RADIOACTIVE MATERIAL TRANSPORTATION: THE UTILITIES' PERSPECTIVE ON THE LEGAL AND REGULATORY ENVIRONMENT

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ABSTRACT

The respective roles of federal and state governments in regulating the transportation of radioactive materials must be better defined if these materials are to move safely and efficiently. Recent increases in shipments of spent fuel, which will accelerate as the Nuclear Waste Policy Act is implemented by the Department of Energy ("DOE"), has heightened interest in this issue. This paper explains the electric utility industry's perspective on these matters as reflected in the industry's comments on the DOE's Transportation Business Plan and comments in a recent proceeding convened by the Department of Transportation to consider the consistency with federal law of an Illinois law imposing a $1000 per cask fee on shipments of spent fuel through the state. Also discussed are the industry's view on the transportation aspects of the DOE's proposal to include a monitored retrievable stroage facility as an integral part of the federal waste management system and the appropriate role of states, localities, and tribal authorities in the regulation of the highway and rail routing of radioactive materials.

INTRODUCTION

The electric utility industry's perspective on a number of the major issues that have arisen with respect to the transportation of radioactive materials, focusing on the transportation of spent fuel, will be discussed today. This presentation is based on my experience over the past several years as counsel to the Electric Utility Companies' Nuclear Transportation Group (the "Group").

The Group consists of 36 investor-owned and publicly-owned electric utilities responsible for the operation or construction of 98 nuclear power reactors. The ultimate objective of the Group is to support the ability of utilities to operate nuclear power plants safely, prudently and economically and to transport in the same manner the fuel cycle materials essential to that operation. To achieve this objective, the Group provides an industry focus on proposed legislation, regulations and other transportation-related activities at the federal and state levels, comments in Department of Transportation ("DOT") inconsistency proceedings, and participates in litigation involving the transport of radioactive materials.

Another principal objective of the Group is to provide effective electric utility oversight of, cooperation with, and input to the Department of Energy ("DOE") in order to ensure that transportation of commercial spent fuel under the Nuclear Waste Policy Act of 1982 ("NWPA") takes place in a safe, timely and cost-effective manner.

In reviewing the Group's major activities in the past few months, a few topics stand out as warranting discussion today. These include the DOE's actions in implementing the NWPA, most notably the development of the Transportation Business Plan and the transportation aspects of the DOE's proposal to construct and operate a monitored retrievable storage facility as an integral part of the federal waste management system under the NWPA, the DOT inconsistency proceeding concerning the Illinois law imposing a $1000 per cask fee on shipments of spent fuel through Illinois, and the respective roles of the federal and state governments in the regulation of the routing of radioactive materials shipments. In the time available, I will attempt to provide you with a brief overview of the electric utility industry's position with respect to each of these topics.

Background - Legal and Regulatory Environment

Before addressing the transportation issues discussed above, I would like to provide you with a basic understanding of the constitutional and statutory bases for federal and state regulation of radioactive materials transport. I will not discuss this topic in detail, however, because it will be covered in the presentations of the other panel participants.

Jurisdiction over the transport of radioactive materials, including spent fuel and other nuclear waste, is vested primarily in the federal government. This authority stems from two provisions of the United States Constitution -- the Commerce Clause and the Supremacy Clause. The Commerce Clause, by its terms, confers power on Congress to regulate interstate and foreign commerce. However, even in the absence of an affirmative exercise of the commerce power by the federal government, the Commerce Clause prevents the states from erecting barriers to the free flow of interstate commerce. The Supremacy Clause elevates federal law above that of the states in the event of an inconsistency or conflict, pursuant to what is known as the preemption doctrine.

Acting primarily pursuant to its authority under the Commerce Clause, Congress has enacted several laws which together create a comprehensive federal system for the regulation of radioactive materials transport. These laws include the Hazardous Materials Transportation Act ("HMTA"); Atomic Energy Act of 1954; Federal Railroad Safety Act ("FRSA"); Low-Level Radioactive Waste Policy Act of 1980, as amended by the

Low Level Radioactive Waste Policy Amendments Act of 1985; and the Nuclear Waste Policy Act of 1982. In some of these laws, including the HMTA and FRSA, Congress included an express preemption provision explaining the extent to which the law, and the regulations issued thereunder, preempt state and local laws. If a law contains no express preemption provision, its preemptive effect depends on the extent to which Congress intended to enact a pervasive regulatory scheme that preempts the field.

