



Department of Energy
Washington, DC 20585

PRM-51-13
(75FR16360)

9

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Via Email – Rulemaking.Comments@nrc.gov

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, D.C. 20555-0001

Subject: Comments on Petition for Rulemaking Under 10 CFR Part 51
(Docket No. PRM-51-13; NRC-2010-0088)

Dear Secretary Vietti-Cook,

Enclosed are comments of the Department of Energy in opposition to the above-referenced Petition for Rulemaking.

Sincerely,

Scott Blake Harris
General Counsel

Enclosure



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Department of Energy Comments to Petition for Rulemaking Under 10 CFR Part 51

(Docket No. PRM-51-13; NRC-2010-0088)

The Nuclear Regulatory Commission (“NRC” or “Commission”) should deny the petition for rulemaking dated February 2, 2010, submitted by Mr. Dan Kane (“Petition”).¹ The Petition requests that the Commission open a rulemaking to revisit certain aspects of its waste confidence determination.² That course of action is wasteful and unnecessary. The issues raised by the Petition fall squarely within the Commission’s existing Waste Confidence rulemaking, which is currently active before the Commission.³ Opening a rulemaking as requested by the Petition would thus not enhance the Commission’s efficiency or effectiveness, and, accordingly, is inconsistent with Commission precedent.⁴

Even beyond that, the Petition is based on mistaken premises. As an initial matter, as the Secretary of Energy has repeatedly emphasized, the Administration is committed to fulfilling the federal government’s obligation to dispose of spent nuclear fuel (SNF) and high-level radioactive waste (HLW), and to do so safely and without significant environmental impact.⁵ The Secretary, at the direction of the President, has established the Blue Ribbon Commission on America’s

¹ The Petition was noticed for public comment by the NRC in 75 Fed. Reg. 16360 (Apr. 1, 2010).

² 75 Fed. Reg. 16360 (Apr. 1, 2010).

³ On October 9, 2008, the Commission issued for public comment a proposed Waste Confidence Decision Update. 73 Fed. Reg. 59551. In September 2009, after the end of the public comment period, the three Commissioners expressed the view that the Administration’s change of policy on the nation’s repository program warranted a re-opening of the public comment period at some future date. See Commission Voting Records of Chairman Jaczko, Commissioner Klein, and Commissioner Svinicki, SECY-09-0090 – Final Update of the Commission’s Waste Confidence Decision. As of the date of this submission, the Commission has not yet re-opened that comment period.

⁴ 73 Fed. Reg. 29448 (May 21, 2008) (“[T]he NRC must consider the potential impact of a rulemaking on the agency’s efficiency and effectiveness. NRC has limited resources for rulemaking.”).

⁵ See, e.g., DOE, Secretary Chu Announces Blue Ribbon Commission on America’s Nuclear Future (Jan. 29, 2010), available at <http://www.energy.gov/news/8584.htm> (“The Administration is committed to promoting nuclear power in the United States and developing a safe, long-term solution for the management of used nuclear fuel and nuclear waste.”); DOE Motion to Withdraw at 1, *In the Matter of U.S. Dep’t of Energy*, Docket No. 63-001-HLW, ASLBP No. 09-892-HLW-CAB04 (“DOE reaffirms its obligation to take possession and dispose of the nation’s spent nuclear fuel and high-level nuclear waste ...”).

Nuclear Future, to provide a comprehensive evaluation of the best alternatives for such disposal and to provide recommendations for action.⁶ The Blue Ribbon Commission has begun work, and its final report is due by early 2012. Moreover, the existence of safe and effective dry storage technology provides DOE with more than sufficient time to meet its obligation for permanent disposal. As the Commission concluded as far back as 1990, “dry spent fuel storage is safe and environmentally acceptable for a period of 100 years.”⁷ Therefore, there is more than sufficient time to develop a permanent disposal solution.

Additionally, contrary to the suggestions in the Petition, the conclusion of waste confidence is not dependent on the opening of a repository at Yucca Mountain. In its 1990 Waste Confidence Decision Update, the Commission stated that, even if the Yucca Mountain site was determined to be unsuitable from a technical perspective, this “would not diminish confidence in the technical feasibility of geologic disposal.”⁸ The Commission also stated that its second Waste Confidence finding (concerning the anticipated availability of a repository) was “based on the time it would take for DOE to proceed from site screening to repository operation at a site *other than Yucca Mountain*, if this should prove necessary.”⁹ Although the second finding predicted that a repository would be available by 2025, the Commission made clear that the inaccuracy of this prediction would not reverse the Commission’s overall conclusion of waste confidence.¹⁰ These statements indicate that what is important is the confidence that the

⁶ Blue Ribbon Commission on America’s Nuclear Future, U.S. Department of Energy, Advisory Committee Charter, *available at* http://brc.gov/pdfFiles/BRC_Charter.pdf.

⁷ 55 Fed. Reg. 38482 (Sep. 18, 1990).

⁸ *Id.* at 38476. To be clear, DOE’s decision to terminate the Yucca Mountain project was not based on a finding that the Yucca Mountain site is unsafe or that there are flaws in the license application for a repository at that site, but rather that it is not a workable option and that alternatives will better serve the public interest.

⁹ *Id.* at 38495 (*emphasis added*).

¹⁰ *Id.* at 38504, 38507 (“The Commission has not identified a date by which a repository must be available for health and safety reasons. ... The Commission’s enhanced confidence in the safety of extended spent fuel storage provides adequate grounds for the view that NRC need not at this time define more precisely the period when, for reasons related to NRC’s mission, a permanent alternative to post-operational spent fuel storage will be needed.”).

federal government will honor its commitment to dispose of SNF and HLW, not whether the materials will be disposed at Yucca Mountain.

In all events, the Waste Confidence rulemaking provides a wholly sufficient opportunity for the Commission and interested parties to address these issues and any others of relevance.

There is no reason to establish a duplicative proceeding.

Conclusion

The Commission should deny the Petition.

Rulemaking Comments

From: Dickerson, Katharine [Katharine.Dickerson@hq.doe.gov] on behalf of Harris, Scott Blake [Scott.Harris@hq.doe.gov]
Sent: Monday, June 14, 2010 5:05 PM
To: Rulemaking Comments
Subject: Comments on Petition for Rulemaking Under 10 CFR Part 51 (Docket No. PRM-51-13; NRC-2010-0088)
Attachments: Annette Vietti-Cook_06-14-10.PDF

Please see attached Department of Energy comments on Petition for Rulemaking under 10 CFR Part 51 (Docket No. PRM-51-13; NRC-2010-0088).

Scott Blake Harris
General Counsel
U.S. Department of Energy
Washington, DC 20585

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From: "Harris, Scott Blake" <Scott.Harris@hq.doe.gov>

To: "'Rulemaking.Comments@nrc.gov'" <Rulemaking.Comments@nrc.gov>

Sender: "Dickerson, Katharine" <Katharine.Dickerson@hq.doe.gov>

Date: Mon, 14 Jun 2010 17:05:25 -0400

Subject: Comments on Petition for Rulemaking Under 10 CFR Part 51 (Docket
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