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January 30, 2004

Steve Zappe
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

RE: Agency-Initiated WIPP Permit Modification

Dear Steve:

Southwest Research and Information Center (SRIC) has long been concerned about the possibility of the Department of Energy (DOE) bringing waste to WIPP that is prohibited by law and by the WIPP permit. Thus, SRIC strongly supports the pending agency-initiated permit modification and urges NMED to incorporate it into the permit. SRIC also suggests that clarifying language be added to the modification.

WIPP is not designed to accommodate, nor is it approved under federal law (the WIPP Land Withdrawal Act of 1992, as amended) for, most of the Department of Energy (DOE) existing or future nuclear waste. The WIPP Act specifies that the land and the facility must be used exclusively for transuranic (TRU) waste from nuclear weapons production – “generated by atomic energy defense activities.” Public Law 102-579, Section 2(19). Thus, WIPP cannot be used for low-level waste storage or disposal or high-level waste storage or disposal or commercial waste storage or disposal.

To emphasize the exclusive nature of the facility, the WIPP Act specifically bans high-level waste: “The Secretary [of Energy] shall not transport high-level radioactive waste or spent nuclear fuel to WIPP or emplace or dispose of such waste or fuel at WIPP.” Section 12.

The WIPP Act further limit the types and amount of waste, including limits on the radioactivity of TRU waste and volume limits on the capacity of WIPP. Section 7.

The WIPP Act also specifically protects the State of New Mexico’s legal authority over WIPP. Section 9(a)(2)(C), Section 9(d), Section 14(a), Section 14(b).

During the five-year permitting process that resulted in NMED issuing its WIPP permit on October 27, 1999, DOE and NMED relied upon the “Transuranic Waste Baseline Inventory Report” (TWBIR) of December 1995 and June 1996 to describe all of the waste that would be coming to WIPP. The waste characterization procedures and other requirements of the permit were based on the types and characteristics of the wastes included in that inventory. A different inventory could



have resulted in different waste characterization requirements or in additional wastes being prohibited, along with those materials already prohibited in the permit. Module II.C.3.

On pages 3 and 4 of the Fact Sheet for this agency-initiated permit modification issued on November 26, 2003, NMED lists various actions and events that indicate that DOE intends to dispose of waste at WIPP that has not included in the TWBIR. Since the issuance of that Fact Sheet, DOE has taken an additional action that further supports the need for the modification.

On January 16, 2004, DOE noticed in the *Federal Register* the availability of the West Valley Demonstration Project Final Waste Management Environmental Impact Statement. Attachment 1. That notice states that the Preferred Alternative A is to “ship TRU waste to the Waste Isolation Pilot Plant (WIPP) in New Mexico.” Alternative B is to ship TRU waste “for interim storage at one of five DOE sites: the Hanford, Site in Washington; the Idaho National Engineering and Environmental Laboratory (INEEL); the Oak Ridge National Laboratory (ORNL) in Tennessee; the Savannah River Site (SRS) in South Carolina; or WIPP. TRU wastes would subsequently be shipped to WIPP for disposal or interim storage at WIPP until disposal could be arranged.” 69 *Federal Register* 2584. All West Valley waste is commercial, non-defense and is thereby excluded from WIPP. SRIC’s comments of January 23 in opposition to those alternatives is Attachment 2.

Since DOE has now indicated that it would like to bring waste to WIPP that was not included in the TWBIR, the NMED must take action. The proposed permit modification would limit waste to that included in the TWBIR. Any exceptions to that requirement must be treated as a major permit modification that includes a public hearing, if requested.

The agency-initiated permit modification is prudent to protect public health and the environment and is consistent with NMED’s authority under the Hazardous Waste Act. The modification also provides notice to the DOE that it should not contemplate bringing wastes to WIPP that are not included as the WIPP inventory in the TWBIR, including high-level waste that it wants to “reclassify” as well as commercial waste.

As the NMED Fact Sheet states, one purpose of the TWBIR, especially Revision 2, was to comply with Section 7(b)(6) of the WIPP Act, as enacted in 1992. Fact Sheet at 2. Thus, the TWBIR, Rev. 2 mentions sites and waste streams that are “not included in the WIPP inventory.” Volume 1 at 5-1. See also especially Section 5.2 “Waste Streams Excluded from WIPP,” and Table 5.2. The fact that sites that are prohibited from sending waste to WIPP (such as West Valley, New York) or waste streams that are prohibited at WIPP (such as Hanford tank wastes), are mentioned in the TWBIR should not provide any basis for those sites or waste streams to be allowed at WIPP. The permit modification should clearly include only those waste streams detailed in the TWBIR as being in the WIPP inventory.

