



The Conservation Foundation

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RECEIVED

March 10, 1989

Samuel Chilk  
Secretary  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Request for LSS Advisory Committee Responses to the  
Questions from Commissioner Curtiss

Dear Secretary Chilk:

This is in reply to your recent correspondence with members of the Licensing Support System Advisory Committee for which I served as lead convenor and facilitator. Enclosed are the responses I have received from members of the Committee.

You have requested answers to certain questions framed by Commissioner Curtiss respecting particular terms upon which most of the Committee agreed, and you have emphasized Commissioner Curtiss' wish that such answers not be negotiated or the subject of lengthy discussion by the Committee. NRC staff prepared a strawman answer to each of the Commissioner's questions. Some of the Committee members' responses are based, in part, on the strawman.

Commissioner Curtiss in his memo to you, which you have sent along, asks for "the views of the Committee as a whole, where consensus exists, and of individual members where there is no consensus." In his questions, however, Commissioner Curtiss often asks for the underlying purpose and intent of a number of specific provisions of the agreement supported by most of the Committee, including NRC staff. I would take this opportunity to suggest that such an inquiry is in fundamental conflict with the purpose, and indeed the measure of success, of the Committee. The Commission created the Committee and, at least implicitly, charged it to negotiate. It must have been understood, as the Committee itself always recognized, that the negotiations process might yield specific agreements which individual Committee members would explain in varying terms, and that some agreements might be entered by Committee members in order to secure other agreements or overall agreement. This is a healthy dynamic and is common in most forms of negotiation, including negotiations among legislators and administrative rulemakers. Regulatory negotiations, after all, in large measure, mirror other more conventional negotiations processes.

Mr. Samuel Chilk, Secretary  
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Thus, to survey the members of the Committee individually and discourage them from negotiated replies by isolating the issues and the members, risks the very agreements that the Committee was able to achieve at the Commission's behest. Perhaps, in the future, as is done in other legislative and rulemaking processes, it would be better practice to limit post negotiation inquiries to the specific terms of the agreement and any explanatory material already at hand, such as in this case the supplemental information and minutes of Committee meetings.

Sincerely,

*Howard S. Bellman* <sub>GLB</sub>

Howard S. Bellman  
Senior Fellow

Enclosures

cc: Members of the LSS Advisory Committee

Murphy & Davenport  
ATTORNEYS AT LAW

James H. Davenport \*  
Malachy R. Murphy

\* Also Admitted in Nevada

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March 2, 1989

COPY

Mr. Samuel J. Chilk, Secretary  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Request For LSS Advisory Committee Responses To  
Questions From Commissioner Curtiss

Dear Secretary Chilk:

This is in response to your memo to Howard Bellman of February 24, 1989, a copy of which you provided to each member of the LSS Negotiating Committee, attaching a series of questions posed by Commissioner Curtiss regarding the LSS Rule. This response is provided on behalf of the State of Nevada.

As you point out in your memo, Commissioner Curtiss is seeking clarification from members of the Negotiating Committee on selected parts of the rulemaking package. Nevada declines to provide further amplification of our position, beyond what we have already said in our written and oral comments to the Commission, and in responses to questions from members of the Commission at the February 7, 1989 meeting.

In declining to respond specifically to Commissioner Curtiss's questions we wish to note the following. First, Nevada agreed to support the proposed rule because it represented a compromise among those parties who joined the consensus. Secondly, because the text of the rule itself, and its rationale, represented a consensus, the Supplementary Information explaining that text and rationale itself became a negotiated statement, representing a consensus among those members of the Committee who joined the overall consensus. To provide Nevada's specific response to Commissioner Curtiss's questions at this time, and thus an individual view as to the operative meaning of the rule, potentially threatens to break open the consensus arrived at, a circumstance which we would find highly undesirable, and which we therefore do not wish to risk. For these reasons Nevada stands on the language of the

rule itself, the Supplementary Information, and its written and oral comments and responses to the Commission.

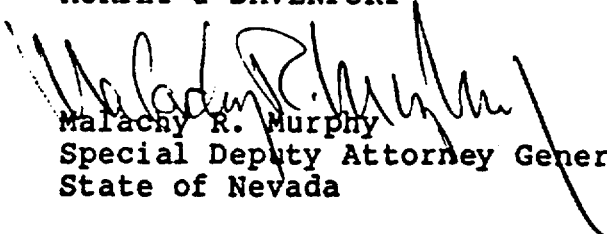
You have attached to your memo "strawman answers" prepared by the NRC staff to each of Commissioner Curtiss's questions. You note that the staff believes that these answers accurately characterize the results of the Committee deliberations during the rulemaking process, and indicate that if a participant disagrees with any of those answers, we should so indicate. We have reviewed those so called "strawman answers" and, while we do not wish to specifically approve of and thus associate ourselves with them, we can find nothing in them with which Nevada strongly disagrees.

While we wish that we could find ourselves able to be more precise in our response to your memo, we trust that you, and Commissioner Curtiss, will understand our reasons for not doing so.

With best personal regards.

