

JRC



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555
June 24, 1992

OFFICE OF THE
EXECUTIVE DIRECTOR
FOR OPERATIONS

NOTE TO: D. Martin, OCM/IS
~~L. Van Cise, OCM/KR~~
K. Dragonette, OCM/JC
~~R. Boyle, OCM/FR~~
K. Whitfield, OCM/deP

FROM: James L. Blaha, AO/OEDO

SUBJECT: DOE PACKAGE CONCERNING DOE OBLIGATION TO
ACCEPT SPENT NUCLEAR FUEL (SNF)

Attached is a package of information provided
by DOE concerning its obligation to accept SNF and
DOE's plans for an MRS. A copy of this package
was recently provided to Commissioner Curtiss'
office by DOE.


James L. Blaha, AO/OEDO

Attachment:
As stated

cc: J. Taylor
H. Thompson
K. Stablein
SECY

1992 JUN 24 11 35 AM

9401050395 931116
PDR COMMS NRCC
CORRESPONDENCE PDR



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 961). 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 (NWPAct), 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 NWPAct, 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 NWPAct nor the Standard Contract imposes an unconditional obligation on the Department to accept SNF by January 31, 1998. The NWPAct 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 NWPAct directs that contracts entered into in accordance with Section 302(a) of the NWPAct 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 NWPAct 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

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

September 30, 1991

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 1996. 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,

KRISTA L. SANDA
COMMISSIONER

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

910/234



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.

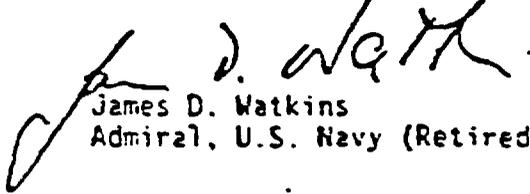
The efforts of the Nuclear Waste Negotiator have been rewarded by 20 requests for Phase I grants from jurisdictions interested in exploring the feasibility of hosting an MRS facility. Several of these applicants have strong prospects to enter into negotiated agreements. Based on this progress, the Negotiator 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 NWPA, 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 NWPA, 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)



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 E.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

06/17 92 13 24 2025568605 RW-30 Rm RW-40 3

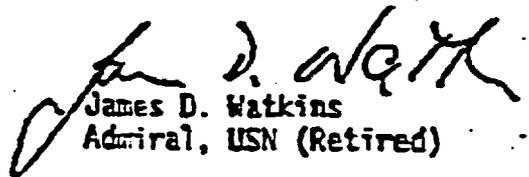
accordance with the law to meet our obligations under the Nuclear Waste Policy Act. Further, we would seek additional legislative authority if appropriate.

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)

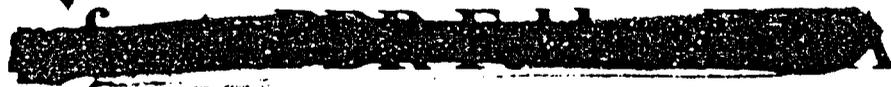
Enclosure

cc:

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



Copyrighted Document



Name & Number: _____

Pages: 6 _____

Accession Number: _____

NOTICE

WARNING

CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Without permission, conditions provided in the title, insert, and insert are prohibited in making photocopies or other reproductions. One of these conditions is that the photocopy or reproduction must not be used for

purposes other than those stated on the title page. This includes the copying or reproduction of material for advertising or promotional purposes, for creating new collective works, or for resale.

For more information, contact the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. Organizations in the USA who are also registered with the Copyright Clearance Center may also contact their local Reproduction Rights Organization (RRO) for inter-country copying arrangements.

1053

The

Radioactive Exchange

To promote the exchange of views and information on radioactive waste management

| | |
|---|---------|
| INSIDE: Small Generators Getting 'Free Ride' . . . | Page 2 |
| EPA Proposes Hazardous Waste Rule | Page 3 |
| Results of Mixed Waste Treatability Study | Page 4 |
| House Energy Bill Pre-empt's Nevada Authority . . . | Page 5 |
| Marionville Okay's Illinois Facility Agreements . . . | Page 5 |
| Wrap Up (LLRW) | Page 7 |
| LLRW Volume Disposal Update | Page 10 |

| | |
|--|--------|
| The HLW Focus | Page 1 |
| House Appropriations Slashes HLW Program . . . | Page 1 |
| House Committee Agrees to Act on WIPP Bill . . . | Page 1 |
| NWTRB: Thermal Loading Analysis Needed Now . . . | Page 1 |
| GAO Predicts More Delays in HLW Program . . . | Page 1 |
| Idaho Wants More Detail in Spent Fuel Plan . . . | Page 2 |
| Wrap Up (HLW) | Page 2 |

