary, we do agree generally with the modified rule, the amendments to the rule. We do appreciate the opportunity of being able to appear before you today and thank you for that opportunity.

CHAIRMAN PALLADINO: Thank you. Was Mr. Knight going to make any comments?

MR. KNIGHT: No, thank you.

CHAIRMAN PALLADINO: Let me ask you one question. The thread of many of the comments that we received so far today has been that we are reducing the amount of opportunity that we had provided in the earlier version of Part 60 for people to comment for example on the site characterization analysis by no longer offering opportunity to comment on the draft.

Do you think we have gone overboard either in the old one or in the new one with regard to opportunities for comment and I meant going overboard either in denying it or in providing for it?

MR. STEIN: I think that the old rule was structured in a different approach. The old rule was structured in a way at least the way we handled it in our interactions with NRC where we would create as in the case in Richland, Washington,
a site characterization report which in effect was a final
document given to NRC which would then be reviewed and a
site characterization or a draft site characterization
analysis would be put forward.

Basically this was the first opportunity that NRC
and the public had to look at that document. Since then
there have been a number of changes in the way we interact
with the Commission, the states and the tribes. We have
frequent open public meetings with the Commission on early
activities associated with the preparation of the plan. We
have had at least four different meetings, open public
meetings, with the Commission staff.

We invite the states and the tribes to participate
in those meetings and we look for and seek comments in the
early stages of the development of the site characterization
plan as well as other parts of our program.

As we modify the input, we then come back and talk
about it some more with the Commission, the states and the
Indian tribes. These are open meetings and so there is lots
of opportunity for participation in the development of the
site characterization plan.

So when that document finally reaches the public for
review and comment, it ought not be much of a surprise because
it will have lots of discussion that will take place prior to
the time that it is finally issued. I think that the present
CHAIRMAN PALLADINO: One of the points that I heard several times was that "OH, yes, they may have an opportunity to make comments in public comments but they don't get the feeling that they are seriously considered" and thereby, there is credibility lost on the part of DOE and when DOE is involved and sometimes I guess even NKL. Do you feel that there is ample opportunity for the states and Indian tribes and other groups to interact effectively on some of these documents that are being prepared?

MR. STEIN: I believe there are ample opportunities for that and I would like to say to you that we consider the comments very seriously, not only, of course, the comments of the staff but the comments of the other participating parties.

MR. KNIGHT: I might add if I may, there was reference earlier perhaps to some inhibition in the ability of the parties at the meetings to fully interact and I think I can state without equivocation that it is our intent that there be full and active participation.

MR. STEIN: Yes, that is quite correct. In the meetings that we have had with the Commission staff, I make it a point to ask for full participation in the technical reviews that are ongoing.

CHAIRMAN PALLADINO For example, a situation was described where they weren't allowed to speak until the end of
the meeting and then it was just almost as though it were just
giving them an opportunity for some perfunctory comments. I
know they didn't use that word. I am being a little bit more
graphic to focus on the issue because we do have a credibility
problem and I think DOE may have it greater than we do at
least on this issue.

MR. STEIN: I certainly noted the comment and so did
Jim and we will look into it. But we are stating policy that
we have these open meetings and the states and tribes are
welcome to participate. The fact is we encourage them to
participate.

CHAIRMAN PALLADINO: All right. Let me see if my
colleagues have other comments? Tom?

COMMISSIONER ROBERTS: No

CHAIRMAN PALLADINO: Jim.

COMMISSIONER ASSELSTINE: Just a couple of quick
comments, first on that point. I think it would be useful for
us to know though if in fact quite a part from what your
statement of policy is, it in fact that is the way the
meetings are being conducted. So if you could give us some
feedback on that, I think that would be useful if that concern
is, in fact, valid. They have gone to those meetings and they
have been told that you can't participate in the give-and-take
of the technical exchange, you have to sit quietly and wait
until the end of the meeting and then provide your comments.
That would be useful to know if that is going on

Mr. Stein, Mr. Asselstine, I would like to mention that we do have that specifically covered in the DOE/NRC

Procedural Agreement for these meetings and they do call for open participation. But I will give you a specific response to your question.

Commissioner Asselstine: Good. I agree also with your comment that we ought to get on with it and finalize the regulations. I suspect that most of the issues that we have been talking about today may not directly affect the content of your site characterization plans since they tend to deal with what happens to them after they get here or some of these other aspects. I am inclined to agree with you that we ought to get on with it and finalize the regulation.

