

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

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September 27, 1996

Ms. Corinne Macaluso
U.S. Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems, Inc.
600 Maryland Avenue, S.W., Suite 695
[Attn: Section 180(c) Comments]
Washington, D.C. 20024

*Re: Comments: Notice of Proposed Policy and Procedures
61 Federal Register 24772 (May 16, 1996)*

Dear Ms. Macaluso:

Enclosed are comments of the State of Michigan and Michigan Public Service Commission in the above-entitled matter.

Enclosed also is a stamped self-addressed envelope, and extra copy of our filing, to be date stamped and returned to us.

Very truly yours,

A handwritten signature in cursive script that reads "Don L. Keskey".

Don L. Keskey (P23003)
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DLK/pc
Att

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY**

**COMMENTS: NOTICE OF PROPOSED
POLICY AND PROCEDURES; Office of Civilian
Radioactive Waste Management; Safe
Transportation and Emergency Response
Training; Technical Assistance and Funding;**
61 Fed. Reg. 24772 (May 16, 1996)

**COMMENTS OF STATE OF MICHIGAN AND
MICHIGAN PUBLIC SERVICE COMMISSION**

INTRODUCTION

On May 16, 1996, the U.S. Department of Energy (DOE or Department) published a Notice of Proposed Policy and Procedures, 61 Fed. Reg. 24772 (May 16, 1996), hereafter referred to as "DOE Notice." The DOE Notice seeks public comment on a proposed policy statement setting forth the DOE's plans for implementing a program of technical and financial assistance to states for training public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Department plans to transport spent nuclear fuel or high-level radioactive waste. The training would cover both routine transportation procedures and emergency response procedures. The State of Michigan and Michigan Public Service Commission submit the following comments in response to DOE's Notice.

**THE STATE OF MICHIGAN AND THE
MICHIGAN PUBLIC SERVICE COMMISSION**

The State of Michigan is a sovereign state of the United States of America which advocates safe, timely and cost effective storage and disposal of high-level

nuclear waste. The Michigan Public Service Commission is a legislatively-created agency having jurisdiction and authority to regulate rates, charges and conditions of service for the sale and distribution of electricity generated by investor-owned utilities in Michigan and likewise seeks the safe, timely and cost-effective storage and disposal of high-level nuclear waste. The Michigan Public Service Commission regulates the rates of several electric utilities which have included in rates the costs of fees charged by the federal government to develop facilities for the storage or disposal of high level nuclear waste pursuant to the Nuclear Waste Policy Act of 1982. The utilities include The Detroit Edison Company, Consumers Power Company, Indiana Michigan Power Company, and Northern States Power Company. Michigan is also the site of four operating nuclear plants, three of which store nuclear waste in containment units and one which presently stores nuclear waste in both the reactor units and in dry casks at the plant site.

DISCUSSION AND COMMENTS

DOE's May 16, 1996 Notice discusses the proposed funding mechanism, definitions of key terms, eligibility and timing of grants, and allowable activities, relating to DOE's duties under 180(c) of the Nuclear Waste Policy Act of 1982, as amended (42 USC 1010 et seq.). Section 180(c) requires the DOE to provide technical assistance and funds to states for training of public safety officials of appropriate units of local government and to Indian tribes through whose jurisdiction the Secretary of Energy (Secretary) plans to transport spent nuclear fuel or high level radioactive waste. The Notice at page 24773 states:

Funding Mechanism

The Department intends to implement Section 180(c) through an OCRWM grants program. Funding would be provided every year beginning approximately three years prior to the first shipment through a state or tribal land. (Emphasis supplied).

* * *

Eligibility and Timing of the Grants and Technical Assistance Program

The Department intends to provide grants and technical assistance under the Section 180(c) program for the safe routine transportation of NWPA shipments as these terms are defined above. The Department intends that the application process for grants and technical assistance begin approximately four years prior to transportation (about one year for the application process, about three years to implement the program) through a jurisdiction. (Emphasis supplied).

The Notice thus reveals that DOE's plan to implement section 180(c) assumes a commencement date at an uncertain time several years in the future. The leisurely pace of implementation revealed by DOE's Notice is not acceptable since the DOE must begin accepting spent nuclear fuel no later than January 31, 1998. In other words, the implementation of Section 180(c) must occur immediately if the DOE is to fulfill its legal obligations under the Nuclear Waste Policy Act of 1982.

In Indiana Michigan Power Company v Department of Energy, 88 F3d 1272 (DC Cir. 1996), the U.S. Court of Appeals for the District of Columbia Circuit in no uncertain terms held that the DOE is legally obligated to start disposing of spent nuclear fuel no later than January 31, 1998. The Court's holding stated:

Thus, we hold that section 302(a)(5)(B) creates an obligation in DOE, reciprocal to the utilities' obligation to pay, to start disposing of the SNF no later than January 31, 1998. 88 F3d at 1277.

The January 31, 1998 date is the deadline by which the DOE must begin the disposal of spent nuclear fuel. This deadline is less than 16 months away. An integral component of the waste disposal process is the DOE's technical assistance and funding to states for training of public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel. However, the plan presented by the DOE exceeds the January 31, 1998 deadline by several years and would clearly frustrate the mandate of the U.S. Court of Appeals. Therefore, the funding and the technical assistance to the states and/or Indian tribes for training must begin immediately and the DOE must totally revise its relevant plans in order to assure it will not violate the Court's mandate.

The State of Michigan and the Michigan Public Service Commission also concur in the comments filed by the Nuclear Waste Strategy Coalition in response to DOE's Notice.

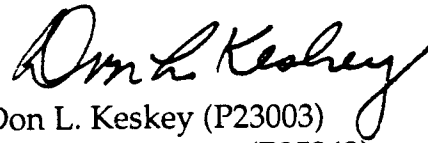
CONCLUSION AND RELIEF

The State of Michigan and the Michigan Public Service Commission respectfully request that the DOE immediately revise its proposed plan for the implementation of section 180[c] of the Nuclear Waste Policy Act of 1982, as amended [supra], and commence implementation immediately, and that the Department of Energy promptly provide the necessary technical assistance and funds to states for the training of public safety officials and the appropriate units of

local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste.

Respectfully submitted,

**STATE OF MICHIGAN AND MICHIGAN
PUBLIC SERVICE COMMISSION**



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