Volume 11 No. 10

June 15, 1992

DOE DENIES LEGAL OBLIGATION TO TAKE SPENT FUEL IN 1998

Utilities, Running Out of Storage Space, Have Different Interpretation of Law

Controversy over how to handle spent nuclear fuel: If the Department of Energy (DOE) does not have an interim storage facility ready by 1998, utilities, their industry organizations, state regulators and DOE running in circles. Each is looking to the others for assurances and answers in a situation in which very little is definitive.

Industry officials say that a group of utilities is pressuring a reluctant Edison Electric Institute to take legal action against DOE. The argument: If DOE does not recognize a legal obligation under the Nuclear Waste Policy Act to accept spent fuel in 1998, then the utilities should not be forced to pay into the HLW fund, as the law requires, after 1998.

But at bottom, the problem is that a significant number of nuclear utilities will run out of storage space in their spent fuel pools before 1998, when DOE insists it will have a Monitored Retrievable Storage (MRS) facility ready to accept fuel.

Utilities are concerned -- with some basis -- that state regulators may deny authority to build the on-site necessary to get them through until DOE has a storage facility ready unless the industry can demonstrate DOE has a legal obligation to take the fuel. The word of Energy Secretary James Watkins that DOE will be ready in 1998 is not enough. But if DOE is legally bound to (See 1998 Deadline in the HLW Focus)

BARNWELL TO BE OPEN UNTIL 1996; SOUTH CAROLINA SETS CONDITIONS

LLRW will be accepted at the Barnwell, S.C. disposal facility through the end of 1995, subject to certain conditions. The South Carolina legislature approved the extension June 4, the last day of its session. Explicit approval of waste imports from outside the Southeast Compact must be granted by the Compact commission, and the fee for out-of-region waste must be at least \$160 per cubic foot.

After July 1, 1994, the South Carolina commissioners will likely use their veto authority to prohibit out-of-region waste disposal, according to S.C. commissioner Carl Roberts.

'Good Neighbor Policy' Included

The House took a non-binding vote May 28, acting as a "committee of the whole," and agreed 61 to 47 to instruct the House conferees to insert language into the budget bill that will keep Barnwell operating. The House was the main hurdle for proponents of keeping the facility open, and speaker Bob Stenerson appointed three Barnwell opponents to the budget conference committee.

The approved language, appearing in the state's final budget bill, includes a "good neighbor policy" which imposes siting requirements on North Carolina, the next host of the compact's regional LLRW disposal facility. North Carolina must "exclude any site within ten miles of a neighboring state by December 31, 1993" and must

Edward L. Helms, Publisher • Maureen Conley, Assistant Editor • Eric Lindeman, Managing Editor

The Radioactive Exchange • 2014 P St. N.W., Suite 300 • Washington, DC 20036 • 800-776-1314

Copyright 1992, Exchange Publications. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without written permission of the publisher.

(1998 Deadline Pg. 1)

take the fuel, then it's DOE problem. Eighteen commercial reactors will lose the capacity to discharge spent fuel — and thus to operate — before the end of 1998, according to the most recent data compiled by DOE's Energy Information Administration (Exchange, Vol. 11, Nos. 8 & 9).

These utilities are or will be applying to their state regulators for authority to build on-site dry storage to get them through until DOE can take the fuel. Otherwise, they face curtailing power levels or shutting down altogether.

But, for those utilities, a devastating precedent was set in April when an administrative law judge (ALJ) in Minnesota recommended the state commission not approve Northern States Power's (NSP) application to build on-site storage on grounds that there is no guarantee DOE will meet its proclaimed deadline for taking up to spent fuel at an MRS or a repository.

No Reason to Believe DOE Will Meet Deadline

To the contrary, ALJ Allan Klein found that there is reason to believe DOE might never be able to take the spent fuel. Thus, he maintained, Northern States' on-site storage could become, de facto, permanent (Exchange, Vol. 11 No. 7). Minnesota law requires legislative approval for permanent disposal.

