

June 16, 1992

Note to: Dan Martin, OCM/IS  
Mort Fleishman, OCM/KR  
Regis Boyle, OCM/FR  
Kay Whitfield, OCM/GdeP

From: Kitty Dragonette, OCM/JC *KSD*

SUBJECT: DOE CORRESPONDENCE RELATING TO RESPONSIBILITY/PLANS FOR  
ACCEPTANCE OF SPENT FUEL IN 1998

Enclosed for your information are three DOE letters referenced in a June 15, 1992 Radioactive Exchange article. Commissioner Curtiss asked me to obtain copies for his review as background for Bartlett's briefing on Tuesday, June 24. DOE is sending copies to HLW and IMNS contacts.

Enclosures:

1. Watkins to Howard dtd 5/29/92
2. Watkins to Keesler dtd 5/27/92
3. Bartlett to Sanda dtd 2/14/92 w/incoming

cc: EDO



The Secretary of Energy  
Washington, DC 20585

May 29, 1992

Mr. James J. Howard  
Chairman and Chief Executive Officer  
Northern States Power Company  
414 Nicollet Mall  
Minneapolis, Minnesota 55401-1993

Dear Mr. Howard:

Thank you for your letter of April 15, 1992, concerning an Administrative Law Judge's (ALJ) recommendation that the Minnesota State Public Utilities Commission (PUC) deny or defer to the State legislature Northern States Power Company (NSP) request to build a dry cask storage facility for spent nuclear fuel. The Department is very concerned that this ALJ decision, if adopted by the PUC, could force NSP to derate and possibly even shut down a safe, reliable, and economical nuclear power plant.

We fundamentally disagree with the conclusions reached by the ALJ with respect to whether the Department will succeed in siting and developing a permanent nuclear waste repository. I recognize that there are those who question the Department's ability to develop a monitored retrievable storage (MRS) facility and a permanent waste repository in a timely manner. Let me make very clear, however, that the Department is committed to fulfill the mandates imposed by the Nuclear Waste Policy Act.

Recent developments suggest that, contrary to the ALJ's decision, the Department will develop a permanent nuclear waste repository in a timely fashion. First, the schedule delays caused by litigation with the State of Nevada are largely behind us. Nevada has now issued the three permits that were the subject of litigation. We began new Yucca Mountain site characterization work last year and are making good progress. Second, we have accomplished specific milestones in our site suitability evaluation. These include completion of a baseline plan for the characterization work, completion of an interim evaluation of site suitability, and redesign of the underground Exploratory Studies Facility. Further, a panel of the National Academy of Sciences has provided a compelling basis for favorable resolution of one of the key-site suitability issues.

I am also heartened by the action taken by the House of Representatives on May 21, 1992, to include in H.R. 776 authority

to enable us to proceed with further site studies at Yucca Mountain without procedural delays by Nevada. This clearly demonstrates Congressional resolve not to permit spent nuclear fuel to permanently remain at reactor sites.

Our current schedule calls for having an MRS facility operating by 1998. The permanent repository will commence operation within 6 years of completion of the Nuclear Regulatory Commission reviews of the repository license application. We expect to start accepting spent fuel at the repository in 2010.

The MRS schedule assumes that the Nuclear Waste Negotiator will begin development of a negotiated agreement with the candidate MRS host in the first half of 1993. Because this is a voluntary process being carried out with a number of parties, it is not possible to establish a more precise date at this time. However, the Negotiator has identified a number of jurisdictions that are candidates for future negotiations leading to hosting an MRS facility. Applications for 20 Phase I grants have been received from jurisdictions interested in investigating the feasibility of hosting an MRS facility. The first part of a Phase II grant was recently awarded to a potential host jurisdiction to study siting an MRS within its jurisdiction in greater detail. We anticipate additional Phase II applications and grant awards.

This effort is necessary prior to formal negotiations between the potential host and the Negotiator over the siting of an MRS. Once the Negotiator finalizes an agreement with a potential host, and the proposed agreement is enacted into law by Congress, construction of an MRS could proceed promptly.