The authority of state and local governments to regulate the transportation of radioactive materials stems from their inherent police powers to protect the health and safety of their citizens, and the Tenth Amendment to the Constitution, which reserves to the states those powers not delegated to the federal government. State and local regulatory authority, however, is defined largely by the scope of the exercise of federal regulatory authority, because states may not enforce laws or regulations that restrict the flow of interstate commerce or are preempted by federal laws or regulations.

Although the federal government has exercised its authority under the Commerce Clause and Supremacy Clause to design a comprehensive system of federal regulations governing radioactive materials transportation, states and localities continue to have an important responsibility to exercise, if they choose, through the promulgation and enforcement of appropriate transportation regulations affecting nuclear fuel cycle materials. Although shipments of radioactive materials have taken place in this country over the past forty years with an excellent safety record, there has been an increased focus by state and local officials on transportation issues because of several factors. Among these factors are the shipments of spent nuclear fuel resulting from the U.S. District Court's order issued in the case of New York State Energy Research and Development Authority v. Nuclear Fuel Services, et al., directing several utilities to remove their spent fuel from the West Valley, New York facility, continuing shipments of spent nuclear fuel to the Morris, Illinois facility operated by the General Electric Company to alleviate on-site storage problems faced by some utilities, shipments destined for DOE facilities under various DOE civilian programs, and the prospect of increased shipments pursuant to the NWPA. State and local concern over these factors has resulted in the enactment of laws and regulations governing these shipments which, in many cases, have disrupted the shipments and resulted in litigation.

The electric utility industry shares the interest of state and local officials in the safe, efficient movement of radioactive materials and believes that state and local governments have an important role to play in the regulation of this activity. However, the industry also believes that state and local regulatory action must fit within the framework for the interaction of federal and state regulation established by Congress and the responsible federal agencies. These beliefs form the basis for the utility perspective discussed in the remainder of my presentation.

The Nuclear Waste Policy Act of 1982

The NWPA establishes a schedule for the federal government's planning, design, development, and construction of nuclear waste repositories and storage facilities, and makes the DOE responsible for shipments of spent fuel from nuclear power reactors to such facilities. The success of DOE in accomplishing its statutory mandate is dependent upon the siting and construction of a suitable repository, and ultimately repositories, and the establishment of a transportation system that can safely and efficiently (and we hope, cost-effectively) transport these materials from reactor sites to the ultimate repositories.

The transportation provisions of the NWPA, and its legislative history, demonstrate that Congress did not intend for the NWPA to alter the status quo in the current relationship among federal, state, and local regulation of spent fuel transport. The NWPA provides that transportation of spent fuel pursuant to the NWPA by DOE to storage facilities must be in full compliance with regulations issued by the Nuclear Regulatory Commission ("NRC") and DOT, and that in arranging for transportation, the DOE must contract with private industry to the fullest extent possible. Section 9 of the NWPA expressly states that "[n]othing in this chapter shall be construed to affect Federal, State, or local laws pertaining to transportation of spent nuclear fuel or high-level radioactive waste." Thus, the current legal and regulatory framework governing radioactive materials transportation, and the appropriate roles of the federal and state governments within that framework, will form the basis for the regulation of spent nuclear fuel shipments under the NWPA.

Transportation Business Plan

DOE is in the process of developing a Transportation Business Plan to implement its responsibility to develop the technical and operational aspects of the transportation system to be utilized under the NWPA, and to stimulate dialogue between the DOE and other potential participants in the establishment and operation of the transportation system. The Group has participated actively in the development of this document through the submission of comments on the draft Transportation Business Plan and participation at the DOE's workshop, and it plans to continue this participation as the Business Plan is implemented. A few of the Group's major comments are summarized below.

First, the Group believes that DOE should specify and define the electric utility industry's role in the development and implementation of the Business Plan. The utility industry is not only the customer whose needs must be addressed by the DOE in implementing the Business Plan, but also has technical expertise in the handling and shipping of spent fuel which should be utilized by the DOE in the best interests of the consumers of electricity. It is only through an ongoing exchange of ideas and information that the utility industry and the DOE can be assured that the transportation program developed under the NWPA will be adequate to meet the utility industry's needs in a safe, timely, and cost-effective manner. The type of problems that would be caused by a lack of sufficient utility input include, for example, a compatibility problem between the cask fleet and individual utility handling facilities. Accordingly, utilities believe strongly that the DOE should specify in the Business Plan the role of the utility industry in the cask procurement and design processes, as well as all other activities relating to implementation of the Business Plan. In this regard, the DOE's procurement regulations and the NWPA must be read together to provide a role for the utility industry in the cask procurement and design processes to ensure that utility interests are fully addressed.

