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SECY NUMBER: 85-780

## OFFICE OF THE SECRETARY

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AUTHOR:

Loring E. Mills

AFFILIATION:

Edison Electric Institute

LETTER DATE:

9/10/85

FILE CODE

ADDRESSEE:

Palladino

SUBJECT:

Review of Cmr Asselstine's comments re the timing of the DOE's preliminary determination on the suitability of sites for development as repositories

ACTION:

Appropriate

DISTRIBUTION:

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SPECIAL HANDLING:

None

SIGNATURE DATE:

FOR THE COMMISSION Champ

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 Date... 9-19-85  
 Time... 8 A

WM Record File

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Docket No.

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# EDISON ELECTRIC INSTITUTE

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September 10, 1985

The Honorable Nunzio J. Palladino  
Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Mr. Palladino:

During the September 6, 1985 public meeting regarding the timing of the Department of Energy's preliminary determination on the suitability of sites for development as repositories, Commissioner Asselstine observed that the Commission's "Waste Confidence" decision had relied upon the Commission's understanding that DOE and NRC agreed that the preliminary determination should be made following site characterization. Commissioner Asselstine questioned whether the Waste Confidence decision was undercut by DOE's present position that the preliminary determination would be made before site characterization.

In view of Commissioner Asselstine's comments, we have reviewed the Waste Confidence proceeding. Based on our review, it is clear that the outcome of that proceeding is in no way affected by any difference between the current views of DOE and NRC on the timing of the preliminary determination.

In explaining its findings, the Commission did indeed rely heavily upon the enactment of the Nuclear Waste Policy Act. See, e.g. 49 Federal Register 34658 at 34666, 34673-34779, 34686 (1984). The Commission stated that passage of the Act "had a significant bearing on the Commission's decision." 49 Federal Register at 34659. There is little to support the conclusion, however, that the decision turned in any significant measure on the agreement between DOE and NRC on the timing of the preliminary decision under § 114(f).

The Commission did note in its Addendum to the Waste Confidence Decision that:

"DOE and NRC now agree that the preliminary determination of site suitability for the alternate sites should be made following site characterization."

49 Federal Register at 34661.

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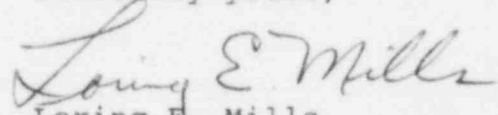
However, that comment was merely addressing one specific issue raised by Consolidated Public Interest Group, and did not represent a central finding underpinning the overall Waste Confidence decision. Indeed the Commission explicitly acknowledged that the lack of unanimity of views on the meaning of the Nuclear Waste Policy Act would not be surprising.

The Commission recognizes the possibility of differing interpretations regarding the implementation of NWPA.

Id. Thus, the reference in the Commission's Addendum to the Waste Confidence Decision to the DOE/NRC positions on the preliminary determination in no way calls into question the Commission's overall Waste Confidence findings.

We appreciate the opportunity to bring these views to your attention.

Sincerely yours,

  
Loring E. Mills  
Vice President,  
Nuclear Activities

LEM:jhd

cc: Commissioner Thomas M. Roberts  
Commissioner James K. Asselstine  
Commissioner Frederick M. Bernthal  
Commissioner Lando W. Zech, Jr.