Thus, SRIC suggests clarifying language for Module II.C.3.i as follows:

II.C.3.i. Documented waste inventory - wastes that are not directly traceable to waste streams included in the WIPP inventory in the “*Transuranic Waste Baseline Inventory Report (Revision 2)*”, DOE/CAO-95-1121, December 1995, are not acceptable at WIPP unless specifically approved and listed in Table II.C.3.i below.

SRIC's suggested additional, clarifying language are the five words underlined. SRIC suggests that the same five words of clarifying language also be incorporated into Attachment B-1c, Page B-6 of 57, line 32.

If DOE attempts to bring waste to WIPP not included in the WIPP inventory in the TWBIR, SRIC urges NMED to revoke or suspend the WIPP permit, as allowed by state law. Section 74-4-4.2.D. NMSA 1978.

Therefore, SRIC supports the agency-initiated permit modification with the additional clarifying language and urges that it be incorporated into the WIPP permit.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don Hancock".

Don Hancock

from PSEG ER&T to renew its authorization to transmit electric energy from the United States to Canada. PSEG ER&T operates as a marketer and broker of electricity, capacity, ancillary services and natural gas products on a wholesale basis throughout the Eastern and Midwestern United States. PSEG ER&T is a fully integrated marketing and trading organization that is active in the long-term and spot wholesale energy markets.

PSEG ER&T proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by PSEG ER&T, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the PSEG ER&T application to export electric energy to Canada should be clearly marked with Docket EA-250-A. Additional copies are to be filed directly with Steven R. Teitelman, President, PSEG Energy Resources & Trade LLC, 80 Park Plaza, T21, Newark, NJ 07102 and Thomas P. Thackston, Senior Attorney, PSEG Services Corporation, 80 Park Plaza, T5G, Newark, New Jersey 07102.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the

reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.de.gov>. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on January 12, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04-987 Filed 1-15-04; 3:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

West Valley Demonstration Project Final Waste Management Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the West Valley Demonstration Project (WVDP) Final Waste Management Environmental Impact Statement (EIS), Cattaraugus County, West Valley, New York (DOE/EIS-0337F). DOE has prepared this Final EIS pursuant to the National Environmental Policy Act (NEPA) and applicable NEPA regulations issued by the Council on Environmental Quality (40 Code of Federal Regulations (CFR) Parts 1500-1508) and by DOE (10 CFR part 1021). DOE proposes to ship radioactive wastes that are either currently in storage on the WVDP site or that will be generated from WVDP operations over the next ten years, to offsite disposal locations. The Final EIS evaluates the potential environmental impacts of the proposed action, including impacts to workers and the public from waste transportation. The Final EIS also analyzes a No Action Alternative, under which most wastes would continue to be stored over the next ten years, and an alternative under which certain wastes would be shipped to interim offsite storage locations prior to disposal.

ADDRESSES: Requests for copies of the Final EIS or requests for information about this document should be directed to: Mr. Daniel W. Sullivan, EIS Document Manager, DOE West Valley Area Office, 10282 Rock Springs Road, WV-49, West Valley, NY 14171-9799,

Telephone: (800) 633-5280 or (716) 942-2152.

Copies of the Final EIS have been distributed to Federal, State, and local officials: Members of Congress; agencies; organizations; and individuals who may be interested or affected. The Final EIS will be available at <http://tis.eh.doe.gov/nepa/docs.docs.htm> or www.wv.doe.gov. Copies of the Final EIS and supporting technical reports also are available for public inspection at the following locations:

Hulbert Library of the Town of Concord, 18 Chapel Street, Springville, NY 14141.

Central Library of the Buffalo, and Erie County Public Library System, Science and Technology Department, Lafayette Square, Buffalo, NY 14203. West Valley Central School Library, 5359 School Street, West Valley, NY 14171.

The Olean Public Library, 134 North 2nd Street, Olean, NY 14760.

FOR FURTHER INFORMATION CONTACT: For additional information on this EIS, contact Mr. Daniel Sullivan at the address provided above. For general information on the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Ms. Borgstrom may be contacted by calling (202) 586-4600 or by leaving a message at (800) 472-2756.

