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**DISCUSSION POINTS CONCERNING FEDERAL SNF DISPOSAL
PROGRAM NWSC MEETING OF 2/14/10**

- I. Nuclear Regulatory Commission - Challenges to the Administration and DOE's withdrawal of Yucca Mountain License Application (with or without prejudice) as being unlawful under NWPA and Standard Contract (as well as NRC action discontinuing proceedings).**
 - a. Position and remedies of existing parties to proceeding (including NEI)
 - b. Late and limited special purposes interventions of states, commissions, NARUC, Indian tribes, others, to oppose withdrawal of license application as being unlawful; good cause for late interventions in light of wholly unforeseen circumstances and drastic amendment (i.e. withdrawal of application)
 - c. Standing of parties and proposed late intervenors
 - d. Exhaustion of administrative remedies to NRC ruling
 - e. Court appeals of NRC rulings
 - f. Nuclear waste confidence proceedings
- II. NWPA Remedies - Appeals to U.S. Court of Appeals**
 - a. Challenge action of Administration and DOE's withdrawal of license application as unlawful under NWPA and Standard Contract
 - b. May also challenge DOE rejection of request for SNF fee reduction or elimination, or refunds
 - c. Remedies-Declaratory ruling, mandamus, stay, escrow, refunds, etc.
 - d. Standing-Utilities, States, Commissions, others
- III. Exercise of State Commission Retail Ratemaking Authority**
 - a. State Commission retail rate authority preserved over utilities and plants subject to state jurisdiction (contrasted with unregulated wholesale plants) as recognized under Federal Power Act
 - b. No preemption of said state ratemaking authority under NWPA, NRC regulations, or Standard Contract.

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- c. Remedies could include investigation into reasonableness and prudence of utility Actions to: enforce their Standard Contracts, to seek protection or refund of the SNF fees, to seek specific performance, and to refund damages to ratepayers. State Commissions could also require the establishment of a state regulated interest bearing escrow trust to receive all amounts included in rates for the SNF fee in view of the default (in many ways analogous to nuclear plant decommissioning trusts regulated by the state commissions).
- d. Recognize demarcation in state regulatory authority and role (and remedies to protect ratepayers) as contrasted with the separate prerogative, role, and remedies of utilities to enforce their Standard Contracts or to seek protective remedies on their own behalf (i.e. the states can establish a "ratepayer escrow" by subtracting the SNF fee payments from utility rates and directing them to a state regulated trust, while the utility on its own must make its separate decision as to whether to continue paying the fee without further enforcement actions or to seek Court action with an attendant "utility escrow").
- e. State or state commission activity-MN, GA, MI, others.
- f. Michigan PSC order **In re Consumers Energy Company, U-15645**, dated November 2, 2009, requiring utility to implement steps for Commission consideration of escrow trust remedy for SNF fees related to pre-April 7, 1983 generation (SNF fee debt); more extensive escrow for ongoing (and perhaps past) SNF fees could be considered by analogy, considering change of circumstances.
- g. Ability of Commissions to influence their utilities to undertake more aggressive actions.

IV. Political Efforts including lobby efforts with Congress, state governors, and legislatures.