To meet our schedules, we have established specific interim milestones to impose discipline and accountability. Top-level milestones are listed on the enclosure to this letter. Several occur during the next 2 to 3 years and will provide a means for readily measuring our progress. As part of this measurement process, we are continually assessing the MRS and repository programs to ensure that we are taking whatever action is necessary to meet our goals. The results of our latest assessment will be submitted as part of the fiscal year 1994 budget to be presented to the Congress in January 1993.

In sum, the Department has sound, integrated program plans that should enable us to begin spent fuel receipt at an MRS facility in 1998 and to begin accepting spent fuel at the repository in 2010. However, should it become clear that our currently-planned actions and progress towards the milestones listed in the enclosure will not ensure that the Department can accept spent nuclear fuel by 1998, we will take whatever actions are necessary and in

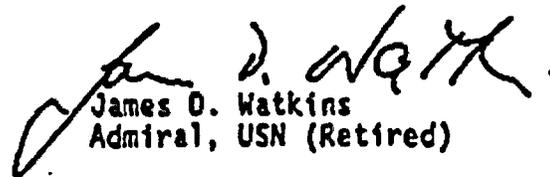
accordance with the law to meet our obligations under the Nuclear Waste Policy Act. Further, we would seek additional legislative authority if appropriate.

Under the Department's 10 CFR Part 961 regulations, the Department and NSP have a contract which commits the Department to accept title to, transport, and dispose of the spent fuel from Prairie Island. From our review of the shipment schedule for Prairie Island, combined with our commitment to accept spent nuclear fuel in 1998, we conclude that the spent fuel proposed to be stored in dry cask storage at Prairie Island will be shipped to an MRS facility within the 25-year time limit envisioned by the ALJ's recommendation.

I recognize that resolution of the waste disposal problem is critical to NSP and to the entire nuclear industry. It is a problem, therefore, which must have a satisfactory conclusion. The Department will continue to work to ensure that an MRS facility and a permanent repository are constructed expeditiously.

If the Department can provide more details for your use with the Minnesota PUC, we would be pleased to do so.

Sincerely,



James D. Watkins  
Admiral, USN (Retired)

Enclosure

cc:  
The Honorable Krista Sanda  
Commissioner of the Minnesota  
Department of Public Service

Enclosure

Key MRS Program Milestones

Complete Environmental Assessment of Potential Sites	June 1993
Submit Siting Recommendation to Congress	June 1993
Congress Complete Review of Siting Decision	September 1993
Complete Design in Support of Safety Analysis Report	September 1994
Issue Environmental Impact Statement (EIS)	August 1995
Submit License Application	September 1995
Start Construction of MRS Facility	September 1996
First Production of Transport Casks	January 1997
Start Receipt of Spent Fuel at MRS	January 1998

Key Yucca Mountain Milestones

Start Exploratory Studies Facility (ESF) Collar/portal Construction	November 1993
Start ESF In-situ Test Phase	September 1995
Start Repository License Application Design	June 1996
Issue Repository EIS Notice of Intent	May 1997
Start EIS Preparation	February 1998
Site Recommendation to the President	April 2001
Submit License Application to NRC	October 2001
NRC Complete Licensing Reviews	October 2004
Start Repository Construction	December 2004
Start Accepting Spent Fuel at a Repository	January 2010

FYI

*John*

The Secretary of Energy  
Washington, DC 20585

May 27, 1992

Mr. Allen J. Keesler, Jr.  
Chairman, American Committee  
on Radwaste Disposal  
Florida Power Corporation  
P.O. Box 14042  
St. Petersburg, Florida 33733

Dear Mr. Keesler:

Thank you for your letter of April 13, 1992, on behalf of the American Committee on Radwaste Disposal (ACORD), urging the Department of Energy (DOE) to review its position on DOE obligation to begin receipt of spent nuclear fuel (SNF) on January 31, 1998.

The Nuclear Waste Policy Act (NWPA) states that Congressional policy is to provide for the disposal of SNF in the near term, rather than leaving that problem to future generations. Congress viewed the disposal of SNF as a national problem and charged the DOE with responsibility for developing and implementing a federal nuclear waste management system.

