

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of )

PROPOSED RULEMAKING ON )  
THE STORAGE AND DISPOSAL )  
OF NUCLEAR WASTE )

(Waste Confidence Rulemaking))

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

COMMENTS OF  
NIAGARA MOHAWK POWER CORPORATION,  
OMAHA PUBLIC POWER DISTRICT,  
POWER AUTHORITY OF THE STATE OF NEW YORK,  
AND PUBLIC SERVICE COMPANY OF INDIANA, INC.  
ON THE WORKING GROUP REPORT

March 5, 1981



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On January 29, 1981, the Working Group filed its report concerning its identification of issues and summary of the record in this proceeding. Pursuant to the Commission's memorandum and order of January 16, 1981, participants were given 35 days within which to comment on the report of the Working Group. Niagara Mohawk Power Corporation, Omaha Public Power District, Power Authority of the State of New York, and Public Service Company of Indiana, Inc. ("Utilities") hereby file their comments:

The Working Group's analysis is divided into five areas, denominated I-V, beginning at page 12 of its report. In I, the Working Group recommends against changing the existing scope of the proceeding. Utilities agree. The Working Group goes on to suggest that the Commission should further define what it means by "confidence" or "reasonable assurance." Utilities question whether any further definition is necessary or appropriate. It seems clear that the Commission has used the terms "confidence" and "reasonable assurance" interchangeably. In other words, the Commission's finding of "confidence" will be based upon a "reasonable assurance" standard. The "reasonable assurance" standard has been used by the Commission for many years and has been approved by the courts. No further definition of that standard is necessary.

In II, the Working Group concludes that no further information on the institutional issues is needed. Utilities agree.

In III, the Working Group recommends that further information be obtained from the Department of Energy concerning (a) historical and projected expenditures on the DOE research and development program in terms of manpower and money and (b) a discussion which delineates the linkages between technical projects and technical problems, the timing of expected solutions and the integration of the solutions into the decision-making process. It is difficult to determine precisely what further information the Working Group thinks would be appropriate, or why. With respect to the assertion that more detailed information concerning the commitment of money and manpower to the program is required, we suggest that such an inquiry into future commitments will be futile. DOE can project its program, but the details concerning future funding and staffing will not be known with any certainty until the program is implemented. Nor can anyone now foretell exactly how future Congresses and future Administrations will respond to DOE's budget requests. Rather than speculate on these matters, the Commission should adopt the presumption that what is needed to be done in the national interest will be done.

Insofar as the Working Group's second recommendation is concerned, Utilities believe that DOE has already furnished enough information and that further discussion is unnecessary.

In IV.2.A., the Working Group indicates that if the Commission decides that indefinite surface storage warrants consideration, the record will have to be supplemented. We are not aware that any party advocates indefinite service storage, and we do not believe that indefinite storage above ground is an issue in this proceeding. Therefore, further information on this subject should be required.

In IV.2.B., the Working Group notes that the record contains no discussion of the disposition of severely damaged fuel. On February 20, 1981, the Presiding Officer served an order denying a motion to require detailed consideration of wastes and damaged fuel from Three Mile Island, Unit 2. In his order, the Presiding Officer indicates that the nature of severely damaged fuel at TMI-2 is a proper subject for generic consideration in this proceeding. We believe that the Presiding Officer's view is incorrect. The Commission has been instructed by the Court of Appeals to make findings concerning the disposal of spent fuel or high-level wastes generated in

the course of normal reactor operations. The Commission's generic findings should be based upon, and limited to, normal operating conditions. Issues concerning the disposition of severely damaged fuel should be addressed in individual proceedings where such fuel is involved. At present, there is only one such case. It is unnecessary to consider or decide that specific case in a generic proceeding.

Utilities are pleased to note the implicit conclusion of the Working Group that no further information is required concerning the availability of extended storage of spent fuel in on-site spent fuel pools and the explicit conclusion that no further information concerning away-from-reactor storage is required. This supports the position previously advanced by Utilities that the record supports a favorable finding by the Commission on these issues without further proceedings.

In V, the Working Group has indicated that the record is complete with respect to 15 technical issues. Utilities agree.

In general, we believe that the Working Group's report is unnecessarily concerned with details. Utilities submit that all the Commission is required to do is make general findings concerning the three issues in this



proceeding. To be sure, the findings should be adequately explained, so that the public and a reviewing court can understand the basis for them. But the Commission should recognize that its findings, particularly on ultimate waste disposal, are necessarily predictive. The Commission need not and probably cannot make findings concerning every detail of a program that will not be completed for another two decades.

Finally, Utilities urge the Commission, following its receipt of comments by participants and a report from the Presiding Officer, to take no further action in this proceeding until President Reagan has appointed a new Chairman and the new Chairman has been in office sufficiently long to become acquainted with the record and to participate in the proceeding.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

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CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Commission's Order of January 28, 1980, copies of the attached Comments of Niagara Mohawk Power Corporation, Omaha Public Power District, Power Authority of the State of New York, and Public Service Company of Indiana, Inc. on the Working Group Report have been served by first class mail, postage prepaid, the 5th day of March, 1981, on the persons listed in the Commission's Official Service List, as amended.

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