SUPPLEMENTARY INFORMATION: The WVDP is located on the Western New York Nuclear Service Center (also referred to as the Center). The Center comprises approximately 13.5 square kilometers (five square miles) in West Valley, New York, and is located in the Town of Ashford, approximately 50 kilometers (30 miles) southeast of Buffalo, New York. The Center was the site of a commercial nuclear fuel reprocessing plant, which was the only one to have operated in the United States. The Center operated under a license issued by the Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission [NRC]) in 1966 to Nuclear Fuel Services, Incorporated, and the New York State Atomic and Space Development Authority, now known as the New York State Energy Research and Development Authority (NYSERDA).

During reprocessing, spent nuclear fuel from commercial nuclear power plants and DOE sites was chopped, dissolved, and processed by a solvent extraction system to recover uranium and plutonium. Fuel reprocessing ended in 1972 when the plant was shut down

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for modifications to increase its capacity, reduce occupational radiation exposure, and reduce radioactive effluents.

In 1976, Nuclear Fuel Services estimated that over \$600 million would be required to modify the facility to increase its capacity and to comply with changes in regulatory standards. As a result, the company decided to withdraw from the nuclear fuel reprocessing business and exercise its contractual right to yield responsibility for the Center to NYSERDA. Nuclear Fuel Services withdrew from the Center without removing any of the in-process nuclear wastes. NYSERDA now holds title to and manages the Center on behalf of the people of the State of New York.

In 1980, Congress passed the WVDP Act (Pub. L. 96-368). This Act requires DOE to demonstrate that the liquid high-level radioactive waste (HLW) from reprocessing can be safely managed by solidifying it at the Center and transporting it to a geologic repository for permanent disposal. In addition to HLW, the WVDP also manages low-level radioactive waste (LLW), transuranic (TRU) waste, and mixed waste (radioactive and hazardous) generated as a result of Project activities.

The WVDP Facilities and areas storing the waste are: The Process Building, which includes approximately 70 rooms and cells that comprised the NRC-licensed spent nuclear fuel reprocessing operations (one of the cells—the Chemical Process Cell—now serves as the storage facility for the canisters containing the HLW, which has been immobilized through vitrification); the Tank Farm, which includes the underground HLW storage tanks; Waste Storage Areas, which include several facilities such as Lag Storage Areas and the Chemical Process Cell Waste Storage Area; and the Radwaste Treatment System Drum Cell (Drum Cell), which stores cement-filled drums of stabilized LLW.

DOE announced its intent to prepare this EIS in a March 2001 Notice of Intent (NOI) (66 FR 16447, March 26, 2001). DOE modified the proposed scope of this EIS as a result of public comments received during scoping and the Department's further evaluation of activities that might be required independently of final decisions on decommissioning and/or long-term stewardship at the WVDP. In the future, DOE plans to issue an EIS on decommissioning and/or long-term stewardship. DOE published an Advance NOI (66 FR 56090, November 6, 2001) inviting preliminary public comment on a proposed scope for the

decommissioning and/or long-term stewardship EIS and published an NOI (68 FR 12004, March 13, 2003).

Public Comments

The Waste Management EIS was issued in draft on May 16, 2003, for public review and comment (68 FR 26587 (2003)). The 45-day comment period ended on June 30, 2003, although DOE also considered comments received after that date. Two public hearings on the Draft EIS were held on June 11, 2003, at the Ashford Office Complex near the WVDP site. The Final EIS incorporates public comments received on the Draft EIS and DOE responses.

In response to public comments, several changes were made in the Final EIS. In particular, the option under Alternative B of placing retrievable grout in the HLW tanks as an interim stabilization measure has been eliminated. Information has been added regarding the extent to which the Canadian population within 80 kilometers (50 miles) of the site could be affected by the activities at the site and transportation under routine and accident conditions. In addition, a number of specific technical changes and corrections have been made in response to public comments, and updated DOE guidance regarding health risk factors was used to estimate potential impacts.

Description of Alternatives

The Final EIS analyzes three alternatives for the continued onsite waste management and shipment of wastes to offsite disposal. Under the No Action Alternative, Continuation of Ongoing Waste Management Activities, waste management would include continued storage of existing Class B and Class C LLW, TRU waste, and HLW. Limited amounts of Class A LLW would be shipped for off-site disposal and the remainder would be stored onsite. The waste storage tanks and their surrounding vaults would continue to be ventilated to manage moisture levels as a corrosion prevention measure.

