

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



COMMISSIONERS:

John F. Ahearne, Chairman  
Victor Gilinsky  
Joseph M. Hendrie  
Peter A. Bradford

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JAN 16 1981

In the Matter of

PROPOSED RULEMAKING ON THE STORAGE  
AND DISPOSAL OF NUCLEAR WASTE

(Waste Confidence Rulemaking)

PR-50, -51  
(44 Fed. Reg. 61372)

MEMORANDUM AND ORDER

Now that the participants' statements and cross-statements have been received, the opening stage of this proceeding as envisioned in our October 25, 1979 Notice of Proposed Rulemaking, 44 Fed. Reg. 61372, has been completed. Pursuant to the Presiding Officer's order of May 29, 1980 the participants have filed suggestions as to the nature and scope of further proceedings. Additional input to the decision on further proceedings will come from the Commission's working group, which in accordance with the Commission's Memorandum and Order of May 28, 1980 is expected to identify issues in controversy and areas in which additional information may be needed. The May 28, 1980 Memorandum and Order also indicated that the working group would submit a summary of the record "following the last phase of the hearing." The Commission has been informed, however, that to accompany its identification of issues the working group is preparing to submit a summary of the

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record so far compiled. It appears that this early availability of the summary will be advantageous.

The content of the record so far compiled is of course a major consideration affecting the choice of further proceedings. Accordingly, the Commission finds well-taken those suggestions which urge that a firm decision on further proceedings should follow rather than precede the Commission's opportunity to review the working groups's summary of the record and identification of issues. A number of the suggestions for further proceedings have also urged that the Commission obtain participants' comments on the working group's report in order to provide further assurance that the summary and identification of issues accurately represent the present state of the record. The Commission believes that concise comments, limited to pointing out significant gaps or possible errors in the summary and identification of issues, can contribute to the usefulness of the working group's product.

Accordingly, the Commission has directed that the working group shall no later than January 29, 1981 file with the Commission and the Presiding Officer and have served on all participants a report which summarizes the record, identifies key issues and controversies, and indicates insofar as possible at this stage of the proceeding how their resolution could affect the Commission's decision. However, the working group shall not make recommendations or express views regarding the conclusions which the Commission should reach on the issues.

Within 35 days from the date the working group's report is filed, participants may submit to the Presiding Officer comments regarding the accuracy

of the working group's summary of the record. Participants may also comment on whether the working group's identification and description of the issues is accurate and complete. Participants may indicate their views on the relative importance of the issues identified. To be of greatest use to the Commission comments should be kept reasonably brief and to the point. Following the close of the comment period, the Presiding Officer shall promptly transmit these comments to the Commission, together with his recommendations concerning further proceedings.

Certain of the participants have filed motions objecting to the working group's use of outside consultants to assist in preparing its summary of the record and identification of issues.<sup>1/</sup> Some of the motions regarded as unduly "secret" the contract-awarding procedures followed by the staff. In response to these motions the Commission notes first of all that the May 28, 1980 Memorandum and Order put the participants explicitly on notice (note 3) that the working group was authorized "to engage the services of outside experts if it determines that such consultation is needed." By the nature of the working group's initial assignment the Commission would expect the group itself to be the best judge of the scope and type of outside assistance, if any, which might be needed to perform the summarizing and issue-identification

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<sup>1/</sup> Objections were filed by the United Nuclear Waste Management Group -- Edison Electric Institute (UNWEG), the Natural Resources Defense Council--New England Coalition on Nuclear Pollution (NRDC-NECNP), the State of New York, the State of Ohio, the California Energy Commission and California Department of Conservation, the State of Minnesota, Environmental Coalition on Nuclear Power, Marvin Lewis, Safe Haven, Ltd., and John O'Neill II.