One question I wanted to ask though and that is on the draft site characterization analysis, I noticed at one point the Department of Interior was going to come to the meeting today and for some reason decided not to. But they said that that is something that we ought to retain, we ought to retain the draft site characterization analysis and not just have the final one.

It strikes me that it might well be of value to you as well as to the states and the Department of the Interior to have a draft site characterization analysis. For example, if there are things in our draft that you disagree with, it is
very easy for you then to come back and say, "Here are our
problems with it as well as the parts that we agree with" and
then the NRC could issue its final one and lay to rest at
least any areas where there were differences between us rather
than having a final document on the table much like the
concern the states expressed.

It is easier to work things out when you are talking
about a draft document before you have something final on the
table and say that this is our position period. I wonder why
you don't see having a draft as something that is in your
interest as well as the states and Interior have expressed.

MR. STEIN. Again, I would like to comment that we
have lots of opportunity to get input from the states, tribes,
NRC and others during the time up to the time that we prepare
the document. So we should have a pretty good understanding
about what the comments are and we ought to also at the same
time have an opportunity to reflect those comments in the
document that we have put out.

Someone earlier today noted that there is just sort
of one crack at it with the SCP. I look at the SCP not as a
snap shot in time. When it is issued, it is certainly a snap
shot in time. It will describe the overall program that we
are going to implement on the site characterization plan but
every six months thereafter, we have to provide progress
reports on the work that we do and it also provides ample
opportunity to have if you will mid-course corrections on the program that we have.

I look at the SCP as being the final document when we are ready to go forward with the license application so the SCP exists initially, tells you what it is that we are going to do, but we do have an opportunity and will correct mid-course corrections, if you will, every six months thereafter.

CHAIRMAN PALLADINO: Thank you, Fred.

COMMISSIONER BERNTHAL: No comments.

CHAIRMAN PALLADINO: Lando.

COMMISSIONER ZECH: Just a quick comment, I would just encourage you to continue your efforts to have an open dialogue with the states and tribes. I think that is important that you do that and I think everyone appreciates the fact that decisions are difficult and will be made in a responsible manner but the fact that dialogue is necessary and candid and open is important and I just urge you to continue to try even harder in that regard. Thank you, Mr. Chairman.

CHAIRMAN PALLADINO: Thank you very much, gentlemen.

(Panel excused.)

CHAIRMAN PALLADINO: We now have a representative from Edison Electric Institute, Mr. Mills. Please join us at the table. We are pleased to have you join us.

MR. MILLS: Thank you, Mr. Chairman and
Commissioners, I am pleased to appear today to participate in your consideration of Part 60. My name is Loring Mills and I am vice president of Edison Electric Institute and I appear here on behalf of both the Institute and the Utility and Nuclear Waste Management Group. The utilities do have a vital interest in all aspects of the Nuclear Waste Program.

Mr. Chairman, I request that my prepared statement be made a part of the record and I will present only a brief oral statement.

CHAIRMAN PALLADINO. All right.

MR. MILLS. As we indicated in our written comments last March, we basically support the proposed amendments which will bring the Commission procedures to the licensing of the high-level waste repositories in conformance with the Nuclear Waste Policy Act.

It is a comfortable position to agree with the NRC staff. The Act, of course, is the outcome of lengthy debate and bargaining extending over a period of many years and several Congresses, among various groups with numerous interests.

No one party received all it wanted in the process that Congress finally prescribed. However, the process does embody a reasonable balance between the need for public input and the practical project demands associated with efficient program implementation.
we support the program, the process and the schedule
the Act mandates for site selection and the development of
repositories. We believe the Commission's proposed amendments
to the repository licensing regulations reflect an appropriate
sensitivity to the importance of maintaining the balance
between competing demands as struck in the Nuclear Waste
Policy Act

We are concerned about the desire of some commenters
that have suggested that the proposed regulations be modified
to require that DOE not to proceed to sink exploratory shafts
at recommended sites until after the review of DOE site
characterization plans have been completed

The requirement of the NWPA on site characterization
specifically addressed in considerable detail in section 113
including a designation that actions under 113 are preliminary
decision making activities as it relates to the NWPA.

There is no requirement in the Act that DOE await
completion of site characterization plan review by NRC, the
states or otherwise prior to the sinking of shafts and the NRC
should not impose one

Timely feedback to DOE for such reviews is
appropriate as DOE proceeds with characterization. The
exchange of information during site characterization on a
cooperative basis is essential.