Second, with respect to the procurement of the fleet of casks, the Group does not support the development

of single purpose/single mode casks, as suggested in the draft business plan. Rather, the Group believes that the DOE should encourage prospective cask developers to attempt to design casks that can be used with more than one transportation mode and to carry more than one type of material (e.g., standard spent fuel, consolidated fuel, and nonstandard spent fuel) for reasons of safety, efficiency and cost-effectiveness, and to limit the possibility for interface problems.

For example, there is no justification for the development of barge-specific casks at this time. If it were determined that barge transport is a viable option, it is likely to be more cost-effective to utilize rail casks mounted on barges rather than to design barge-specific casks. Most, if not all, casks shipped by barge also will have to be designed to be moved by rail or truck at either end of the barge shipment segment.

Accordingly, there should not be a separate procurement process for barge casks. Rather, casks should be designed which can be moved in a rail/barge or truck/barge combination. DOE also should recognize that the use of different "baskets" can result in internal configurations which suit many needs and thereby eliminate the need for multiple cask designs. In addition, unless and until there is an established need for "specially designed equipment", which was referenced in the draft business plan, DOE should not commit any resources to the development of such equipment.

Third, the Group has urged the DOE to focus the Business Plan on such issues as engineering, cost, technical and operational considerations, transportation safety and efficiency, and regulatory compliance with respect to the development of the transportation program. The Transportation Institutional Plan, on the other hand, is the appropriate vehicle to address such factors as the need for and method of assuring regulatory stability, methods for assuring input from federal, state and local governments in the transportation program, cost-effective mechanisms for mitigating perceived impacts of transportation, and mechanisms for the resolution of institutional issues. This distinction between business and institutional issues is important, because the failure appropriately to classify an issue could result in confusion over the appropriate vehicle for resolving an issue and unnecessary delay in the implementation of the business aspects of the overall plan.

For example, as a business matter, prototype casks should be tested only as necessary to verify analytical models or the results of tests performed on the engineering models. "Public acceptance testing" of prototype casks is an institutional issue, not a business issue. Reference to public acceptance testing in the Business Plan would serve no purpose other than to obscure the technical issues that are appropriately addressed in performance testing with what might be necessary or desirable activities for accomplishing another, far different, purpose.

The Integral Monitored Retreivable Storage Facility

Another aspect of the DOE's implementation of the NWPA that I would like to discuss is the proposal to include a monitored retrievable storage facility as an integral part of the federal waste management system, focusing on the transportation aspects of the proposal.

The DOE intends to submit to Congress a proposal to construct and operate an integral monitored retrievable storage facility ("IMRS") at the Clinch River Site in Roane County, Tennessee. The IMRS facility would be an integral part of the waste management system. Although its primary function would be the preparation and packaging of nuclear wastes for disposal, including spent fuel rod consolidation, the IMRS would serve many other functions. For example, the IRMS would improve DOE's ability to develop and operate the functions of the waste management system by separating the scheduling of spent fuel receipt from waste emplacement operations and by enabling DOE to focus its activities at the repository site on long-term waste isolation rather than the front-end functions of the disposal process.

There are several transportation benefits that would ensue if the IRMS were approved by Congress. However, these benefits are not related to a reduction in the radiological impacts of spent fuel transportation. The radiological doses received by the public for all site-design combinations from normal facility operation, postulated accidents, and transportation of spent fuel to and from an IMRS are far below the regulatory limits set by the NRC, and consistently less than 1 percent of the dose received by the same population group from naturally occurring background radiation. Because spent fuel would be consolidated at the IMRS and shipped to the repository in larger rail casks than could be used for reactor to repository shipments, there would be a reduction in total transportation shipment-miles traveled relative to the no-IMRS system. Transportation effects would be shifted to the Eastern region of the country relative to the no-IMRS system and would increase in the area surrounding the IMRS facility. However, as mentioned previously, the radiation risk to the public from transportation in any event is so low that a slight reduction, increase or shift in transportation risk should not serve as a justification for (or argument against) the IMRS proposal.

