

2013
Nuclear Regulatory Commission
Regulatory Information Conference

Developments in Waste Confidence and
Used Fuel Management

Ellen C. Ginsberg
Vice President, General Counsel and Secretary
Nuclear Energy Institute
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Overview

- The State of Play
 - Waste Confidence/Temporary Storage Rulemaking
 - Pending Litigation
 - NARUC v. DOE
 - Aiken v. NRC
 - Cost of inaction
- Future Development of a Sustainable Used Fuel Management Program



Waste Confidence
Background

- Genesis of Waste Confidence Decision
 - *State of Minnesota v. NRC*, 602 F.2d 412 (DC Cir. 1979)
 - Denial of NRDC Petition for Rulemaking (PRM-50-18), 42 Fed. Reg. 34391; July 5, 1977
- Evolution of Waste Confidence Decision
 - 1984: Established five findings
 - 1990: Predicted the availability of a repository by 2025
 - 2010: Finding 2—A repository will be available “when necessary”
 - Finding 4— Onsite storage is safe for at least 60 years beyond licensed life



Relationship between Waste Confidence Decision and Temporary Storage Rule

- Generic NEPA finding of no significant impact (FONSI) regarding the environmental impacts of used fuel storage during the time between the end of licensed life and the time the fuel is removed for disposal

§51.23 Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact.

(a) The Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor in a combination of storage in its spent fuel storage basin and at either onsite or offsite independent spent fuel storage installations. Further, the Commission believes there is reasonable assurance that sufficient mined geologic repository capacity will be available to dispose of the commercial high-level radioactive waste and spent fuel generated in any reactor when necessary.



Legal/Regulatory Effect of the Temporary Storage Rule

- Absent a waiver per (10 CFR 2.335), environmental impacts of used fuel storage covered by the EA and FONSI need not be considered in issuing or amending licenses for nuclear power reactors or ISFSIs

§51.23 Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact.

(b) Accordingly, as provided in §§51.20(b), 51.53, 51.61, 51.90(b), 51.95, and 51.97(a), and within the scope of the generic determination in paragraph (a) of this section, no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the reactor operating license or amendment, reactor combined license or amendment, or initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment, or other analysis prepared in connection with the issuance or amendment of an operating license for a nuclear power reactor under parts 50 and 54 of this chapter, or issuance or amendment of a combined license for a nuclear power reactor under parts 52 and 54 of this chapter, or the issuance of an initial license for storage of spent fuel at an ISFSI, or any amendment thereto.



Challenge to the 2010 Waste Confidence Update

- June 2012 DC Circuit vacated and remanded the WCD and TRS
 - WCD is a "major federal action;" NRC must perform either EA with FONSI or EIS
 - Existing EA and FONSI are inadequate
 - Need to examine environmental consequences of "no repository" scenario
 - Analysis of on-site storage inadequate
 - Analysis of pool leaks focused on review of past experience "insufficient" – evaluation of potential future leaks necessary
 - Analysis of SFP fires focused on low probability of occurrence – evaluation of consequences necessary, unless probability effectively zero



Waste Confidence Post-Decision Developments

- Scoping process for the GEIS began October 25, 2012
 - Significant public involvement
- NEI's Scoping Comments
 - **Scope:** The waste confidence EIS represents one aspect of the larger environmental analyses relied upon by the NRC in issuing initial, or renewing existing, reactor and IFSI licenses. Scope of the waste confidence EIS should be narrowly focused on the environmental impacts associated with interim, onsite storage of spent fuel after licensed life of a plant, with a specific emphasis on the three issues identified by the Court.
 - **Generic Analysis:** NEI supports the Commission's decision to continue its long-standing and well-accepted practice of addressing waste confidence issues generically, rather than on a site-specific basis.
 - **Use of Existing Data and Analyses:** NEI fully supports the NRC's proposal to use the substantial record compiled during prior waste confidence updates, as well as DOE's environmental impact statement for Yucca Mountain, to develop this EIS.
 - **Schedule:** NEI supports the 24-month schedule established by the Commission



NARUC v. DOE

- Challenge to DOE's continued collection of 1 mil/kWh Nuclear Waste Fund fee
- June 2012 DC Circuit Decision
 - DOE's fee adequacy determination "legally defective"
 - DOE's interpretation of its NPWA obligations is unacceptable regardless of deference to DOE
 - Secretary cannot "like an ostrich put, his head in the sand"
 - Court rejected DOE's "blithe" use of Yucca Mountain program as a "proxy" for a used fuel management program and called position "irrational"
 - Court confirmed its authority to direct Secretary to suspend the fee
 - Because of DOE's "disposition to delay," Court ordered DOE to comply in 6 months



Post-Decision Developments

- 2013 Fee Adequacy Assessment Report
 - DOE's criterion for whether the Nuclear Waste Fee should be adjusted is whether there is "compelling evidence" that DOE is collecting too much or too little
 - Based on the assumption that legislation to implement the Strategy will be adopted in 2014 and that Congress will provide sufficient appropriations
 - Evaluates 42 economic scenarios without assessing probabilities
 - "significant variation" among the scenarios, ranging from **\$4.9 trillion** over-collection to **\$2 trillion** under-collection
 - Most of the scenarios show an over-collection of the NWF fee
 - The **\$7 trillion** range among the scenarios compares with a range of **\$500 billion** in the 2009 Fee Adequacy Report
 - \$7 trillion variation stems from uncertainty from the long term economic outlook, as well as "reflects uncertainty regarding the disposal system cost"