Yours very truly,

MURPHY & DAVENPORT



Malachy R. Murphy  
Special Deputy Attorney General  
State of Nevada

MRM/kew

cc: Howard Bellman  
Tim Mealey  
Members, LSS Negotiating Comm.

# ENVIRONMENTAL DEFENSE FUND

1405 Arapahoe Avenue  
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March 2, 1989

Samuel J. Chilk, Secretary  
Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: Curtiss' Questions to the LSS Negotiating Committee

Dear Secretary Chilk,

On February 27, 1988, I received a packet of information requested responses to a series of questions on the LSS rule posed by Commissioner Curtiss. On Commissioner Curtiss' behalf, you have solicited an individual response from the Environmental Coalition of the Negotiating Committee. I was the spokesperson for this coalition. Our response to your questions is as follows.

The answers are contained in the language of the rule itself, and/or in the supplemental information which accompanies the rule. (It is my understanding that NRC staff has made available to Commissioner Curtiss a list of citations to the proposed final rule, the supplemental information and other Commission laws and regulations where answers to the questions posed may be found.) Precisely because Committee members were concerned that the underlying rationale for the rule and certain implementation issues might not be clear from the text of the rule itself, the Committee included the text of the supplemental information as part of the subject for negotiations.

The Environmental Coalition believes that any additional information we provide may unnecessarily jeopardize the consensus reached, which was a consensus based on the rule as a whole. Alternatively, the Commission could reconvene the Committee to negotiate a consensus response to Commissioner Curtiss' questions beyond the answers contained in the supplemental information, perhaps using as a starting point the strawman responses prepared by the NRC staff which the Environmental Coalition has reviewed and found to reflect, for the most part, the consensus as reported in the rule and supplemental information. Absent such further action, we cannot submit a more detailed response than this.



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Sincerely,

A handwritten signature in cursive script that reads 'Melinda Kassen'.

Melinda Kassen  
Senior Attorney

NRC Secretary Samuel Chilk  
March 2, 1989  
Page 2

cc: Brooks Yeager  
David Ortman  
Howard Bellman  
Mal Murphy  
Dean Tousley  
Jerry Saltzman  
Steve Bradhurst  
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March 8, 1989

Mr. Samuel J. Chilk, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: Commissioner Curtiss's Questions on the LSS Rule

Dear Mr. Chilk:

I am in receipt of your February 24, 1989 Memorandum for Howard S. Bellman, with enclosed Memorandum to you and questions from Commissioner Curtiss for the LSS Negotiating Committee members. I represented the National Congress of American Indians on the Negotiating Committee, and am authorized to provide the following response on NCAI's behalf.

We appreciate Commissioner Curtiss' active interest in the LSS rule, particularly in light of his appointment to the Commission late in this rulemaking process. Regretfully, and with all due respect, we believe that the protocols and the spirit of the negotiated rulemaking process preclude us from providing specific responses to his questions.

Commissioner Curtiss has asked for "the views of the Committee as a whole, where consensus exists, and views of individual members where there is no consensus." Unfortunately, we are unable to characterize the views of the Committee as a whole beyond pointing to the result of the Committee's labors: all of the participants except the industry coalition agreed to the text of the rule and the supplementary information which is presently before the Commission. We cannot embellish that product without re-convening the Committee.

For the same reason, we must respectfully decline to propound our views as an individual Committee member. Among the protocols of the Negotiating Committee was an agreement by the parties not to comment on any consensus position which we had concurred with. If we were to provide our specific views on Commissioner Curtiss's questions, those views might conflict with those of another concurring party, thus threatening the consensus that was achieved. (We believe it is apparent from the

HARMON, CURRAN & TOUSLEY

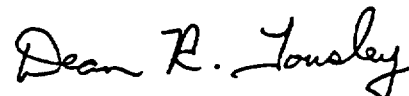
Mr. Samuel J. Chilk, Secretary  
March 8, 1989  
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testimony of the parties at the Commission's February 7, 1989 briefing that the near-consensus that was achieved is highly valued by all the concurring parties.)

We have examined the "strawman" answers that were prepared by the NRC Staff. While they appear as a whole to be reasonable explanations of the outcome of the negotiations, we cannot endorse them as such, as they have not been discussed by the Committee. We would not consider it appropriate for those strawman answers to become a *de facto* part of the rulemaking history without having them be the subject of negotiation by the Committee.

NCAI values highly its good working relationship with the NRC Staff and with the Commissioners. The Commission has evidenced much-appreciated receptivity to the concerns and interests of Indian tribes in recent years, particularly in the context of the nuclear waste program. We underscore that favorable experience in order to emphasize that we do not lightly or cavalierly decline to provide the specific responses which Commissioner Curtiss requests. We sincerely hope to have and to maintain a productive relationship with Commissioner Curtiss as with the Commission as a whole. We trust that he will understand that our difficulty with his questions is process-related, and in no way reflects any disrespect or disregard for either Commissioner Curtiss or the substance of his concerns.

Sincerely yours,



Dean R. Tousley  
ATTORNEY FOR NCAI

cc: Timothy Mealey, Conservation Foundation