tasks set out by the Commission's order.<sup>2/</sup> The Commission notes that the working group's contracting activities have not been "secret" but have followed approved contracting procedures in full accord with applicable statutes and regulations.<sup>3/</sup> The only services engaged so far have been largely for the purpose of making the summaries more readable to the public. The scope of

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<sup>2/</sup> The Working Group has been involved in three separate procurement actions during the course of this proceeding. First, the Working Group has obtained the services of Editorial Consultants, Inc. to provide technical editing and writing assistance. This contract was initiated on September 24, 1980 and terminated on December 10, 1980. A second contract was awarded to Teknekron, Inc. on October 27, 1980 and was completed on November 5, 1980. The purpose of this contract was for the contractor "to improve the quality of the working group's summaries" of the participants' statements of position. The Working Group explicitly stated that "the contractor will avoid interpreting, paraphrasing, or otherwise modifying the conclusions made by the participants on the issues." The final procurement action (Request for Quotation (RFQ) No. RS-NMS-81-032) is entitled "Technical Support for the Confidence Rule-making Proceeding." The purpose of this contract is for the contractor to review the participants' submittals and to assist the Working Group in its function of identifying issues and assuring completeness of the record by summarizing the record, describing issues identified by the participants, and identifying technical errors and omissions or issues where additional information is necessary. Sixty percent of effort under this contract would be reserved for any support required during the second phase of the proceeding. Proposals received on this RFQ have been evaluated by the Working Group, but no contract award has yet been made for this RFQ.

<sup>3/</sup> For major contractual actions (i.e., contract awards greater than \$10,000), the NRC routinely has published in the Commerce Business Daily a summary of the request for quotation. This is required by the Federal Procurement Regulations. In the instance involving RFQ No. RS-NMS-81-032, the notice was published in the Commerce Business Daily on October 22, 1980 and contained a partial list of offerors who were solicited. After a contract award is made, a full list of offerors in any procurement action is normally obtainable under the Freedom of Information Act (FOIA). Prior to awarding the contract, however, the Commission does not release the identity of firms who have submitted bids, since release of this information could interfere with the competitive process. The offerors are being evaluated in accordance with applicable law and procedures, including the NRC Organizational Conflict of Interest Rule, 42 CFR 20-1.54.

these two contracts was too small to require publication, but no attempt has been made to conceal them from the participants.

Some of these motions also objected to the working group's providing an "evaluation" of the record or in effect performing any task involving expressions of judgment on the content of the record. The working group's mission to identify "key" issues requires the group to exercise a degree of judgment in addition to performing "ministerial" duties. Even the preparation of a summary of the record clearly involves some selectivity and discretion. In managing a record of this size the Commission finds it both necessary and reasonable that evaluative functions at this level be performed by the working group rather than the Commissioners themselves. At the same time, the Commission has made clear that the working group's technical evaluation of the record to determine completeness is not to include a judgment on how the evidence should be weighted in resolving serious controversies. That judgment the Commission has reserved for itself.

The Commission recognizes the participants' concern that the summary and identification of issues should fairly represent the record. The Commission believes that the opportunity for participants to comment on the working group's report provides adequate assurance that any significant inaccuracies or biases, whatever their source, will not go unremarked. Accordingly, the Commission is not persuaded that the working group's use of outside consultants poses a threat to the fairness of this proceeding. The Commission


therefore denies motions to the effect that consulting contracts should be withdrawn.

It is so ORDERED.



Dated at Washington, DC,  
this 16<sup>th</sup> day of January, 1981.

For the Commission

  
SAMUEL J. CHILK  
Secretary of the Commission



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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STORAGE AND DISPOSAL OF NUCLEAR WASTE ) PARTS 50, 51  
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(Waste Confidence Rulemaking) )  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

16<sup>th</sup> day of Jan 1981.

Dorothy T. Downing  
Office of the Secretary of the Commission  
*emf/cis*

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STORAGE AND DISPOSAL OF ) Parts 50, 51  
NUCLEAR WASTE ) (44 FR 61372)  
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