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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

DOE was specifically directed via the WVDP Act to decommission the High-Level Waste (HLW) tanks and other facilities at West Valley. (DOE does not have this specific statutory mandate at other sites.) This decommissioning mandate means that they have to make a certain showing with regard to the long-term performance of the tanks. This showing or demonstration of compliance with the U.S. Nuclear Regulatory Commission (NRC) License Termination Rule decommissioning criteria for the West Valley tanks is very difficult, if not impossible, without actually exhuming the tanks. Unfortunately, DOE's current leadership in Washington has stated very plainly that, "DOE does not exhume HLW tanks." In other words, DOE appears to have an unwritten policy that they will not exhume HLW tanks at any of their sites for fear of having this become a precedent for their other sites. To leave the HLW tanks in place at West Valley, DOE has to demonstrate that the tanks can meet NRC decommissioning criteria over thousands of years. NYSERDA believes this effort is futile and that the best solution is a preferred alternative (e.g., tank exhumation) that does not require this demonstration.

Following the pre-decisional draft EIS and the issuance of the PRG Report, the U.S. Environmental Protection Agency (EPA) made a presentation at a meeting of the cooperating agencies proposing that DOE and NYSERDA adopt a preferred alternative that called for exhumation of the HLW tanks and other facilities on the Project Premises. NYSERDA's President and CEO, Peter Smith, followed up with a letter to DOE in June supporting the EPA proposal and indicating that support for such a proposal by DOE would resolve many of the outstanding issues between DOE and the NYSERDA. Despite many attempts to follow-up with DOE staff, DOE has still not responded to the EPA proposal.

Expenditure of Public Funds

Work on this Joint EIS process has now gone on for over 18 years and cost more than \$ 47.3 million. The Authority's 27% share has cost more than \$ 12.7 million. As public stewards, NYSERDA has become increasingly concerned about funding a flawed process and flawed analyses. Moreover, we have come to believe that our share of future funds should be used to direct and conduct our own analyses to support our decisionmaking. We need to be able to trust what the analyses are showing us and trust the conclusions being drawn from these analyses.

EIS Will Continue

If NYSERDA were to terminate the supplemental agreement with DOE and withdraw from our joint lead agency relationship with DOE, it would not prevent DOE from proceeding with the Decommissioning and/or Long-term Stewardship EIS, nor would it prevent NYSERDA from reviewing and commenting on DOE's EIS. It would simply clarify for the public, and for all involved, that DOE is directing this process and the EIS analyses are being conducted in a manner that DOE deems appropriate without any implication that NYSERDA is in agreement with or supports DOE's approach or decisions. NYSERDA would continue to scrutinize DOE's analyses and raise our concerns as the analyses, data and information are made available to us. If DOE does eventually produce analyses

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