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Gerald W. Muench
Vice President
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January 31, 1991

Mr. James Kennedy
Office of Nuclear Materials
Safety and Safeguards
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Subject: SECY-90-318 (September 12, 1990) Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions 55 Federal Register 50064 (December 4, 1990)

CNRO-91/00002

Dear Mr. Kennedy:

In accordance with the above referenced notice and invitation to comment, we submit the attached comments on behalf of Entergy Operations, Inc. Our comments focus on those aspects of SECY-90-318 which will have the greatest impact on generators of low-level radioactive waste.

We appreciate this opportunity to express our views on the subject document and encourage the Commission's support in achieving the goal of permanent disposal capability for low-level radioactive waste.

Sincerely,

GWM/swb
attachment

cc: Mr. T. W. Alexion
Mr. S. E. Ebneter
Mr. L. L. Kintner
Mr. Byron Lee, Jr.
Mr. R. D. Martin
Ms. Sheri Peterson
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bcc:
Mr. R. P. Barkhurst, W-3
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Mr. R. F. Burski, W-3
Mr. N. S. Carns, ANO
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Mr. W. T. Cottle, GGNS/ESC
Mr. J. G. Dewease, ECH/69
Mr. M. A. Dietrich, GGNS/B/ADMIN
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COMMENTS ON SECY 90-318 "TITLE TRANSFER PROVISIONS OF THE LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985"

GENERAL COMMENT:

The title transfer and possession provisions of the 1985 Act are the only driving force for states to develop new disposal capacity. These provisions are a critical element in the overall federal policy. The responsibility for safe and efficient management of low-level waste disposal is specifically assigned to the states themselves and all necessary and appropriate actions to ensure that these provisions are fully implemented should be taken.

Entergy Operations supports the NRC's decision to consider now the potential regulatory issues associated with implementation of the title transfer and possession provisions. It is essential that states are fully informed of the regulatory requirements and guidelines associated with this issue. Entergy Operations also supports the NRC Staff's recommendation to provide guidance to the Governors on this subject.

Entergy Operations would like to emphasize that interim storage of low-level waste, whether at a reactor site or a state facility, is not the solution to the waste disposal problem. In deed, interim storage will result in significant unnecessary costs and could undermine the entire regional waste disposal facility development process. All possible actions should be taken to ensure that states honor their responsibilities to provide for permanent waste disposal. For those states progressing toward new disposal facility operation, continued disposal options should be pursued rather than interim storage. Developing additional interim storage will be costly and could have significant adverse effects on the regional disposal facility development process.

Question 1: What factors should the Commission consider in deciding whether to authorize on-site storage of LLRW (other than storage for a few months to accommodate operational needs such as consolidated shipments or holding for periodic treatment or decay) beyond January 1, 1996?

Entergy Operations' Response:

This question specifically inquires about storage authorization beyond January 1, 1996. While we recognize the significance of this date from the perspective of the 1985 Act, we do not believe that this date is relevant to any decision by the NRC whether or not to authorize on-site storage. Some licensees may have no alternative but to store LLRW on-site as a result of being denied access to existing disposal facilities. If existing disposal facilities are not available after January 1, 1993, interim storage, either on or off site, will be a pressing reality long before 1996. We believe that the NRC should not take any actions which create unnecessary impediments to licensee storage.

Question 2: What are the potential health and safety and environmental impacts of increased on-site storage of LLRW?

Entergy Operations' Response:

We believe that there are no significant health, safety or environmental impacts associated with utility on-site storage of LLRW. However, these concerns may exist for storage of non-utility LLRW. Additionally, there are significant financial, technical, and political impacts associated with the storage issue.

Question 3: Would LLRW storage for other than operational needs beyond January 1, 1996, have an adverse impact on the incentive for timely development of permanent disposal capacity?

Entergy Operations' Response:

Again, we do not see the relevance in the January 1, 1996 date. Any additional LLRW storage capacity, before or after January 1, 1996, could be perceived by certain groups, and promoted by these groups, as a solution to LLRW disposal. Past experience indicates that the storage issue can have an adverse impact on regional disposal facility progress. Appropriate actions should be taken to encourage and promote timely development of new disposal facilities without unnecessarily impeding the ability of waste generators to store LLRW if disposal options are not available.

Question 4: What specific administrative, technical or legal issues are raised by the requirements for transfer of title?

Entergy Operations' Response:

The provisions of the 1985 Act have survived constitutional challenge in two federal district courts. Although appeals are possible, the position of the courts has set a precedent as to the constitutionality and validity of these provisions.

We agree with the NRC Staff's evaluation that existing NRC regulations provide the necessary regulatory framework for transfer of title of LLRW to states.

Question 5: What are the advantages and disadvantages of transfer of title and possession as separate steps?

Entergy Operations' Response:

It does not appear that any affirmative licensing action by the NRC will be required to transfer title of LLRW to states. Transfer of possession will most likely require some licensing action. Additionally, states cannot take possession of LLRW unless they have the physical capability to do so.

Question 6: Could any state or local laws interfere with or preclude transfer of title or possession of LLRW?