The state public utilities commission is scheduled to begin consideration of the issues June 19 and expects to take final action late in the month or early in July. Without the on-site storage, Northern States' two Prairie Island units, licensed until 2013 and 2014, can operate only until January 1995.

In response to the situation, James Howard, Northern States chairman and chief executive officer, wrote to Energy Secretary James Watkins April 13, seeking assurances that DOE would take the Prairie Island fuel in 1998.

Watkins replied May 29, saying, "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." He added that "the department is committed to fulfill the mandates imposed by the Nuclear Waste Policy Act."

In the letter, a copy of which DOE provided on request, Watkins set out milestones for the MRS program and HLW repository at Yucca Mountain (see below), which an official of the Edison Electric Institute (EEI) applauded as "very significant, something we've been trying to get DOE to do."

Watkins also said that "should it become clear that our currently planned actions and progress towards the milestones...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."

But within the EEI membership, there appears to be no unanimity on just what DOE's obligations are under the Nuclear Waste Policy Act (NWPA). To add even more to the controversy, DOE's position is not entirely clear.

In a May 27 letter — just two days before the letter to Northern States — Watkins said, yes, DOE is committed to taking the fuel by 1998 but, no, under NWPA the department has no legal responsibility to take fuel unless it has a facility in which to store it. Neither DOE nor EEI would release the letter, but a copy was obtained elsewhere.

Watkins Says DOE Not Obligated to Take Fuel

Watkins's correspondence addressed a query by Allen Keesler, president and chief executive officer of Florida Power Corp. and chairman of EEI's American Committee on Radwaste Disposal (ACORD), about whether DOE acknowledged legal responsibility for accepting spent fuel in 1998.

To that question Watkins responded: "If, contrary to our 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 (spent nuclear fuel).

"We understand ACORD's desire for certainty regarding the management of SNF, but nothing in the NWPA, 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."

Northern States clearly felt obliged to interpret Watkins' more recent (by two days) letter to Howard as supporting the utility's position for its on-site storage application before the state commission.

In a June 3 press release, Howard said: "This statement from Admiral Watkins reaffirms our belief that NSP's above-ground storage proposal is indeed temporary. DOE's commitment eliminates the primary concern in the ALJ's recent opinion on NSP's dry cask storage application."

But Keester, and officials of other utilities that have their backs against the 1998 wall, apparently was misled by Watkins' letter and his interpretation of DOE's legal responsibility under NWPA. Keester reportedly disagrees with DOE, despite the attempts of other EEL officials to play the issue down.

Focusing on DOE Response to NSP

The more recent Watkins letter — the May 29 correspondence, not the May 27 one — is the operative position, explained one EEL official. The expression of DOE's commitment to the 1998 deadline, and not its denial of legal responsibility to take spent fuel if the department has no place to put it, "is more descriptive and useful," he said.

In Minnesota, he added, where the state will be acting on the on-site storage application soon, "the question is more immediate. It's 1992, not 1998."

The "question" also looms large for Wisconsin Electric Power Co. (WEPCO), which has applied to its state public service commission for authority to build on-site dry cask storage. WEPCO's two Point Beach reactors are licensed until 2010 and 2013, but they run out of spent fuel storage in mid-1995.

Although an official of the Wisconsin Public Service Commission said the application for dry cask storage "won't be acted on" for at least a year, the utility clearly is concerned about what is happening in neighboring Minnesota.

At Point Beach-2, WEPCO is planning to replace the steam generators — a big ticket item — in the spring of 1996. If the Minnesota commission follows the ALJ's recommendation and doesn't grant Northern States authority to build on-site storage, "it would impact our application for steam generators and other things," according to Jeff Raugh, a WEPCO spokesman. "Those who don't want our application approved will certainly question the capital expenditure for steam generators."

Raugh said WEPCO agrees with ACORD: "Keester has said he disagrees with the DOE position stating their only obligation was to accept spent fuel if they had a facility sited and built. We believe the waste act (NWPA) definitively requires DOE to start accepting waste in 1998 whether they have a repository licensed or not."

Few of the arguments are new. Minnesota Department of Public Service Commissioner Krista Sands petitioned DOE last September to grant the state a credit on Northern States' contributions to the HLW waste fund equal to the cost of storing spent fuel at Prairie Island after Jan. 31, 1998. Sands asked DOE to initiate a rulemaking and to publish her petition in the *Federal Register*.

