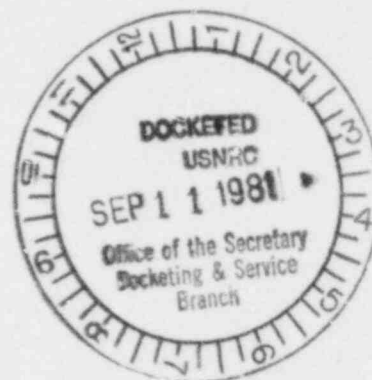


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)



ANSWER OF
NIAGARA MOHAWK POWER CORPORATION,
OMAHA PUBLIC POWER DISTRICT,
POWER AUTHORITY OF THE STATE OF NEW YORK,
AND PUBLIC SERVICE COMPANY OF INDIANA, INC.
IN RESPONSE TO
NATURAL RESOURCES DEFENSE COUNCIL
MOTION FOR JUDGMENT

On August 27, 1981, the Natural Resources Defense Council served by mail a "Motion for Judgment" in this proceeding. 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 respond in opposition to that motion.

It is the position of Utilities that the motion should be denied, that there is no reason to reopen the proceeding, and that the Commission should promptly take whatever further action is necessary to bring the proceeding to a prompt conclusion.

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NRDC has misconstrued the purpose of this proceeding as mandated by the court in Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979). In that case, the court asked the Commission to determine

"whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-2009, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates." Id. at 418 (emphasis added).

Judge Tamm, concurring in the court's opinion, indicated that "there must be a determination it is reasonably probable that an offsite fuel repository will be available when the operating license of the nuclear plant in question expires." Id. at 419 (emphasis added). Thus, the court expected the Commission to determine whether off-site storage for spent fuel would be available. Of course, the bulk of the record in this proceeding has been devoted to answering that question.

NRDC also misconstrues the position of DOE. DOE has consistently taken the position that a permanent disposal facility should be capable of accepting spent fuel. There has been no change in that position, and DOE is continuing its program to develop a permanent repository that will be capable of accepting either spent fuel or reprocessing wastes.

It is obvious that DOE must plan to construct a repository that will be capable of accepting spent fuel.

DOE has repeatedly recognized that, regardless of the status of reprocessing, the ultimate disposition of spent fuel may be required for either technical or economic reasons. In addition, the licensing of a reprocessing facility has not yet occurred, and there is no immediate assurance as to when domestic reprocessing will be commercially available. Thus, some nuclear plants may need to dispose of spent fuel simply because reprocessing is not available.

Utilities believe that the record already compiled in this proceeding, while primarily addressed to the ultimate disposition of spent fuel as a reference case, adequately demonstrates that reprocessing wastes can also be safely stored. Certainly, there is no basis for a summary conclusion to the opposite effect.

In any event, there is ample evidence in the record to support a finding of reasonable assurance that spent fuel can safely be disposed of by 2007-2009, which is the finding required to comply with the court's opinion. Utilities therefore agree with NRDC that the record should not be reopened.

Finally, Utilities endorse the position advanced by other parties that the Commission should take whatever steps are necessary to bring this proceeding to a prompt conclusion.

Conclusion

For the foregoing reasons, the Presiding Officer
should deny NRDC's motion.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

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Indiana, Inc.

September 11, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Answer of Niagara Mohawk Power Corporation, Omaha Public Power District, Power Authority of the State of New York, and Public Service Company of Indiana, Inc. In Response to Natural Resources Defense Council Motion for Judgment have been served by first class mail, postage prepaid, the 11th day of September, 1981, on the persons listed in the Commission's Official Service List, as amended.

Harry H. Voigt

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