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COMMISSION PAPER ON AMFM

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NOV 26 1984

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: RECOMMENDATIONS OF THE DEPARTMENT OF ENERGY'S ADVISORY
PANEL ON ALTERNATIVE MEANS OF FINANCING AND MANAGING
RADIOACTIVE WASTE FACILITIES

Purpose: To inform the Commissioners on the Panel's forthcoming
recommendations in preparation for review of DOE's draft
report to Congress

Background: Section 303 of the Nuclear Waste Policy Act requires the
Secretary of Energy to "undertake a study with respect to
alternative approaches to managing the construction and
operation of all civilian radioactive waste facilities,
including the feasibility of establishing a private
corporation for such purpose." The Act directs the
Secretary to "consult" with the Chairman of the Commission
in conducting the study, which was to have been reported to
Congress by January 7, 1984.

In carrying out these provisions, DOE elected to establish
an Advisory Panel pursuant to the provisions of the Federal
Advisory Committee Act. The background on the
establishment of the Panel and a listing of Panel members
was provided to the Commissioners in SECY-84-118 (March 15,
1984). An update on the Panel's activities as of August
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(August 23, 1984). The Panel held ten meetings between
January and November of 1984, which were attended by NRC
staff observers. The Director of NRC's Office of Nuclear
Material Safety and Safeguards briefed the Panel on the
Commission's regulatory role on February 22, 1984.

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Discussion:

The Panel's tenth and final meeting on November 13 and 14 concluded in a meeting with Secretary Hodel to discuss their recommendations and forthcoming report. The report, which will be available in final draft form by December 7, concludes that several organizational forms are more suited than DOE for managing the waste program, including an independent federal agency or commission, a public corporation, and a private corporation. Among these alternative organizations, the draft report identifies a public corporation as the Panel's preferred alternative, as it best meets criteria the Panel developed for an acceptable waste management organization. In particular, the draft report indicates that a public corporation would be stable, highly mission-oriented, able to maintain credibility with stakeholders, and more responsive to regulatory control than a federal executive agency.

As described in the draft report, the corporation, "FEDCORP," would have a seven-member Board of Directors appointed by the President and confirmed by the Senate, serving staggered seven-year terms. The President would designate a Chairman of the Board. The Board would appoint a Chief Executive Officer to serve at their pleasure as manager of the corporation and to be an ex officio member of the Board.

Regarding financing, the draft report concludes that the fee on nuclear-generated electricity (currently 1 mil per kilowatt-hour) provided for in NWPA is fair, shows no evidence of serious flaw to date, and appears to be adaptable to a change in organizational structure.

The Panel's draft also recommends adoption of several specific program components which are independent of the type of organization Congress ultimately chooses to run the program. These could be instituted by DOE and later transferred to a new organization. Foremost among these, the Panel believes an Advisory Siting Council should be established by DOE, with representatives from all legitimate stakeholders. The Council would provide oversight concerning site selection processes, and would review and comment on siting recommendations made by the site selection authority. Under the Panel's plan, the NWPA procedures for State and Tribe participation in siting decisions would be retained. In addition, the draft report recommends that an oversight contractor with a systems

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integration function should be hired, that a waste fund oversight commission and a scientific peer review board should be established, and that the selected organization should be exempted from civil service requirements.

In a letter to Secretary Hodel dated July 8, 1983, the Chairman indicated that the Commission intended to limit its area of consultation on the AMFM study to the examination of potential impacts on NRC regulatory responsibility which may flow from any recommended alternative management proposal. The Panel has stated that they do not intend any change in NRC's regulatory role as a result of their recommendations. The staff has expressed to the Panel that it would be of value to state the Panel's intent concerning regulation in the report to avoid any potential misunderstanding. Although the transfer of functions to a public corporation (or other organization) would affect some of NRC's procedures for doing business in the waste program, the staff does not expect any major impact on regulatory responsibilities.

The Panel expects to submit its final report to the Secretary before the start of the 99th Congress. After developing its own draft report to Congress, DOE is expected to submit the draft to the Commission for a brief review and consultation period. Secretary Hodel stated in a February 16, 1984 letter to Chairman Palladino that the NWPA consultation requirement cannot be met until the Chairman is given the opportunity to review and comment on the Department's draft report to Congress.

The staff will provide the Commission with copies of the final draft of the Panel's report when it is received (approximately December 7 according to present DOE plans), and within 30 days of the date of receipt we will also provide a staff review of that report with such recommendations as may be appropriate. No Commission action is anticipated to be required until such time as Secretary Hodel provides the Commission with his report to Congress for consultation as required by Section 303 of the NWPA. We can only assume at this time that his report will fundamentally reflect the recommendation of the Panel Report.

The staff notes that this action involves no new resource requirements.

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In preparation for commenting on the Secretary's draft report to Congress, the staff has organized a review of the Panel's final draft report, which will be available by December 7. If the Commission intends to broaden its scope of involvement beyond impacts on NRC responsibility, the staff recommends that members of the AMFM Panel be invited to brief the Commission on their work. In the interim, the staff will forward the final draft of the Panel's report to the Commission under separate cover. We will keep the Commissioners informed of future developments.

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The Panel expects to submit its final report to the Secretary before the beginning of the 99th Congress. It is expected that DOE's draft report to Congress will be forwarded to the Commission for review and comment shortly thereafter.

