

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20545

April 10, 1978

SECY-78-201

INFORMATION REPORT

For: The Commissioners

From: Robert G. Ryan, Director, Office of State Programs

Thru: Executive Director for Operations *W. J. D. D.*

Subject: CALIFORNIA ENERGY COMMISSION ORDER DENYING PETITION
RELATING TO NUCLEAR REPROCESSING AND WASTE DISPOSAL

Purpose: To report to the Commission a recent decision of the
California Energy Commission regarding reprocessing
and waste disposal.

Discussion: On March 22, 1978 the California Energy Commission
issued an order denying a petition by three California
utilities seeking reconsideration of the Energy
Commission's negative finding on reprocessing and
waste disposal.

In its order, the Commission states that its decision
on reprocessing and waste management is merely an
"advisory decision or opinion . . . for the benefit
of the Legislature, not a final order." Further, the
order states that the Energy Commission will continue
to receive and process nuclear power plant notices
of intention and applications for certification.

A copy of the complete order is attached.



Robert G. Ryan, Director
Office of State Programs

Enclosure:

1. Before The State of
California Energy Resources
Conservation and Development
Commission Order Denying
Petition For Reconsideration
Dated: March 22, 1978

Contact:
S. A. Schwartz, SP
49-27794

BEFORE THE
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket Nos. 76-NL-1
)	76-NL-3
Implementation of Nuclear)	
Reprocessing and Waste Disposal)	ORDER DENYING PETITION FOR
Statutes)	RECONSIDERATION
)	

The petition of the SOUTHERN CALIFORNIA EDISON COMPANY, the LOS ANGELES DEPARTMENT OF WATER AND POWER, and the PACIFIC GAS AND ELECTRIC COMPANY for an order of reconsideration of the decision in this matter dated January 25, 1978, having been filed and having been fully considered, is hereby denied.

A petition seeking reconsideration of the California Energy Resources Conservation and Development Commission's ("Energy Commission") decision on reprocessing and waste disposal is not appropriate at this time. The Commission has not rendered a final decision under California Public Resources Code Sections 25524.1 and 25524.2. The January 25, 1978 Commission decision is merely an advisory decision or opinion on the status of reprocessing and waste management as of that date for the benefit of the Legislature in its determinations on a possible exemption for a specific project from the requirements of the nuclear laws. Under Sections 25524.1 and 25524.2, the Commission has continuing jurisdiction to review and update its findings on these issues.

The January 25, 1978 Energy Commission decision in this matter was rendered pursuant to California Public Resources Code Sections 25524.25, which states, in part,

Notwithstanding any other provision of this division, the commission shall, no later than January 16, 1978, transmit, to each house of the Legislature, its determination as to whether all of the findings required by Sections 25524.1 and 25524.2 can be made at that time... (emphasis added) Cal. Pub. Res. Code Section 25524.25.

The statute does not dictate that these findings are to be the Commission's final determinations under Sections 25524.1 and 25524.2. The purpose of the nuclear laws findings under Section 25524.25 is narrower than a complete and final determination pursuant to Sections 25524.1 and 25524.2. The Energy Commission is required in 25524.25 to determine whether it can make the reprocessing and waste disposal findings as of January 16, 1978, only to further determine whether the Energy Commission should recommend to the Legislature that an existing nuclear power plant proposal should be exempted from the constraints of the nuclear legislation. The findings included in the January 25, 1978

(Mailed March 31, 1978 to lists 13,14,23,60,63,71,86)

decision are thus limited in both time and effect. The January 25 decision does not therefore represent the Commission's "final" determinations on these issues.

Public Resources Code Sections 25524.1 and 25524.2 set no specific deadline for a final determination on these issues. Indeed, both these sections state:

The commission shall continue to receive and process notices of intention and applications for certification pursuant to this division but shall not issue a decision pursuant to Section 25523 granting a certificate until the requirements of this section have been met...
Cal. Pub. Res. Code Sections 25524.1(c) and 25524.2(d).

Section 25524.25 has not, by its specific terms, modified this provision. It has merely specified a method for the Energy Commission to use in recommending to the Legislature whether a specific power plant proposal should be exempted from this provision by further legislation.

The Energy Commission will continue to receive and process nuclear power plant notices of intention and applications for certification pursuant to this section. In addition, the Energy Commission will continue to monitor developments in waste disposal and reprocessing to determine whether new information requires a change in the Commission's January 25 decision. The Commission, on its own motion, will continue to extensively investigate further developments in these technical areas, and will hold additional informational hearings, as necessary. In addition, the Commission will entertain petitions for orders instituting hearings which contain a showing of significant new evidence not previously considered on these issues, and the Commission will also accept similar written material to supplement the record. Significant new material such as the recently released U.S. Department of Energy Draft Report on the Task Force for Review of Nuclear Waste Management (DOE/EZ-0004/D) is being included by the Commission in the record in this proceeding.

The Commission anticipates significant and rapid developments in the areas of reprocessing and waste disposal in the near future. Litigation, legislation, proposed regulations, and significant Federal studies in these areas may produce significant changes. The Commission needs to monitor these activities and evaluate the Commission's present findings in light of significant changes which these activities may produce. In connection with these issues, the Commission intends to actively participate in Federal proceedings which are part of the developing Federal waste management program. Through its participation, the Energy Commission hopes to aid in the development of a program which will adequately resolve the issues raised in the nuclear laws. The Commission is already actively pursuing this goal through comments, discussions, and correspondence with appropriate Federal officials.

As the Federal program progresses and discrete tasks are completed, the Energy Commission, on its own motion, will conduct extensive investigations to determine whether completion of a particular proceeding has a direct impact upon the findings required under the nuclear laws. Examples of such milestones include:

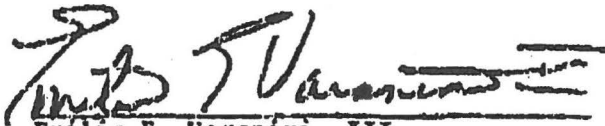
1. Environmental Protection Agency development of general environmental standards for waste disposal in 1978-79;
2. Nuclear Regulatory Commission development of waste performance criteria in 1978-79;
3. Nuclear Regulatory Commission development of repository design criteria and regulations in 1978-79;
4. Nuclear Regulatory Commission and Department of Energy development of generic and specific environmental impact statements on waste management in 1978-early 1980s;
5. Department of Energy and Nuclear Regulatory Commission development, licensing and operation of the Waste Isolation Pilot Plant, an in situ experimental research facility for waste management, in 1978--early 1980s.

The Commission believes that its continued monitoring of and involvement in the developing Federal waste management program is consistent with the Legislature's mandate to thoroughly investigate the issues raised in Sections 25524.1 and 25524.2.

For the reasons stated above, the Commission denies the petition for reconsideration of the Commission's January 25, 1978 decision on this matter.

Dated: March 22, 1978

STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION


Emilio E. Varanini, III
Presiding Member