There are significant nonradiological transportation benefits, however, that would result from the approval of the IMRS proposal. Once the IMRS proposal is approved by Congress, there will be a known destination point for shipments of spent fuel from reactors. The IMRS site would be known with certainty four or five years before the selection of the site for the first repository. Accordingly, once the IMRS were approved, DOE immediately could begin identifying potential transportation routes and working with state and local governments to resolve technical and institutional issues such as necessary emergency planning and the need for state inspection programs. In addition, the separation of waste acceptance schedules from waste emplacement schedules would allow DOE to accept spent fuel earlier and at an increased rate during the first years of repository operations; would reduce the opportunity for delays in the development of transportation, acceptance, and packaging functions to affect repository schedules; and would provide DOE with greater control over transportation logistics.

As additional benefit from the utility perspective is that the decision to build an IMRS would provide a better basis for utilities to plan for their storage needs, reduce the buildup of spent fuel at reactors, and improve the efficiency of the waste acceptance process by increasing the spent fuel receipt rate in the initial years of system operation. In addition, once they know the destination for their spent fuel

shipments, utilities can join DOE in working with the affected states and localities to educate them about the nature of spent fuel shipments and to determine the appropriate scope of state and local activities with respect to the shipments.

Finally, with respect to transportation costs, there is an increased quantifiable cost associated with moving the fuel from reactor to IMRS to repository, rather than directly from reactor to repository. On the other hand, the reduction in total shipment-miles resulting from the use of large capacity rail casks from the IMRS to the repository would reduce system transportation costs. This reduction in system transportation costs may offset, at least to some degree, the increases in facility costs for the waste management system. The total cost of the waste management system developed under the NWPA is an issue of concern to both utilities and their ratepayers. Utilities are now contributing some $25 million a month into the Nuclear Waste Fund established under the NWPA. These contributions are funded through assessments on utility ratepayers. A large percentage of this sum will eventually be devoted to transportation-related activites. It is the utilities' obligation-as it is the obligation of responsible state officials-to see to it that these sums are properly spent.

The DOE Inconsistency Proceeding Concerning the Illinois Spent Fuel Transport Fee

The DOT has the authority under the HMTA to promulgate regulations for the safe transport in commerce of hazardous materials, including radioactive materials. Acting pursuant to this authority, DOT has enacted a comprehensive body of regulations, known as the Hazardous Materials Regulations ("HMR"), pertaining to, among other things, the placarding, labeling, packaging and highway routing of radioactive materials.

As I mentioned previously, the HMTA contains an express preemption provision. Pursuant to §112(a) of the HMTA, a state or local requirement that is "inconsistent" with the HMTA or an HMR issued thereunder is automatically preempted. The legislative history explains that Congress included this preemption provision in the HMTA "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." A determination of consistency can be made by either DOT, or a federal or state court.

If a state or local requirement were determined to be inconsistent with federal law or if inconsistency were admitted, the state or locality can apply to DOT for a nonpreemption determination. Pursuant to §112(b) of the HMTA, the DOT may exempt an inconsistent state or local requirements from preemption if it determines "that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of [the HMTA] or of regulations issued under [the HMTA] and (2) does not unreasonably burden commerce."

Pending before DOT is a preceeding to determine the consistency of an Illinois law which imposes a fee of $1,000 per cask on owners of spent fuel being transported through Illinois. The request for an inconsistency ruling was filed by Wisconsin Electric Power Company ("WEPCO") after it was assessed and paid under protest $15,000 for shipments of spent fuel through Illinois. These shipments were made in response to the NYSERDA case I discussed earlier, which ordered several utilities, including WEPCO, to remove their spent fuel from the West Valley, New York facility. The purpose of the fee, according to Illinois, is to fund the development of a state emergency response program that is prepared to respond in the event of an accident occurring during the transportation of spent fuel. According to Illinois, the state conducts inspections of spent fuel shipments traversing the state as part of this emergency response program.

Pursuant to its regulations, DOT noticed the proceeding in the Federal Register and solicited public comments. Ths Group and WEPCO submitted detailed comments in which they took the position that the Illinois fee provision is inconsistent with the HMTA and HMR because it presents an obstacle to the accomplishment and execution of the HMTA and the HMR. The DOE also submitted comments supporting WEPCO's application.

