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Sent: Monday, September 25, 2006 1:29 PM

Subject: NYSERDA's consideration of terminating our participation in the joint EIS process

At the CTF meeting last month, it was apparent that the CTF was very concerned that NYSERDA is considering terminating our role as a joint lead agency with DOE on the Decommissioning and/or Long-term Stewardship Environmental Impact Statement (EIS). This email is intended to provide you with a fuller description of the long history that has led NYSERDA to believe that this course of action is necessary. I want to make it clear that this is a carefully considered staff recommendation, the potential consequences of which have been assessed by staff, and will continue to be assessed by our management and our Board. NYSERDA's Board has tabled this recommendation. A more complete vetting of the issue is needed. I welcome additional discussion with the CTF at your September 27 meeting.

Preferred Alternative Must Consider Lessons From Draft EISs

NYSERDA staff have come to believe that further real progress on the EIS is not possible due to DOE's disregard for what 18 years of EIS analyses have taught us. Specifically, that *the major source terms at West Valley cannot be left in place and be considered decommissioned*. In NYSERDA's considered opinion, all four of the major source terms at West Valley (i.e., the High-Level Waste tanks, the Reprocessing Building, the State-Licensed Disposal Area and the NRC-Licensed Disposal Area) either need to:

- 1) be exhumed to achieve decommissioning, or
- 2) must continue to be actively managed in a licensed, non-decommissioned state for pre-specified short time horizons (i.e., tens of years) with each specified time period concluding with a reevaluation of the exhumation alternative.

NYSERDA believes that further and more detailed analyses should be performed on variations of the two alternatives described above. DOE continues to expend EIS resources on generating the next erosion model, designing more elaborate and robust engineered barriers, and developing performance assessment models that intend to show that these engineered barriers can win a battle with mother nature. We disagree with DOE's direction for the EIS and we disagree with the expenditure of additional public funds in this way.

Recently, DOE invited us and the cooperating agencies to participate in a "core team process" to address technical comments on the pre-decisional draft EIS. However, NYSERDA is convinced that in the absence of agreement on a preferred alternative (that acknowledges the lessons learned from 18 years of analyses), additional refinement of technical analyses focused on the in-place closure of the HLW tanks and Reprocessing Building will not be productive. Instead, DOE has simply declared that "DOE does not exhume tanks." Unless DOE abandons this *a priori* position and agrees to participate in true negotiations on the West Valley cleanup, we see no value in participating in the core team process.

Flawed Analyses

NYSERDA believes that sound technical and scientific analysis must inform all environmental decisionmaking. At

the last CTF meeting, Paul Bembia shared with you some of our concerns with the EIS analysis to date. For years, we have been providing DOE with technical comments about many of the most important analyses being performed in support of the EIS. We have met with DOE. We have written to DOE. We shared information with the regulatory agencies in the presence of DOE staff. However, at every turn, DOE has disregarded and ignored our concerns.

The recent pre-decisional draft EIS that was distributed for comment to the cooperating agencies disregarded many technical issues and comments that were submitted by NYSERDA and the cooperating agencies on earlier partial drafts of the document. To get an independent assessment of these concerns, NYSERDA, with the participation of DOE, convened a Peer Review Group (PRG) composed of eminent, nationally recognized scientists in the relevant fields, and asked them to review the new DOE draft EIS. The PRG produced a report that confirmed most of NYSERDA's concerns and concluded that "the PRG questions the suitability of the DEIS to serve as a basis for an informed selection of a preferred site closure or decommissioning alternative."

At this point, we have little confidence that DOE will produce a document that uses appropriate scientific tools and analyses. In short, NYSERDA will not put our name on a document that is not defensible and, more importantly, one that employs flawed technical work to support decisions that will have significant impact on the local community, the State and the Great Lakes Region.

Bias Against Tank Exhumation

that we believe are technically defensible, NYSERDA could adopt the EIS and use it to support our decisionmaking. If DOE proceeds to make decisions based on analyses that NYSERDA believes are technically and scientifically unsound, then NYSERDA will be in a better position to challenge those decisions.

Conclusion

In short, NYSERDA has tried to work with DOE to issue another draft EIS for over 10 years. DOE's efforts have been directed at demonstrating that the close-in-place alternative will be acceptable over thousands of years. NYSERDA believes that this particular alternative is not worth expenditure of any additional resources.

We are not disagreeing with DOE just to disagree and we are not disagreeing just to protect our own interests. We have the public's interest in mind and demand that defensible, sound science be used to support decisionmaking. While we can end the disagreements with DOE simply by letting them pursue a decommission in-place alternative with flawed analyses, we do not believe that this solution would be in the best interests of the local community or the state of New York.

I hope, given the reasons presented above, that you understand why we believe that NYSERDA can no longer participate with DOE in the joint EIS process. And, as mentioned earlier, I welcome further discussion of this topic at the next CTF meeting.

Thank you for your time.

Paul