DOE did not respond until February 14, when John Bartlett, Civilian Radioactive Waste Management director, denied all of Sands's requests. Bartlett said that "Neither the NWPA nor the Standard Contract (between the utilities) imposes an unconditional obligation on the department to accept spent nuclear fuel by Jan. 31, 1998. The NWPA and the Standard Contract condition waste acceptance by the department upon the commencement of operation of a repository or an MRS facility."

He added:

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 Jan. 31, 1998."

Of further importance is Section 142 of the NWPA 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 Jan. 31, 1998.

The view seems to be accepted on Capitol Hill, where House and Senate staffers emphasize there would be little point in DOE asking title to spent fuel if it had no

place to put it. One congressional aide summarized: "They (DOE) have legal liability to take it at a facility. But if they don't have one, then tough."

KEY MRS PROGRAM MILESTONES

- Complete Environmental Assessment of Potential Sites June 1993
- Submit Siting Recommendations to Congress June 1993
- Congress Complete Review of Siting Decision Sept. 1993
- Complete Design in Support of Safety Analysis Report Sept. 1994
- Issue Environmental Impact Statement Aug. 1995
- Submit License Application Sept. 1995
- Start MRS Construction Sept. 1996
- First Transport Cask Production Jan. 1997
- Start Receipt of Spent Fuel Jan. 1998

KEY YUCCA MOUNTAIN MILESTONES

- Start Exploratory Studies Facility (ESF) Collar/Portal Construction Nov. 1993
- Start ESF In-Situ Test Phase Sept. 1995
- Start Repository License Application Design June 1996
- Issue Repository EIS Notice of Intent May 1997
- Start EIS Preparation Feb. 1998
- Site Recommendation to President April 2001
- Submit License NRC Application Oct. 2001
- NRC Complete Licensing Reviews Oct. 2002
- Start Repository Construction Dec. 2002
- Start Accepting Spent Fuel Jan. 2010

HOUSE APPROPRIATIONS COMMITTEE SLASHES HLW PROGRAM FUNDING

The House Appropriations Committee approved the Energy and Water Subcommittee's recommendation to limit fiscal year 1993 appropriations for the Nuclear Waste Disposal Fund to FY92 levels, cutting \$116.9 million from the administration's request.

The administration had requested \$392 million from the fund to support activities of the Office of Civilian Radioactive Waste management's (OCRWM) HLW program, an increase of 42 percent over the FY92 appropriations. Nearly \$41 million of those funds were slated for analyzing an Monitored Retrievable Storage (MRS) site.

But the committee, marking up the FY93 appropriations bill June 11, cited "significant budget constraints" that required it to stick with the FY92 funding level of \$275 million. Spending limits for FY93, known as 602(b) allocations, in general are 2 to 3 percent lower than FY92 levels.

In FY 1993, the fund will generate a little over \$641 million in revenues derived from fees and interest income. But the enabling legislation "does not offset the appropriation with fees," the committee stated in its report.

The Committee notes that progress has been made in obtaining licenses from the state of Nevada to allow the characterization of the Yucca Mountain site. The committee is encouraged by this progress and recommends that the department maximize the on-site work possible from within.

The committee set aside \$5 million for the Nevada's Yucca Mountain oversight responsibilities and \$4 million for affected local governments. In addition, \$1.7 million is recommended for infrastructure studies and other research and development work carried out by the University of Nevada at Las Vegas and the University of Nevada at Reno.

None of the money in the fund, according to committee language, may be used directly or indirectly to influence legislative action on any matter pending before Congress or a state legislature or for any lobbying activities or litigation expenses.

For the Waste Isolation Pilot Plant (WIPP), which is funded through DOE's defense portion of the environmental restoration and waste management program, the committee did not include \$20 million DOE requested for the state of New Mexico to mitigate impacts resulting from the test phase. That amount was provided last year and is still available, it said.

< TRANSACTION REPORT >

06-17-1992(WED) 12:28

[RECEIVE]

| NO. | DATE | TIME | DESTINATION STATION | PG. | DURATION | MODE | RESULT |
|-----|------|-------|---------------------|-----|----------|--------|--------|
| 316 | 6-17 | 12:18 | 2025869608 | 13 | 0'10'36" | NORM.E | OK |
| | | | | 13 | 0'10'36" | | |

Volume XIII.

Q

C