Under DOE's Preferred Alternative A, Offsite Shipment of HLW, LLW, Mixed LLW, and TRU Wastes to Disposal, DOE would ship Class A, B, and C LLW and mixed LLW to one of two potential DOE disposal sites (in Washington or Nevada) or to a commercial disposal site (such as the Envirocare facility in Utah); ship TRU waste to the Waste Isolation Pilot Plant (WIPP) in New Mexico; and ship HLW to the proposed Yucca Mountain HLW Repository. LLW and mixed LLW would be shipped over the next ten years. TRU waste shipments to

the WIPP could occur within the next ten years if the TRU waste were determined to meet all the requirements for disposal in this repository. If some or all of WVDP's TRU waste did not meet these requirements, the Department would need to explore other alternatives for disposal of this waste. The waste storage tanks would continue to be managed as described under the No Action Alternative.

Under Alternative B, Offsite Shipment of LLW and Mixed LLW to Disposal, and Shipment of HLW and TRU Waste to Interim Storage, LLW and mixed LLW would be shipped offsite for disposal at the same locations as Alternative A. TRU wastes would be shipped for interim storage at one of five DOE sites: the Hanford Site in Washington; the Idaho National Engineering and Environmental Laboratory (INEEL); the Oak Ridge National Laboratory (ORNL) in Tennessee; the Savannah River Site (SRS) in South Carolina; or WIPP. TRU wastes would subsequently be shipped to WIPP for disposal or interim storage at WIPP until disposal could be arranged. HLW would be shipped to SRS or Hanford for interim storage, with subsequent shipment to Yucca Mountain for disposal. The waste storage tanks would continue to be managed as described under the No Action Alternative.

In addition, DOE considered, but did not analyze, an alternative to construct and maintain waste storage facilities for indefinite storage of waste at the WVDP. DOE presently does not consider that alternative to be practical or reasonable over time, because of continuing costs of construction of new facilities and maintenance of existing facilities.

Record of Decision (ROD)

DOE intends to issue a ROD no sooner than 30 days following publication in the **Federal Register** of the Environmental Protection Agency's Notice of Availability of the WVDP Final EIS. DOE will publish its ROD in the **Federal Register**.

Issued in Washington, DC, on January 12, 2004.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

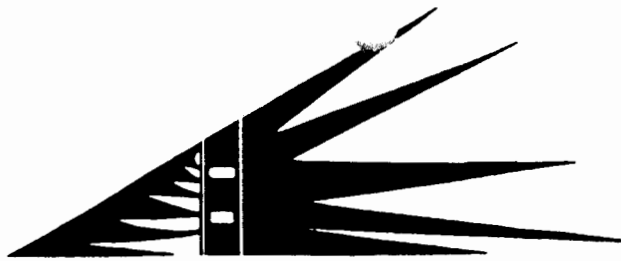
[FR Doc. 04-988 Filed 1-15-04; 8:45 am]

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DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.



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January 23, 2004

Jessie Hill Roberson
EM-1
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

VIA FAX 202/586-7757 and U.S. MAIL

RE: West Valley Demonstration Project Final Waste Management
Environmental Impact Statement, December 2003, 69
Federal Register 2584 (January 16, 2004)

Dear Ms. Roberson:

Southwest Research and Information Center (SRIC) has been involved for more than 25 years with issues regarding the Waste Isolation Pilot Plant (WIPP). SRIC is very familiar with the legal and regulatory requirements for WIPP, as well as the National Environmental Policy Act (NEPA) documents related to WIPP.

Pursuant to 40 CFR 1503.1(4)(b), SRIC submits these comments on the West Valley Final Environmental Impact Statement (FEIS), and requests that DOE specifically respond to them in any supplemental EIS, which SRIC believes should be issued, or any Record of Decision (ROD).

SRIC strongly objects to the portions of the West Valley Final FEIS related to transuranic (TRU) waste, especially including Preferred Alternative A and Alternative B. Neither of those two alternatives is consistent with legal and regulatory requirements, and thus, neither should be considered reasonable alternatives in the West Valley FEIS or any other NEPA document. Thus, in any ROD DOE should specify that, as to transuranic waste, neither of those alternatives will be implemented.

Instead, SRIC believes that DOE must supplement the West Valley FEIS to describe the legal and regulatory requirements for WIPP and that West Valley TRU waste is prohibited at WIPP, since the FEIS does not describe those requirements. Thus, DOE should analyze the reasonable alternatives for storage and disposal of West Valley TRU waste that do not include WIPP. Such an analysis was not done in the West Valley FEIS, which is a totally inadequate NEPA document as regards those TRU wastes.

West Valley TRU waste is prohibited from storage or disposal at WIPP.

The WIPP Land Withdrawal Act (PL 102-579, as amended) specifies that WIPP is exclusively for TRU waste "generated by atomic energy defense activities." Section 2(19). West Valley TRU waste is commercial, non-defense TRU waste that is excluded from WIPP. In 1996, at DOE's suggestion, legislation was proposed to delete that WIPP Act prohibition on commercial waste, but that provision was not passed. *See 142 Congressional Record, S. 6589 (June 20, 1996)*. Thus, DOE has known since at least 1992 that West Valley TRU waste was prohibited at WIPP.

