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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSION



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In the Matter :

of : PR-50, 51 (44 F.R. 61372)

Proposed Rulemaking on Storage :

and Disposal of Nuclear Waste, :

10 CFR Parts 50 and 51 :

(Waste Confidence Rulemaking)

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MOTION OF ROBERT ABRAMS, ATTORNEY  
GENERAL OF THE STATE OF NEW YORK,  
FOR WITHDRAWAL OF REQUESTS FOR  
QUOTATION

On October 27, 1980 we recieved a copy of a motion by the Utility Nuclear Waste Management Group - Edison Electric Institute ("UNWMG-EEI") which, among other things, objected to the employment by the NRC of a consultant to assist the working group identified in the Commission's memorandum and order dated May 28, 1980. The motion referred to the NRC's October 1, 1980 "Request For Quotation No. RS-NMS-81-032 Entitled 'Technical Support for the Confidence Rulemaking Proceeding'" ("RFQ"). That was the first notice we received that an RFQ was issued. We did not receive a copy of the RFQ until October 30, 1980, and that copy was sent to us not by the NRC but by counsel for UNWMG-EEI.

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We have subsequently learned from Sheldon Trubach, in the NRC counsel's office, that a second RFQ was issued with respect to this proceeding, and that one contract has been signed with a consultant, Teknekron. We have not yet seen a copy of the second RFQ. Mrs. Patricia Smith, the NRC contract specialist handling the October 1st RFQ, has advised us that the RFQ was sent out to a number of firms, but she declined to name the firms, saying she did not believe the names were available to the public. She also said that no contract had yet been signed with respect to that RFQ.

We object to the secret procedure used by the NRC in issuing the two RFQs without notice to the participants and an opportunity to comment. We also object to having either a consultant or NRC staff evaluate or pass judgment upon the record. Only the Commission itself should do that, after reviewing the record and hearing oral argument. It may be desirable to have a summary of the record prepared -- but one that merely describes the statements by participants and the supporting literature without evaluation. That task could be done as readily by NRC staff as by a consultant. If, however, a consultant is to be employed to prepare the non-judgmental summary of the record, the procedure requires prior notice to the participants and a chance to comment. In addition, approval of the participants should be obtained before a consultant is selected. The participants should

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have the opportunity to comment on the accuracy of the summary of the record, regardless of who prepares it.

The RFQs were issued without notice to the participants, and at least one was issued at a time when they were preparing their suggestions for further proceedings, which were due on October 6, 1980. Before issuing the RFQs the NRC should have sent copies of the draft RFQs to all participants and accepted comments before deciding whether to issue the RFQs, and if so, in what form. Instead, the NRC has taken secret action that may render some of the suggestions for further proceedings academic. We were thus deprived of the opportunity to present those suggestions with knowledge of all the relevant circumstances. Failure by the NRC to notify the participants of the RFQs was improper, and can only undermine public confidence in the Commission's procedures.

As to the terms of the October 1st RFQ, we strongly object to Task 3 in the Statement of Work insofar as it calls upon the consultant to (i) evaluate the "technical accuracy of the findings made in the statements and cross-statements," and (ii) to identify and discuss "technical errors or omissions" (second and third sentences of Task 3). We similarly are opposed to NRC staff performing such tasks in this proceeding. We believe that the issues must be resolved by the Commission alone, and not decided for the Commission by others. The issues are set forth in the



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statements and cross-statements, and it is time for the Commissioners to review the record and, after oral argument, render a decision. Significantly, the Commission's May 28, 1980 memorandum and order does not authorize the working group to offer its views on the merits of the issues.

Our statements urging no confidence are carefully documented by references to the relevant literature, generally to publications issued by or for Government agencies, including the NRC, the Department of Energy and the U.S. Geological Survey. It would not be proper for either a consultant, or NRC employees, to express their agreement or disagreement with the authors of those publications. Their function should be to prepare a factual summary of the record, setting forth the views of the participants as well as the underlying reports on which the participants relied -- but without attempting to pass judgment of the accuracy of those views or reports. We see no reason why a consultant, rather than NRC staff, is needed to prepare such a summary.

If, however, the NRC prefers to use a consultant, none should be selected without agreement of the participants. Proposals may be received from consultants known for a pro-industry bias in their views of waste management, and employment of such a consultant could taint this proceeding beyond repair and serve as an affront to the participants who have spent valuable time preparing statements in the

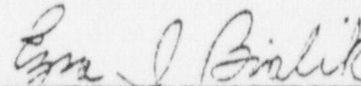
hope that the Commission would evaluate the record. Indeed, it is possible that most of the firms to whom the RFQ was sent are known for such a bias. Staff's implementation of the NRC conflict-of-interest procedures cannot be counted on to eliminate such biased parties. Accordingly, we demand that copies of (i) the list of firms to whom any RFQ is sent, and (ii) the names of all parties submitting proposals to the NRC in connection with RFQs, be sent to all participants, and adequate time be given for participants to comment about the acceptability of the potential consultants. No consultant should be employed unless agreed to by the participants.

We therefore urge the Commission to withdraw the RFQs and cancel any contracts until the participants have been furnished copies and given an opportunity to comment. Thereafter, if the NRC decides to hire a consultant, it should do so on notice to the participants, who should be advised of the names of persons to whom the RFQ was sent and the names of firms submitting proposals, and no consultant should be retained without agreement of the participants. Moreover, the RFQ, if used at all, should omit the second and third sentences of Task 3, ¶ 3.3 of the Statement of Work, as the consultant should not be permitted to pass judgment on the record.

In addition, we believe the NRC owes the participants and public a full explanation of why the RFQ was issued secretly, and should furnish a list of the names of the firms to whom the two RFQs were sent, and an explanation of why they were sent to that group. The NRC should also explain why that list is being withheld from the public.

Dated: November 3, 1980

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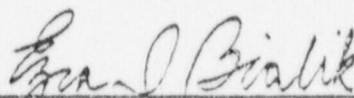
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