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Texas Low-Level Radioactive Waste Disposal Compact Commission
Margaret Henderson, Interim Executive Director
3616 Far West Blvd.
Suite 117, #294,
Austin, TX 78731

Sent via fax to: margaret.henderson@tllrwdcc.org

Subject: Comments on Proposed Rule, 31 TAC §§675.21 – 675.23
By Fairewinds Associates, Inc

Dear Ms. Henderson and Commissioners,

We would like to thank the Texas Low-Level Radioactive Waste Disposal Compact Commission for this opportunity to comment on the proposed export/import rule.

Fairewinds Associates, Inc formally requests that the Commission not proceed with the import portion of the rule, as it is not in the best interest of Vermonters and the State of Vermont. Fairewinds Associates, Inc is a paralegal services and expert witness testimony firm on contract as a consultant to the Joint Fiscal Committee of the Vermont State Legislature. Additionally, Arnie Gundersen, Chief Engineer for Fairewinds Associates, Inc, is an appointee to the legislatively created Vermont Yankee Public Oversight Panel tasked with evaluating the viability of relicensing the Entergy Nuclear Vermont Yankee Power Plant based upon its reliability.

Because the Texas Compact Commission has no staff and no attorney and only an interim person, there has been no legal review to this process. We urge the Commission to not pass this language without review by State of Vermont Legislative Legal Counsel. It is our belief that the current legal language in this proposed rulemaking puts Vermont at a liability for additional and significant costs for which the State Legislature has not given legislative authority and budgetary approval, and that the State of Vermont may not have the resources to sustain.

Capacity

The Entergy Nuclear Vermont Yankee (ENVY) Power Plant is scheduled to either be shut down in 2012 or relicensed for an additional 20-years. Either way, the State of Vermont will require all of the currently allotted space at the Texas Compact facility. Vermont Yankee will shut down in 2012 if it is not allowed to relicense for an additional 20-years. Currently, Vermont Yankee's shutdown in 2012 looks likely given that the

Vermont Senate voted against relicensure on February 24, 2010. At the present time, Vermont is the only state in the country able to vote for or against relicensure based upon reliability. During this evaluative process, which required many months of expert reports, testimony, and legislative review, the State of Vermont relied upon the Texas Compact contractual obligation to meet its commitment to accept Vermont's low-level radioactive waste.

First, Vermont's contract with the Compact is based upon the premise that there will be the requisite capacity for Vermont's low-level radioactive waste disposal needs at the Compact facility in Texas. While the current language in §675.23(b) appears to reserve capacity at the site for Vermont's disposal needs, Fairewinds Associates, Inc believes that the proposed rule is inadequate for Vermont's needs. We believe that the rule must specifically reserve in numerical figures the agreed upon space at the Compact facility so that Vermont is guaranteed adequate storage for its waste.

According to our review of the license for the Texas Compact Facility, the Compact capacity is limited to 2.31 million cubic feet. The Compact Commission's volume rule estimates Vermont's disposal needs at 1 million cubic feet, and we believe the entire 1 million cubic feet will be required by Vermont. The current decommissioning assessment by Entergy subsidiary TLG services is a generic site assessment dating back to 2006, and not the site-specific assessment necessary to make a determination regarding the amount of space required for low-level storage. Additionally, the 2006 assessment does not include the recently uncovered leaking buried pipes and subsequent soil contamination by tritium, cesium, manganese, zinc and cobalt. In light of these recent findings, it is critical to Vermont's needs that the 1 million cubic feet of space contractually reserved for Vermont's low-level radioactive waste must be reserved in the import rule for use beginning in 2012 not at some abstract time in the distant future.

International Waste And New Nuclear Reactors

Second, by proposing to take either international waste or waste from newly proposed reactors the Texas Compact Facility risks using its allocated space before being able to accept the anticipated waste from the decommissioning of Vermont Yankee. In fact, such an action may leave both Vermont and Texas without adequate fully licensed storage capacity.

Vermont Responsibilities As Member Of The Compact

Third, as a party to the Compact with members on the Compact Commission, Vermont has some responsibility for the actions of the Commission. If this rule is approved, the Commission will be making potential legal commitments that it may not be able to meet. Therefore, such an action seems like the Compact Commission may be putting Vermont at financial risk. As yet there is no construction at the site, thus it is our opinion that the Compact Commission should not be considering any rule allowing the importation of any additional waste until the site itself is actually operational.

Fourth, since Vermont is liable for its pro-rata share, this rulemaking creates a huge potential liability and budgetary concern that has not been reviewed by Vermont's State Legislature. It appears to us that the language for the potential contracts for additional imports and liabilities has the potential to cost Vermont significant amounts of money if

this rulemaking proceeds in such a fast-paced manner. Approval of this rule opens the door to a ticking clock at the same time the Commission has no funds to fulfill its current legal obligations responsibly and most likely even legally. According to this rule and Commission funds allowing, every reactor in the country may be sending in applications demanding a timely review by an organization that has neither staff nor any legal counsel representing the Compact's interests and contractual responsibilities.

Since the Texas Compact Commission has no staff and no counsel of its own, there has not been a thorough legal review to this process. We urge the Commission to not pass this language without adequate review by the State of Vermont, its Legislative Legal Counsel, and its Attorney General. It is our belief that the current legal language in this proposed rulemaking puts Vermont at a liability for significant costs that Vermont may not have the resources to sustain.

Lastly, the private company WCS that is running this radioactive dump is alleging that it may have to file for bankruptcy if it is not able to import significant amounts of additional waste, and this is without the site even constructed. As stated earlier, Vermont is responsible for its pro-rata share. In our opinion, it makes no sense for Vermont to be absorbing the cost of hiring additional Compact staff and Compact legal counsel in an effort to protect the contractor, who willingly sought this radioactive waste contract, but now after being awarded the contract says it will go bankrupt unless the scope of the project is increased. Not only would Vermont have to share in the Compact's burgeoning cost burden of adding staff and legal counsel in order to evaluate other potential users of this low-level waste site, but then Vermont may also lose the allocated space it requires for a timely decommissioning of Vermont Yankee.

In closing, we are gravely concerned that this rulemaking is occurring in a rushed and ill-advised manner. We ask that you postpone this rulemaking until the site is fully operational and the items in question receive adequate review. Should you have any questions or wish expert testimony, we are available to confer with the Commission. Thank you.

Sincerely,

Margaret Gundersen
President, Fairewinds Associates, Inc

Arnie Gundersen
Chief Engineer, Fairewinds Associates, Inc

Cc: State of Vermont Joint Fiscal Office, Steve Klein
Speaker of the House Shap Smith
President of the Senate Pro Tempore Peter Shumlin
Attorney General William Sorrell