To this end, close communication between the host
States, the Indian tribes, the NRC and DOE during site characterization must be achieved to assure that the necessary information and data are available for the construction application.

As we understand it, this process of close communication and coordination of all parties is envisioned as part of the ongoing site characterization plan concept as it is embodied in the mission plan and discussed there and as it was just indicated by DOE.

We wish to emphasize again that approval of the SCP's is not required under the Act although close coordination and cooperation between NRC and DOE is needed for the desired result to be achieved.

The Commission should not restrict the flexibility provided in the Act with respect to site work by requiring DOE to await completion of any SCP review prior to starting the exploratory shafts.

Thank you, gentlemen. I will try to answer any questions.

CHAIRMAN PALLADINO Thank you very much. I am sure the staff welcomes your support especially when most of the comments were critical of the staff report. One aspect of your statement that reminded me of a point that came up earlier, how do you feel about identifying host states and affected Indian tribes as parties in the proposed rule?
MR. MILLS. There are several opportunities for
these parties to participate and they are a specifically
designated party to work with DOE on a cooperative basis. I
believe the opportunities are there. I believe that they will
not be bashful in coming forward. I don't believe it is
essential that it be included as a specific requirement in the
rule.

COMMISSIONER ASSELSTINE: You would expect them to
be named as parties, would you not?

MR. MILLS: Absolutely.

COMMISSIONER ASSELSTINE: All right.

MR. MILLS: I don't believe they will be bashful in
requesting it.

COMMISSIONER ROBERTS: I think they will not be
bashful.

(Laughter.)

CHAIRMAN PALLADINO: But they somehow seem worried
and I was having trouble understanding why they are worried
but I will leave it at that. Do you have any comments or
questions?

COMMISSIONER ASSELSTINE: No.

CHAIRMAN PALLADINO: Fred?

COMMISSIONER BERNTHAL: No.

COMMISSIONER ROBERTS: You see, being last you just
wore us down. No one is going to ask you anything.
COMMISSIONER ASSELSTINE: That's right.

MR. MILLS: Thank you.

CHAIRMAN PALLADINO: Thank you very much.

(Witness excused.)

CHAIRMAN PALLADINO: Let me express appreciation to all the participants of today's meeting. I find I always learn a great deal from having presenters come before us. I did have a request earlier at least by one individual and maybe there were more than one to be able to submit additional information. Let me suggest that any information we are going to get and which you want to make sure that we consider in our decisions ought to come in by a week from today.

COMMISSIONER ASSELSTINE: That sounds good.

COMMISSIONER ZECH: Fine.

CHAIRMAN PALLADINO: Let me so request it because we do want to act as promptly as we can on this matter. Anything more to come before us?

(No response.)

CHAIRMAN PALLADINO: Thank you very much. We will stand adjourned.

[Whereupon, the hearing in the above-entitled matter was adjourned at 12:40 o'clock p.m., to reconvene at the call of the Chair.]
CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of COMMISSION MEETING

Name of Proceedings: Presentation by Participants on Proposed Amendments to Part 60 (Public Meeting)

Docket No

Place: Washington, D. C.

Date: Friday, January 24, 1986

were held as herein appears and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(Signature)

(Typed Name of Reporter) Lynn Nations

Ann Riley & Associates, Ltd.
SCHEDULING NOTES

TITLE: PRESENTATION OF PROPOSALS TO PART 60

SCHEDULED: 9:30 A.M., FRIDAY, JANUARY 24, 1986 (OPEN)

DURATION: APPROX 3 HRS

SPEAKERS:

STATE PANEL
NEVADA - MALACHI MURPHY
TEXAS - STEVE FREISH"AN
UTAH - PATRICK SPURRIN
MINNESOTA - GREG LARSEN
WASHINGTON - DON FRAZER

TRIBAL PANEL
YAKIMA INDIAN NATION - DEAN TOUSLEY
NATIONAL CONGRESS OF AMERICAN INDIANS - SUZAN SHERWOOD

10 MINUTE INTERMISSION

PUBLIC INTEREST GROUPS
Environmental Policy Institute - DAVID BERRICK
Natural Resources Defense Council - DAVID BERRICK
Scientists and Engineers for Social Energy - JAMES McGRANEY, JR.

FEDERAL AGENCY PANEL
DEPARTMENT OF ENERGY - RALPH STEIN
JIM KNIGHT

INDUSTRY
EDISON ELECTRIC INSTITUTE - LORING HILLS

DOCUMENT: SECY-85-033
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