In determining the consistency of the Illinois fee provision, the DOT must examine and balance the justification for the fee with its effect on the transportation of spent fuel. In the Group's opinion, Illinois has an innately governmental responsibility to develop an on-the-scene emergency preparedness capability for all hazardous materials shipments, including spent fuel shipments. The type of on-the-scene emergency response that would be required in the remote event of a spent fuel transportation accident differs little from that required in the event of a transportation accident involving other hazardous materials. Moreover, the federal government has developed an extensive program, coordinated by the Federal Emergency Management Agency, to ensure that state and local governments are aware of the nature of the radioactive materials transported nationwide, the risks posed by such transportation, and the appropriate response in the event of an accident. There is also an extensive federal response system that will provide support to the states in the event of a radioactive materials transport emergency.

These federal programs are unique to radioactive materials transportation, despite the fact that the risks posed by shipments of radioactive materials that are made in accordance with NRC and DOT regulations, including spent fuel shipments, are markedly less than those for some other hazardous materials shipments. For these reasons, the Group believes that Illinois' decision to collect a $1000 per cask fee to fund an emergency response program uniquely tailored to spent fuel transport accidents, while failing to collect a similar fee with respect to other hazardous materials shipments, in unduly discriminatory in nature and raises a question as to the actual need for the program.

The Group similarly believes that there is no justification for singling out spent fuel shipments from all other hazardous materials for inspection purposes. In contrast to other hazardous materials shipments, every aspect of spent fuel shipments is subject to comprehensive federal regulations. These shipments are subjected to extensive inspections at their origin and at destination. There is little benefit to be gained by repetitive state inspections while the shipment is enroute. To the contrary, enroute inspections could unnecessarily increase personnel exposure, violating the ALARA principle, and, if state personnel are not properly trained, could cause unwarranted alarm.

Even assuming there were a sufficient justification for the fee, its effect on spent fuel shipments must be considered. The primary radiological risk from

spent fuel shipments is that of normal transportation exposure - i.e., non-accident exposure. This exposure varies proportionately with the time enroute. Accordingly, DOT's highway routing regulation requires that the shipper utilize a preferred route selected to reduce time in transit. It should be emphasized, however, that DOT regulations do not require that the shipper utilize the shortest route. NRC regulations governing route approvals also require that a highway route be chosen in accordance with DOT regulations. A utility faced with a $1000 per cask fee for spent fuel shipments through Illinois would attempt to devise a route that bypasses Illinois. Thus, the Illinois fee could result in the diversion and circuitous routing of shipments thereby increasing travel time and population exposure. If the NRC were to refuse to approve a route that bypassed Illinois, the shipper would be forced to incur a financial penalty or forego the shipment. Either of these options, circuitous routing or a financial penalty, presents a situation which conflicts with the goals of ensuring compliance with the HMR and of safety and uniformity of regulation underlying the HMTA.

Of course, utilities do not oppose the development of state emergency response or inspection programs. Utilities do object, however, to the singling out of radioactive materials from all other hazardous materials for special treatment when there is no justification therefor. The facts do not indicate the need for a state emergency response program tailored specifically to spent fuel shipments. Nor do the facts demonstrate a radiological safety benefit to be gained by repetitive state inspections of spent fuel shipments to determine compliance with radiological-based regulations.

If a state decides to develop an emergency response program uniquely tailored to radioactive materials or spent fuel shipments, for example, because the state believes such a program promotes public acceptance of such shipments, it should not attempt to fund such a program by levying fees on spent fuel shipments. Extensive assistance in developing such a program is available from the federal government on request. To the extent a state takes advantage of the federal assistance available but nevertheless incurs expenses in developing an emergency response program, the funding for the program should come out of general state revenues as does the funding for other governmental services provided by the state. A fee, in and of itself, has the potential to cause shipment diversion, thereby imposing a disproportionate burden on neighboring states, and increased travel time, thereby increasing exposure to the public. If one fee provision would cause delay and circuitous routing, not to mention the imposition of a financial burden on shippers, the effects would be magnified by the enactment of numerous state fee provisions.

The electric utility industry's keen interest in the result of the DOT's consistency determination with respect to the Illinois' spent fuel shipment fee stems in part from the fact that the DOT's consistency determinations will form a major part of the regulatory framework for spent fuel shipments by DOE pursuant to the NWPA. The issues raised in the Illinois proceeding, including the extent to which a state should be developing independent emergency response and inspection programs for spent fuel shipments, are the type of issues that should be resolved prior to the commencement of shipments under the NWPA. As mentioned previously, Congressional authorization of the DOE's IMRS proposal will aid in the timely resolution of these issues by enabling DOE to identify and begin to work with those states that will be impacted by NWPA shipments to define the appropriate scope of state regulatory activity.

