



N A R U C
National Association of Regulatory Utility Commissioners

December 27, 2012

Ms. Cindy Bladey, Chief
Rules, Announcements, and Directives Branch
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Comments on Scope of Environmental Impact Statement Supporting the Rulemaking to Update the Waste Confidence Decision & Rule (Docket ID: NRC-2012-0246)

Dear Ms. Bladey:

The National Association of Regulatory Utility Commissioners (NARUC) appreciates the opportunity to comment on the scope of the EIS for the Update of the Waste Confidence Decision and Rule to be prepared by the NRC as described in COMSECY-12-0016, the Federal Register Notice of October 25, 2012 and the public scoping sessions and webinars. The NRC should be commended for seeking broad participation in a process of that has been ordered by the D.C. Circuit Court to address three deficiencies which the Court found in an earlier Environmental Assessment of the 2010 Waste Confidence Decision Rulemaking.

There are far more stakeholders who might be effected by the consequences of the NRC decision not to issue licenses dependent on the Waste Confidence Rule until the Court remand is satisfied than have the resources to review the previous EA, the Court order and the NRC NEPA policies and practices. One such organization with the expertise and grasp of the matters the Court found deficient is the Nuclear Energy Institute. NARUC has seen the comments that NEI has prepared and wishes to support their comments and suggestions.

NARUC has some confusion over some NEPA basics that we had intended to raise during the scoping meeting but we were unable to attend. What is the purpose and need that the agency seeks to fulfill by various alternative courses of action? The Court ruled that the WCD is a major federal action requiring a Finding of No Significant Impact or an EIS. The NRC has been challenged before over its basis for confidence that there will be a safe, long-term solution to the isolation of commercial spent nuclear fuel and government owned high-level radioactive waste from the human environment. Yet, the responsibility for fulfilling that mandate is assigned to another federal agency, the Department of Energy (DOE,) and arguably DOE has been impeded to a certain extent by the actions and inactions of Congress. In short, the "decision maker(s)" is being asked to examine the environmental impacts of alternative courses of action and select a preferred course of action over which they have no direct responsibility, although the NEPA

strategy for the development (and licensing) of a Yucca Mountain repository was for the NRC to adopt the Yucca Mountain EIS to the extent practical.

The Court faulted the NRC in its analysis for failure to assess the environmental impacts of failure to ever develop a repository. It seems to us that is an infeasible alternative. If the purpose and need is to isolate the waste for a far longer period (initially it was to have been 10,000 years and later revised to one million years—essentially forever.) The law (NWPA) says that the federal government will dispose of these types of nuclear waste and there are contractual commitments that have been made based on that mandate. Unless the law is changed, failure to ever develop a repository is not a feasible alternative. Except that the Court requires an environmental assessment.

The NEI comments make reference to the two no-action alternative scenarios already exhaustively evaluated in the Yucca Mountain EIS. We would posit that the most useful analysis to compare with a longer period of delay in developing a repository is scenario 1 in which NRC regulatory enforcement throughout the duration of extended reactor-site storage. Scenario 2 has severe and unacceptable health consequences after a long (hundreds of years) time frame, well beyond any period of delay contemplated.

The Department of Energy will soon provide its implementing strategy for the recommendations of the Blue Ribbon Commission on America's Nuclear Future (BRC) on re-establishing the stagnated nuclear waste storage and disposal program that with the support of the President, Congress and the American people that the NRC and all parties can all have true confidence that this material can be safely managed and eventually disposed of in accordance with both NEPA and NWPA. It is our wish that a re-vitalized disposal plan can be agreed to by policymakers, regulators and stakeholders by the time that the WCD EIS is finalized.

Sincerely,



Brian O'Connell, P.E.

Director

Nuclear Waste Program Office