Post-Decision Developments

- D.C. Circuit granted motion to re-open
 - Original panel will hear the case
 - Briefing schedule runs through mid-July
- DOE ordered to return the mandate
- Industry will press its position
 - 2013 Secretarial Determination and Report is legally defective
 - The disposal "strategy" which is the basis for DOE's NWF fee adequacy assessment is based on an *assumed* nuclear waste disposal program that does not comport with existing statutory requirements and has not been approved by Congress
 - DOE's Report fails to consider whether DOE needs to collect any additional fees to fund a waste disposal program
 - None of the Report's 42 scenarios assesses the adequacy of the Nuclear Waste Fund if no new fee revenues are added
 - Scenarios are "as speculative as they are uncertain, and show that DOE has failed to conduct a meaningful analysis"



Aiken v. NRC

- Aiken County, States of Washington and South Carolina and others requested the Court issue "writ of mandamus" to compel NRC to complete consideration of YM construction authorization application and issue a final decision
 - Nuclear Waste Policy Act specifies three year deadline (+1)
- NRC's licensing proceeding at a standstill following the June 2010 decision by the ASLB
 - ASLB ruled DOE lacked the legal authority to withdraw the Yucca Mountain application
 - Fourteen months later, Commission's cryptic order stated that it was evenly divided on whether to affirm or reverse the Board's decision
 - Despite ASLB decision remaining as "law of the case," the Commission ordered the "orderly closure" of the licensing proceeding **based on budget constraints**



Aiken v. NRC

- August 2012, 2-1 decision, D.C. Circuit ordered the case held in abeyance
 - Concurrence
 - Focused on whether, given Congress' upcoming appropriations decisions, it would be futile to issue mandamus
 - Judge Kavanaugh, if he were to reach the merits, would find a statutory violation
 - Dissent
 - Finding NRC "willfully defying" a statutory obligation, Judge Randolph would issue mandamus because NRC has sufficient funds to move forward



Post-Decision Developments

- NRC
 - Mandamus should not issue because no appropriations decisions have been made that explicitly allow the NRC to use its available funds to continue the YM licensing review
- Nevada
 - By enacting H.J. Res. 117, Congress rejected the opportunity to provide additional funds to the NRC to continue the YM licensing proceeding, as well as the opportunity to give DOE funds to continue to prosecute its license application
- Aiken et al.
 - Mandamus should issue immediately, because no appropriations decisions have been made since August 2012 that prohibit NRC from using its available funds to continue the agency's "mandatory" review of the YM repository license application.
 - Continuing Resolution (H.J. Res. 117) that will fund the federal government until March 27, 2013 contains no statutory text **precluding** the NRC from using any appropriated money (including funds previously appropriated) for the YM licensing process
 - CR allows "activities to be started or resumed if authorized by law and funding is available" (as here)



Standard Contract Litigation

CLOSED		PENDING	
8	Voluntarily Withdrawn	2	Judgments on Appeal
32	Settled	2	Final Judgments/Time to Appeal Has Not Yet Run
22	Final Unappealable Judgments	1	Pending Interlocutory Appeal
		4	Cases Awaiting Final Judgment
		0	Active Cases w/scheduled trial date
		11	Active Cases w/o scheduled trial date
		2	Stayed Cases

62	Closed Cases
22	Pending Cases
84	Total Complaints Filed



Your Tax Dollars At Work

- "Because [DOE did] not take custody of the spent fuel starting in 1998, DOE reports that as of September 2011, 76 lawsuits have been filed against it by utilities to recover claimed damages resulting from the delay. These lawsuits have resulted in a cost to taxpayers of about \$1.6 billion from the U.S. Treasury's judgment fund. DOE estimates that future liabilities will total about an additional \$19.1 billion through 2020 and that they may cost about \$500 million each year after that." *GAO Report, "Spent Nuclear Fuel-Accumulating Quantities at Commercial Reactors Present Storage and Other Challenges," August 2012.*
- Estimate to 2042 is approximately \$32 billion



DOE Strategy for Management & Disposal of Used Nuclear Fuel

- Intended to provide framework for sustainable used fuel/HLW management program
- Key elements of the strategy include
 - A pilot, interim storage facility focused on used fuel from decommissioned reactors (available by 2021)
 - A larger, consolidated interim storage facility (available by 2025)
 - Consent Based Siting for Interim Storage Facility and Permanent Geologic Repository
 - Permanent Repository
 - Sited by 2026
 - Site characterized, repository designed, repository licensed by 2042
 - Operational by 2048
 - Creation of a Management and Disposal Organization
 - Organizational stability, leadership continuity, oversight and accountability, and public credibility
 - Funding Reform
 - Ongoing, discretionary appropriations
 - Access to annual fee collections
 - Eventual access to NWF corpus



Early Stages of Developing Consensus

- House and Senate have differing views regarding the Yucca Mountain program
- State/Local Governments will play a significant role
- Industry supports
 - Complete Yucca Mountain licensing
 - Developing a consent-based approach to siting a consolidated storage facility
 - Creating a new management entity
 - Federal corporate structure, similar to-TVA
 - Ensuring access to funds (NWF and future fees) necessary to complete program's mission
 - Permanent disposal facility at Yucca Mountain or elsewhere
- Industry opposes
 - Federal government taking title to used fuel at commercial sites
 - Using Nuclear Waste Fund to pay for used fuel management at commercial sites, prohibited by *Alabama Power* decision



Consolidated Storage Program


