

May 20, 1997

**BY MAIL**

Hon. Federico Peña  
 Secretary of Energy  
 U.S. Department of Energy  
 1000 Independence Avenue, S.W.  
 Washington, D.C. 20585

**Commonwealth Edison MOX Fuels Proposal**

Dear Secretary Peña:

As you may be aware, Commonwealth Edison Company of Illinois ("ComEd") plans to lead an international consortium in bidding for Department of Energy ("DOE") contracts to manufacture surplus warhead plutonium into mixed oxide ("MOX") fuel and then to irradiate this fuel in one or more of ComEd's licensed nuclear power plants. In light of outstanding questions raised by the Nuclear Regulatory Commission (the "Commission") concerning ComEd's safety record, we think ComEd is an entirely inappropriate candidate for participation in any MOX plutonium disposition program. We have today sent a letter to the Chairman of ComEd outlining our views. A copy is attached.

We understand that DOE is presently preparing a request for proposals to secure MOX fuel services. We strongly believe that DOE, in the context of that process, should determine that ComEd would not be considered a "responsible prospective contractor" within the meaning of Part 9 of the Federal Acquisition Regulation (the "FAR"). There are at least three grounds for such a determination.

First, a "responsible prospective contractor" must "[h]ave adequate financial resources to perform the contract." FAR § 9.104-1(a). But, ComEd is burdened by "stranded costs" exceeding \$9.78 billion, and its financial weaknesses may ultimately impact its ability to carry out the MOX program.

Second, a "responsible prospective contractor" must "[b]e able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments." FAR §9.104-1(b). As set forth in the attached letter, there are serious questions whether ComEd can today meet its existing obligations to ensure the safety of its licensed reactors, let alone whether it could do so, and at the same time fulfill contractual commitments to DOE, if it assumed substantial, new responsibilities for the MOX program.

Third, a "responsible prospective contractor" must "[h]ave the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control procedures, quality assurance measures, and safety programs applicable to materials to be produced or services to be provided . . .)." FAR § 9.104-1(e). Needless to say, ComEd's dismal record of safety performance, as documented by the Commission, creates grave doubts whether, among other matters, it is capable of managing the provision of MOX services with adequate quality assurance measures and safety programs.

In awarding contracts for MOX services, DOE must of necessity be sensitive to the implications for the Commission's licensing responsibilities. ComEd's participation in the MOX program would almost surely detract from efforts to resolve current safety problems at licensed facilities. At the same time, its inability to date to resolve those problems scarcely engenders confidence in its ability effectively to address the substantial, new safety issues raised by irradiating weapons-grade plutonium MOX fuel in conventional light water reactors.

In such circumstances, it makes most sense to exclude ComEd from the DOE procurement process. Simply stated, ComEd should be told that it must get its own house in order and that it will not be permitted to assume the additional challenges of manufacturing and using MOX fuel. In a letter to NRC Chairman Shirley Ann Jackson, we have advised her that were ComEd actually to apply for license amendments allowing it to irradiate MOX fuel, a number of our organizations would vigorously oppose its applications.

We appreciate your consideration of our views. We would be more than happy to meet with you and DOE staff to discuss them in further detail and answer any questions that you might have.

Sincerely,

Paul Leventhal  
 Nuclear Control  
 Institute

Thomas B. Cochran  
 Natural Resources  
 Defense Council

David Kraft  
 Nuclear Energy  
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Daniel Becker  
 Sierra Club

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Jim Adams  
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Marilyn Elie  
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Jonathan Parfrey  
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New York	Watchdog Group Kansas	Social Responsibility Los Angeles, CA
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Alice Slater Global Resource Action Center for the Environment	George Crocker North American Water Office Lake Elmo, MN	Bruce Drew Prairie Island Coalition Minneapolis, MN
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Elizabeth Apfelberg San Luis Obispo Mothers for Peace San Luis Obispo, CA	Jerry Polk Citizens Action Coalition of Indiana	Betty Schroeder Arizona Safe Energy Coalition
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Marion Pack Alliance for Survival Orange County, CA	Roger Herried Abalone Alliance San Francisco, CA	Wendy Oser Nuclear Guardianship Project San Francisco, CA
Clare Greensfelder Plutonium Free Future Berkeley, CA	Susan L. Hiatt Ohio Citizens for Responsible Energy, Inc.	David Agnew Citizens at Risk Cape Cod, MA
Susan Lee Solar Sensible Mothers and others Against Radioactive Transport Austin, TX		

Attachment

cc: Members of the Commission

**Federico Peña's Response, July 10, 1997**[What's New](#)[Plutonium Disposition Page](#)[Home Page](#)[nci@mailback.com](mailto:nci@mailback.com)