(Signed) Jack W. Dircks

William J. Dircks
Executive Director for Operations

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November 26, 1984

SECY-84-449

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William J. Dircks
Executive Director for Operations

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CHAPTER XII. CONCLUSIONS AND RECOMMENDATIONS

As required by Section 303 of the Nuclear Waste Policy Act of 1982 (NWPA) and by the task assigned to it by the Secretary of Energy, the Panel has studied alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. The Panel has also considered alternative means of financing the program as implied by the title of Section 303.

Org. Structure Considerations
The Panel finds the Office of Civilian Radioactive Waste management within DOE to be, and to have, a moving target. The 14 month-old OCRWM is now in the midst, following appointment of its first Director in May, of yet a new set of actions fundamental to the implementation of the NWPA:

1. A revised OCRWM organizational structure is again being put in place, with several key changes, (e.g., establishment of the Office of Policy Integration and Outreach), and again with a number of key personnel changes.
2. The Mission Plan is again being revised, including reconsideration of each of the schedule milestones and the programmatic requirements on a total waste systems approach. This effort reflects studies of the entire system, including

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consideration of allowances for contingencies. The ongoing changes in the Mission Plan, including design decisions and milestone schedules, are likely to impact the budget and the adequacy of program revenues.

3. Effort is underway to execute consultation and cooperation agreements with states and Indian Tribes, and in that context, the OCRWM is making commitments to those constituencies. Commitments are also being made (or at least the Director is articulating the latest OCRWM positions) to other key stakeholders, such as the utilities and environmental groups, on key interpretations of NHPA provisions (e.g., the responsibility of the Government to take title to spent fuel in 1998 whether or not a repository is ready; the requirement that only one of the three candidate sites need be found acceptable; the need for an MRS; etc.).

It is in midst of these events, and with the knowledge that it may be difficult to effect any legislative changes to the NHPA, that the Panel presents its recommendation. Within that frame of reference, we find there are serious defects in the OCRWM as a management structure. Particularly, and recognizing the history of predecessor organizations (AEC and ERDA) and continuing discussion of liquidation of the DOE, there is a serious and

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inherent lack of stability and continuity. This is a major cause of the absence of credibility, which inhibits DOE's effectiveness. *in agreement with the*
In fact, when we subject OCRWM to this and other tests developed by the Panel, and compare it to the alternate forms of organization considered, the overwhelming majority of the Panel gives the other forms higher ratings.

At the same time, such rating exercises done in the abstract must clearly be examined in the light of the real-life circumstances before recommendations can be extracted from them. In that context, the Panel also recognizes that civilian radioactive waste management, as a "business," has a number distinct phases with unique characteristics (presented in Chapter 4), with which any organization would find it difficult to cope. The NWPA *recognizes the need for* ~~recognizes the conflict between those provisions designed to~~ assure maximum accessibility and responsiveness to many and diverse constituencies with serious interests in the program, and *also recognizes the need for* ~~the very~~ prescriptive milestones and other programmatic mandates. We find that organizational forms which better meet the tests may be desirable, but recognize there is an intrinsic uncertainty as to how confident one can be that the organization form that looks best on paper will in reality and over time fulfill its promises, and will in fact function as it is designed to function. We also recognize that any organizational change will present transition problems.

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It cannot be overemphasized that the most difficult phase of the overall waste program is the selection and approval of a repository site. Once such a site has been selected and licensed, the programmatic responsibilities will be substantially different, and could be transferred or contracted to an organization other than the one responsible for site selection and obtaining licensing. The Panel believes there are several organizational forms, including private corporations, more suited than the DOE for managing the construction and operation phases. The panel also believes that, regardless of the "preferred" organizational form, the site selection process could be enhanced and made more credible by the use of a special siting advisory council comprised of representatives of all stakeholders.

We conclude that an immediate effort must be made to improve the credibility, internal flexibility and cost effectiveness of the OCRWM. However, in recognition that no modification to the DOE/OCRWM organization would provide adequate stability and continuity, it is our principal recommendation that investigation of the specific steps necessary to implement, for example, a dedicated Federally chartered corporation which was the first choice of the panel voting on organizational tests, should be undertaken immediately so that Congress can have a precise understanding of the legislative changes to bring about such an organization.

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Financing

The main thrust of the Panel study has dealt with the structure and capabilities of various organizational alternatives for managing the high-level radioactive waste management program. As evidenced by the material contained in Chapter II of this report, however, the Panel also gave consideration to the financing processes of the NWPA, and to certain financing alternatives which might be substituted for the existing mechanisms. In doing so, the Panel encountered an array of financial uncertainties which confront the radioactive waste management program as it moves forward over the next two decades. At this juncture, it is extremely difficult to predict how future events, programmatic developments, and economic influences will affect the financing structure and cost level over the term of the program.

It is the Panel's conclusion that the financing mechanism provided by Congress under the Nuclear Waste Policy Act appears to be fair, amenable to administrative implementation and cost controls, and sufficiently flexible to accommodate the full-recovery requirement of the legislation. Under NWPA, utilities are assessed a fee of 1 mill per Kilowatt-hour of nuclear-generated electricity, plus a one-time fee for spent fuel accumulated prior to April 7, 1983.

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Based upon the Panel's general scrutiny, DOE implementation of the NWPA financing provisions is proceeding in a generally satisfactory manner. More importantly, the financing system devised by Congress shows no evidence of a serious flaw in its design and operation to date. And finally, this financing strategy appears to be adaptable to a change in organizational structure such as that contemplated in this report.

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