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January 17, 2001

The Honorable Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Chairman Meserve:

When we met in Las Vegas, on July 14, 2000, our discussion included my thoughts on a possible modification of the Commission's licensing procedure if the Yucca Mountain site becomes the subject of a high-level radioactive waste repository license application.

My proposal was that the Commission consider, for purposes of a Yucca Mountain repository application, the role of the Commission staff be modified such that the staff is not a party advocating a license in the hearing before the Atomic Safety and Licensing Board. Instead, the role of the staff would be to review the License Application and Safety Analysis Report submitted by the Department, and prepare a Safety Evaluation Report containing its findings and recommendations. This report would then be available for use by the applicant and all other parties to the litigation. The burden of demonstrating the basis for a finding of reasonable assurance that the proposed repository would meet all established safety requirements and standards would remain squarely with the applicant in the licensing hearing.

Licensing a high-level radioactive waste repository is a unique situation that goes far beyond business-as-usual for the Nuclear Regulatory Commission. Among the factors that make this activity unique are the fact that another agency of the U.S. government, the Department of Energy, will be the license applicant; a reasonable assurance determination must be made based on projections of performance of geologic and engineered barriers' for thousands of years into the future; and, once the facility is closed, there can be no reliance on institutional controls to assure the long-term protection of future generations from the danger of the buried waste. There are no precedents or experts in dealing with these three daunting factors associated with licensing a geologic repository for long-lived highly radioactive wastes.

I have proposed a procedural modification in the licensing process in an attempt to mitigate the fact that an agency of the federal government will be the applicant for a permit from a federal regulatory agency, when the two agencies have a common ancestry, the Atomic Energy Commission. If the Commission staff participates in the licensing hearing as an advocate for a license being granted to another federal agency with a common policy heritage, the objectivity of the regulatory agency will be in considerable question. Other parties would find themselves in the position of defending their contentions against the full weight and resources of the federal government. This unfortunate situation would be contrary to the primary purpose of the hearing, which is for the applicant to demonstrate the merit and robustness of the safety case presented in its application.

I have not cast this proposal as an administrative Petition for Rulemaking because I believe it is important that the concept of the proposal be considered on its own. The Commission has numerous avenues by which it could seek comment from the interested public on this concept for a unique license hearing procedure, and then, if appropriate, move forward with a formal administrative rulemaking, eg. an amendment to the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders (10 CFR Part 2).

I appreciate your interest in considering this proposal and look forward to hearing from you on this matter. If you have question about this unique licensing concept, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a large, sweeping flourish extending to the right.

Robert R. Loux
Executive Director

RRL:cs

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