Nonetheless, the West Valley FEIS states that the preferred alternative A includes: "TRU waste shipments to WIPP could occur within the next 10 years if the TRU waste is determined to meet all requirements for disposal in this repository; however, if some or all of WIPP's TRU waste does not meet these requirements, the Department would need to explore other alternatives for disposal of this waste." at 2-13.

West Valley FEIS alternative B is that "TRU waste would be shipped to Hanford, INEEL, ORNL, or SRS for interim storage, and then to WIPP for disposal. TRU waste could also be shipped to WIPP for interim storage prior to disposal there." at 2-16.

The West Valley FEIS is totally inadequate because it never describes "all requirements for disposal" at WIPP. Thus, the public and decision makers have no way of evaluating what the requirements are and whether they can be met.

Further, it is irresponsible and contrary to law for DOE to not fully explore alternative disposal sites for transuranic waste. DOE has had several obvious opportunities to comply with NEPA and prepare an EIS on such disposal sites over the past decade. Clearly, it is past time for such alternatives to be explored and for an alternative disposal site to be chosen. DOE cannot proceed with a ROD related to the West Valley FEIS that makes decisions on storage or disposal of TRU waste as included in alternatives A and B.

The EPA certification for WIPP does not include any West Valley TRU waste.

On May 18, 1998, the Environmental Protection Agency (EPA) issued its certification of WIPP. The TRU waste from West Valley was not included in the *Transuranic Waste Baseline Inventory Report (Revision 3)*, June 1996, which provided the inventory information for the performance assessment used to certify that WIPP meets EPA disposal requirements, pursuant to the WIPP Act, Section 8(d).

Thus, the EPA certification does not allow for West Valley TRU waste to be disposed at WIPP.

The State of New Mexico operating permit does not include any West Valley TRU waste.

On October 27, 1999, the New Mexico Environment Department (NMED) issued the operating permit for WIPP under the New Mexico Hazardous Waste Act. TRU waste from West Valley was not included in the permit application, nor in the permit issued.

Thus, the existing operating permit does not allow for West Valley TRU waste to be stored or disposed at WIPP.

The West Valley FEIS volumes of TRU waste are inconsistent with previous estimates.

The West Valley FEIS states that the amount of Contact-handled (CH) TRU waste is 1,130 cubic meters and Remote-handled (RH) TRU waste is 250 cubic meters. West Valley FEIS at 2-15. In the *WIPP Supplement Environmental Impact Statement* (SEIS-II, 1997), the West Valley CH-TRU waste is 190 cubic meters and RH-TRU waste is 1,700 cubic meters, and all of that waste is commercial/nondefense waste. WIPP SEIS-II at 2-7.

The vast volume disparities, in addition to showing the inadequacy of DOE's NEPA documents, also shows the inadequate waste characterization and inventory information. DOE must develop more reliable information so that it can prepare adequate NEPA documents.

DOE should not consider bringing West Valley high-level waste to WIPP.

On July 2, 2003, a federal district court judge in Idaho issued his decision in *Natural Resources Defense Council, et. al. v. Abraham*, 271 F.Supp. 2d 1260, D. Idaho, 2003. In its decision, the Court held that DOE Order 435.1 is invalid. Thus, DOE may not reclassify high-level waste at West Valley (or other DOE sites) as TRU so that they can be stored or disposed at WIPP.

DOE should include that court decision in its supplement to the West Valley FEIS and clearly state in any FEIS and ROD that no reclassification of HLW will be done regarding West Valley HLW.

The public comment process on the West Valley EIS was inadequate.

DOE's NEPA regulations state that public notice "should focus on reaching persons who may be interested in or affected by the proposal." 10 CFR 1021.313(d). CEQ's NEPA Regulations require that agencies shall "make diligent efforts to involve the public in preparing and implementing their NEPA procedures." 40 CFR 1506.6(a).

DOE did not make diligent efforts to notice and distribute the West Valley draft EIS to affected agencies and organizations in New Mexico. In preparing the supplemental EIS that SRIC believes is required, DOE should notice agencies and organizations, including state and local governments, in New Mexico, Washington, Oregon, Idaho, Tennessee, and South Carolina if it maintains that alternatives A or B are to be considered.

Thank you for your full consideration and response to these comments.

Sincerely,



Don Hancock