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JAN 20 2000

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EIS000974

STATEMENT TO DOE PUBLIC HEARING ON YUCCA MOUNTAIN, 1/20/2000

1...

I would like to raise two points against the interstate transportation of nuclear power plant waste.

I'm a lawyer, and I undertook a little research on the legalities of the situation. I found that in two cases the federal Court of Appeals for the District of Columbia Circuit has interpreted the duties of the Department of Energy in a way that is pertinent to the issue of transportation of waste.

In a case brought by utilities and state commissions which had paid fees into the Nuclear Waste Fund, the Department maintained that it had no obligation to take title to spent nuclear fuel until there was an operating repository for it. Congress anticipated that there would be such a repository by January 31, 1998; as we now know there will be no such repository at Yucca Mountain or anywhere else for some time to come. The court, interpreting sec. 302(a)(5) of the Nuclear Waste Policy Act (42 U.S.C. sec. 10222(a)(5)) nevertheless held that the Department was contractually obligated to take title to and "dispose of" the waste despite its inability to meet the condition of a permanent repository. Indiana Michigan Power Co. v. Department of Energy, 88 F.3d 1272 (D.C.Cir. 1996); this holding was reaffirmed and reinforced with a writ of mandamus in Northern States Power Co. v. U.S. Department of Energy, 128 F.3d 754 (D.C.Cir. 1997).

1 cont.

The implication is clear--interim disposal will be on site at the nuclear power plants. It is therefore consistent with the Department's legal responsibilities to leave it there. In the meantime those isotopes with the shortest half-lives may decay to the point where transportation becomes notably safer. We can also hope for technological progress to be made towards neutralizing the radioactive waste, converting it into more benign forms, or at least developing safer storage containers. The longer it is left on site, the more risks we avert in the eventual transportation of the irradiated fuel.

2 The second point I would like to make is this: [I fear that the existence of a permanent repository at Yucca Mountain will encourage the persistence of the nuclear power industry, the importation of waste from overseas, the relicensing of old nuclear power plants, and conceivably the building of new ones.] Already,

3 I understand, Baltimore Gas & Electric has applied for relicensing of two reactor units at Calvert Cliffs, MD, for 20 years beyond their present expiration dates of 2014 and 2016.

The nuclear power industry should not be allowed to continue in operation unless and until it can be rendered safe. Yucca Mountain or any other permanent repository will not make it so. The only way to minimize the risk to public safety is to minimize the amount of nuclear waste travelling across the country by road and rail. Therefore it should be the policy of the DOE and this country that no more waste should be generated that can be expected to move in interstate traffic.