I take that responsibility most seriously. The DOE schedule to develop a nuclear waste management system, which was established in my November 1989 "Report to Congress on Reassessment of the Civilian Radioactive Waste Management Program," is to begin SNF acceptance from reactors in 1998 for storage in a Monitored Retrievable Storage (MRS) facility and to begin accepting spent fuel at a repository in 2010.

We have confidence that we will be able to meet our schedule despite the uncertainties inherent in a program of this magnitude. As you note in your letter, we have made significant progress over the last several months in the MRS program.

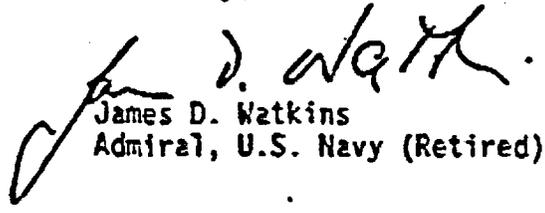
The efforts of the Nuclear Waste Negotiator have been rewarded by 20 requests for Phase I grants from jurisdictions interested in exploring the feasibility of hosting an MRS facility. Several of these applicants have strong prospects to enter into negotiated agreements. Based on this progress, the Negotiator expects that one or more MRS facility hosts can be identified by early next year. This would enable us to begin spent fuel receipt in 1998.

If, contrary to our current expectations, we are not able to begin spent fuel receipt at an MRS facility by January 31, 1998, the Department has determined that it is not legally obligated to accept SNF. We understand ACORD desire for certainty regarding the management of SNF, but nothing in the NWSA, or in the implementing contracts, requires DOE to take spent fuel if, despite our best efforts, we have no operating MRS facility in which to put it.

However, should it become clear to me that our currently-planned actions will not ensure that the Department can accept SNF by 1998, we will take whatever actions are necessary and in accordance with the law to meet our obligations under the Nuclear Waste Policy Act. Further, we would seek additional legislative authority if appropriate.

In summary, the DOE remains firmly committed to living up to our responsibilities under the NWSA, including our programmatic schedule goals. We are making good progress toward that end and welcome ACORD interest and support.

Sincerely,

  
James D. Watkins  
Admiral, U.S. Navy (Retired)



Department of Energy  
Washington, DC 20585

February 14, 1992

The Honorable Krista L. Sanda  
Commissioner  
Minnesota Department of Public Service  
790 American Center  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101-1496

Dear Ms. Sanda:

This is in response to your September 30, 1991, petition to Secretary Watkins that requested that the Department of Energy (Department) amend the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (10 CFR Part 951). The proposed amendment would provide credits to owners of spent nuclear fuel (SNF) for the costs of on-site storage after January 31, 1998. Your petition further requests that it be published in the Federal Register.

Your petition was carefully reviewed in light of the Nuclear Waste Policy Act of 1982 (NWP), as amended, the Standard Contract, and the legislative history concerning the Department's obligation to accept SNF. The Department has concluded that, while your petition addresses issues of serious concern to electricity consumers in Minnesota, as well as other electricity consumers Nationwide, it would be premature and inappropriate to initiate a rulemaking to provide credits to owners of SNF for the costs of on-site storage after January 31, 1998.

Your petition contends that under Section 302(a) of the NWP, the Department is required to begin accepting waste not later than January 31, 1998. Your petition further reasons that in view of the present status of the Department's efforts to construct either a repository or a Monitored Retrievable Storage (MRS) facility, the Department will not be able to begin waste acceptance by that date.

Neither the NWP nor the Standard Contract imposes an unconditional obligation on the Department to accept SNF by January 31, 1998. The NWP and the Standard Contract condition waste acceptance by the Department upon the commencement of operation of a repository or an MRS facility. In this connection, Section 302(a)(5)(B) of the NWP directs that contracts entered into in accordance with Section 302(a) of the NWP are to provide that the Department will take title to SNF following commencement of operation of a repository.