The Routing of Radioactive Materials Shipments

One issue that has always been of concern to states and localities, and which promises to attract even more attention as the planning for NWPA shiments proceeds, is the appropriate role of state and local governments in the selection of highway and rail routes for radioactive materials shipments.

The DOT has the express authority under the HMTA to promulgate routing regulations for the highway and rail shipment of radioactive materials. DOT has exercised this authority, however, only with respect to highway shipments. On January 19, 1981, the DOT issued a comprehensive regulation, commonly known as HM-164, governing the highway routing of radioactive materials. By way of background, DOT held eight public hearings and analyzed more than 1,600 comments over a three year period before issuing HM-164, which was designed to take state and local interests into account to the maximum extent possible consistent with the development of a uniform, safe, and efficient national highway routing framework for radioactive materials transport.

For highway route controlled quantities of radioactive material, which includes spent fuel, HM-164 requires transport over a preferred route selected to reduce time in transit. A preferred highway route consists of (1) an Interstate System highway, including the use of an Interstate System bypass or beltway around a city when available, or (2) a state-designated route selected by a state routing agency in accordance with DOT guidelines or an equivalent method of risk assessment. Thus, HM-164 provides a federally designated system of highways for the routing of spent fuel and other highway route controlled quantities of radioactive materials the use of which states may require and enforce if they choose. However, states or Indian tribes may specify an alternative to the use of the Interstate System highway through their jurisdictions following the procedure for designating alternative routes set forth in HM-164. That procedure requires that an alternative route be selected by a "state routing agnecy", which is an entity authorized to impose intrastate routing requirements on carriers of radioactive materials, in accordance with DOT guidelines or an equivalent routing analysis that adequately considers overall risk to the general public. In addition, a state routing agency must consult with affected local jurisdictions and any other affected states prior to designating an alternative route to ensure consideration of all impacts and continuity of designated routes and to combat the "not in my backyard" syndrome.

The Group believes that HM-164 establishes an appropriate framework for states, localities, and Indian tribes to participate in highway routing decisions. With respect to NWPA shipments, DOE should provide reasonable technical assistance to states, localities, and tribes in their consideration of alternative routes, but the actual selection should be made by states or tribes in accordance with the procedure set forth in HM-164.

DOT has deliberately chosen not to exercise its authority to establish routing regulations governing railroad shipments of radioactive or other hazardous materials on the grounds that such regulations are not needed. The railroad industry consistently has opposed regulations governing the rail routing of shipments of hazardous materials on the gorunds that they are unnecessary and that routing of trains should be decided by

railroad and shipper management based upon many factors, including safety. The electric utility industry agrees with this position insofar as shipments of nuclear fuel cycle materials are concerned.

State governments historically have had far less control over railroads than they have had over highways within their jurisdictions. Because of their interstate nature, and the fewer routing options available, routing decisions traditionally have been within the control of the shippers and railroads. For NWPA shipments, DOE should work with the railroads to designate particular routes for spent fuel shipments taking all relevent factors into account, including safety and cost. For both practical and legal reasons, states, tribes and localities do not have rights of route selection for rail routes equivalent to those provided by HM-164 for highway routing. However, states, tribes and localities should coordinate with DOE to ensure that the appropriate factors in route selection are taken into account.

CONCLUSION

Several consistent observations can be gleaned from the topics discussed above, First, utilities believe that pursuant to DOT and NRC regulations, shipments of radioactive materials, including spent fuel, have been and will continue to be transported in a safe manner that results in an acceptable level of risk to public health and safety. Second, utilities believe that states, tribes and localities have an important role to play in the regulation of the transportation of nuclear fuel cycle materials within the current regulatory framework. State, tribal and local regulatory actions which conflict with this regulatory framework, however, will prevent the safe, efficient, and cost-effective transportation of these materials. Third, utilities want to address and resolve the issues of concern to states, localities and tribes regarding the transportation of radioactive materials as soon as possible in order to prevent the disruption of individual shipping campaigns while these issues are being resolved, to avoid the need for litigation, and to pave the way for safe, efficient and cost-effective shipments under the NWPA in a manner which is acceptable to the nation.