Entergy Operations' Response:

In all probability there will be efforts through the introduction of state and local laws to attempt to interfere with the title transfer and possession provisions of the 1985 Act. If these laws do conflict with the 1985 Act they would be preempted under the Supremacy Clause of the U. S. Constitution. The mandatory responsibilities of states which do not develop disposal capability in a timely manner is clear after January 1, 1996. If disposal capacity is not available from January 1, 1993 to January 1, 1996, it is unclear whether the states will incur any liabilities at all. If a state refuses to take title and possession of waste on January 1, 1993 the Act provides for a portion of the 1990-1992 surcharges, plus interest, to be rebated to the generators. This provision only applies to states in non-sited compacts since sited compact generators have payed no surcharges. It does not appear that the rebates will come from the states themselves. After January 1, 1996 states must take title to the waste and are obligated to take possession of the waste. States are liable for all damages incurred by a generator as a result of failure to take possession of waste after January 1, 1996. Unfortunately, damages to generators will occur long before January 1, 1996.

Question 7: What assurances of the availability of safe and sufficient disposal capacity for LLRW should the Commission require and when should it require them? What additional conditions, if any should the Commission consider in reviewing such assurances?

Entergy Operations' Response:

The 1985 Act establishes incentives and penalties for the development of new disposal facilities. The NRC's role is to provide guidance and applicable license review. There is no reason for the NRC to consider additional conditions or any assurances regarding the availability of disposal capacity.

Question 8: Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of LLRW and mixed (radioactive and chemical hazardous) waste?

Entergy Operations' Response:

Mixed waste is currently subject to dual regulation by EPA under the Resource Conservation and Recovery Act (RCRA) and by NRC under the Atomic Energy Act (AEA). This dual regulation will complicate transfer of title and possession to the states. Mixed waste will also complicate the on-site storage issue.

Under current regulations, persons who handle mixed waste are subject to a

number of EPA requirements as well as NRC regulations. Entities involved with the storage, treatment or disposal of mixed waste may be required to file complex "Part B" permit applications to comply with extensive EPA technical requirements.

Summary Comment:

In addition to any technical issues, there could be political issues relating to the transfer of title and possession of LLRW to the state. The process for transfer of title and possession is initiated by notification, from the generator to the state, in which the generator requests the state to take title and possession of its waste. Generators could be subject to significant political pressure not to file such requests.

In conclusion, Entergy Operations appreciates the opportunity to submit our comments on SECY-90-318. Although we support the NRC's decision to address the regulatory implications associated with "title transfer and possession" provisions of the 1985 Act, we would like to stress that the goal of both the 1980 Act and 1985 Act is to provide for permanent LLRW disposal.

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New York Power Authority

John C. Brons
Executive Vice President
Nuclear Generation

January 31, 1991
JPN-91-006
IPN-91-003

Mr. James Kennedy
Office of Nuclear Materials and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

SUBJECT: James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
Indian Point 3 Nuclear Power Plant
Docket No. 50-286
Comments on SECY 90-318, "Low Level Radioactive Waste Policy Amendments Act Title and Possession Provisions"

Dear Sir:

This letter provides the New York Power Authority's comments on SECY 90-318 "Low Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions." The Authority's comments address the questions contained in the Federal Register on December 4, 1990 (55 FR 50064).

The Authority believes that Commission decisions on licensee activities should continue to be based on a determination that such activities can be conducted in accordance with applicable regulations. Therefore, in response to several of the questions contained in the Federal Register, the Authority offers the following comments:

Q1. The Authority agrees with the finding on page 4 of SECY 90-318 that Title 10 Code of Federal Regulations Parts 20, 30 and 50 and NRC guidance documents together provide an adequate regulatory framework for licensing onsite storage. The Authority recommends that the Commission use this existing regulatory framework for decisions related to onsite storage of low level waste.

Specifically, the Commission should consider authorization for storage based solely on reasonable assurance that a licensee can conduct storage activities in compliance with regulations and without endangering the health or safety of the public.

By using the existing regulatory framework, the Commission preserves the ability of each generator licensee to act on and pursue onsite storage according to the licensee's individual capabilities and situation. The Commission should not consider factors other than regulatory compliance when it is considering decisions on licensee actions related to storage.

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Q2. Permanent disposal of low level waste in a licensed disposal facility is the most effective means available for isolating the radiological hazard from the environment. However, licensees can conduct storage activities in a manner that will protect public health and present no danger to life and property.

Q3. Storage should not be a substitute for permanent disposal and, further, permanent disposal is technologically achievable within existing licensing standards. However, the regulatory requirements under which storage is licensed and conducted are separate from the provisions of the act under which state and compact authorities are developing disposal capacity. The act imposes no mandate on the Commission to establish permanent disposal facilities. Conversely, if Congress had wanted to preclude onsite storage, whether by directing NRC not to license it or by outright prohibition, that requirement would have been expressly stated in the act. The NRC's mandate is to ensure through licensing and facility oversight that the handling, storage and disposal of radioactive material, in this case low level waste, is performed in a safe and environmentally sound manner. As long as onsite storage meets these criteria, not to license new or continued storage would appear discretionary.

Therefore, although the Commission is responsible under the law for certain activities concerning states and compacts, the Authority believes that the progress of such entities under the law should not become a factor in the Commission's decisions on individual generator licensee actions.

Q8. The Power Authority has applied for interim status for mixed hazardous and radioactive waste under New York State's program authorized by the Environmental Protection Agency. Mixed waste is currently subject to full dual regulation by both the NRC and the EPA, and generators of mixed wastes have no alternative but to store them onsite because commercial disposal capacity does not exist. For these reasons the Authority encourages the Commission to work with the EPA and the Congress to establish a single set of standards for storage, treatment and disposal of mixed waste that will ensure an adequate degree of protection for workers, the public, and the environment.

If you have any questions on our comments, please contact Pete Kokolakis.

Very truly yours,

for John C. Brons
Executive Vice President
Nuclear Generation Department

cc: Regional Administrator
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