In response to this statutory requirement, the Standard Contract provides in Article II that "[t]he services to be provided by DOE under this contract shall begin, after commencement of facility operations, not later than January 31, 1998." Of further importance is Section 142 of the NWP that authorizes the Department to accept SNF for temporary storage at an MRS

facility prior to disposal in a repository. By these provisions, the triggering event for the Department's waste acceptance obligation is the commencement of either repository or MRS operations on or after January 31, 1998.

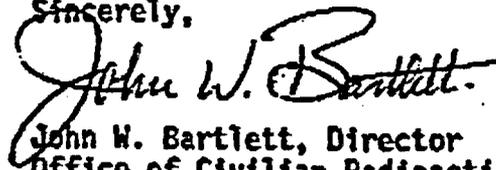
The Department intends to initiate the waste acceptance process, consistent with its obligation under both the NWPA and the Standard Contract, as soon as a facility commences operation. The Department fully expects this process to begin at an MRS by January 31, 1998. Until the SNF is accepted by the Department, Section 111(a)(5) of the NWPA assigns the waste owners the primary responsibility to provide for, and pay the costs of, interim storage.

Regarding your general request for publication of your petition in the Federal Register, neither the Administrative Procedure Act nor the DOE Organization Act requires publication in the Federal Register of all petitions for rulemaking. In this instance, where the Department has neither a statutory nor a regulatory obligation to promulgate new regulatory provisions, the Department is under no obligation to publish the petition. In processing a request, such as yours, to initiate discretionary rulemaking actions in the Federal Register, the Department follows a practice of review on a case-by-case basis.

In view of the fact that 1) the Department is obligated to accept SNF only after commencement of facility operations, 2) the NWPA assigns responsibility to the owners of SNF for storage until a facility commences operation, and 3) the Department believes it will be able to meet the January 31, 1998, date for acceptance of SNF at an MRS, the Department has decided not to initiate a rulemaking on the issue of credits for the cost of on-site storage of SNF after January 31, 1998, and not to publish your petition in the Federal Register.

I understand your concern about the Department's ability to accept SNF from utilities on a timely basis. It is important to recognize, however, that significant progress has been made recently toward obtaining a host site for an MRS facility, which is a prerequisite for initiation of the waste acceptance process in 1998. For example, the Department has awarded four grants to jurisdictions who are studying the feasibility of hosting an MRS facility. Several other grant applications have also been received and are being processed by the Department. I remain confident that waste acceptance can begin in 1998 at an MRS facility.

Sincerely,



John W. Bartlett, Director  
Office of Civilian Radioactive  
Waste Management



MINNESOTA  
Department of  
Public Service

September 30, 1991

790 American Center  
150 East Kellogg Boulevard  
St. Paul, Minnesota 55101-1496  
(612) 296-7107  
FAX (612) 297-1959

Admiral James D. Watkins  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

**RE: *Petition to Grant Credit on the Nuclear Waste Fund Fee***

Dear Admiral Watkins:

On August 2, 1991, I met with your Undersecretary John Tuck and other DOE staff members to discuss my concerns regarding the Department of Energy's implementation of the Civilian Nuclear Waste Disposal Program. I have studied this issue in depth. My staff has conducted an extensive investigation. Based on that study, I conclude that it is highly probable that your department will experience significant delay in meeting its obligation to begin taking high-level radioactive waste in 1998. Therefore, I have directed my legal counsel to prepare a Petition for Relief.

Through the attached Petition, Minnesota seeks from the DOE a credit on the amount it charges for the Nuclear Waste Disposal Program. We are being forced to plan for the fact that your department will delay, or perhaps even fail, to live up to its congressionally mandated obligation to dispose of high-level radioactive waste. At a minimum, you should take prompt action to ensure that we are not charged for your delay.

Our future depends on your implementation of the Nuclear Waste Disposal Program. We want you to be successful in meeting your obligations under the Nuclear Waste Policy Act. Nonetheless, as the state official charged to represent Minnesota in federal energy matters, I must initiate this action to protect our interests.

Sincerely,

A handwritten signature in black ink that reads "Krista L. Sanda".

KRISTA L. SANDA  
COMMISSIONER

c: Dr. John W. Bartlett  
Office of Civilian Radioactive Waste Management

9101234