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September 15, 1994

The Honorable Ivan Selin
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Selin:

I want to take this opportunity to thank you for inviting us to give you some of our thoughts and concerns regarding the Department of Energy's High-Level Waste Program at the Commission's September 9, 1994 meeting. Because of questions you asked regarding socioeconomic issues related to the project in Nevada, I have taken the liberty of enclosing some descriptive materials published by this Office and our contractors on this issue that I thought you might have an interest in.

Regarding the question posed by Jim Davenport, Nevada Special Deputy Attorney General, at the September 9 meeting, I thought it might be helpful to you in ascertaining the Commission's position regarding Nevada's "Rule 27" lawsuit to provide you with some more specific information.

Nevada is concerned that the evidence produced by DOE contractors in the early phases of its program at Yucca Mountain will become stale or unavailable by the time a licensing proceeding may be conducted. DOE will presumably rely on this data, and its analysis by mere reference to early-published reports. We would expect that standard rules of evidence would apply and that such evidence would be inadmissible if it were not subject to examination by all parties to the proceeding. In order to address this problem, Nevada initiated a proceeding in the U.S. District Court for the District of Nevada, pursuant to Rule 27 of the Federal Rules of Civil Procedure. (CV-N-93-399-ECR) Rule 27 permits parties to invoke the court's jurisdiction in order to perpetuate testimony through depositions for later use in cases which are not yet ripe but are ultimately cognizable in court.

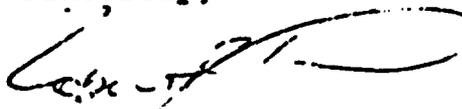
Nevada named the Department of Energy, the Nuclear Regulatory Commission and the Environmental Protection Agency as potentially expected adverse parties and served each with a summons. The Justice Department entered an "opposition" but never a notice of appearance for any party. The opposition was essentially DOE's opposition. It is still not clear to Nevada what the NRC's formal position is regarding this type of perpetuation of evidence.

At the request of DOE, purportedly acting on behalf of NRC as well, the District Court dismissed Nevada's petition primarily on the grounds that Rule 27 jurisdiction should not be used for the perpetuation of testimony which could be introduced in an administrative agency proceeding reviewable in the federal district or appeals courts. Nevada appealed that issue and it is currently pending before the Ninth Circuit Court of Appeals (No. 93-17367). Mr. John F. Cordes, Jr., NRC solicitor, joined the DOE's brief to the Ninth Circuit on May 23, 1994.

Did the NRC staff consult the Commission on its position regarding this litigation? Did (or does) the Commission oppose Nevada's efforts to perpetuate testimony which may be introduced in a later NRC licensing proceedings. Given the length of time and potential loss of availability of technical experts who produced reports upon which the DOE will likely rely in licensing, we would expect the NRC to support the perpetuation of evidence. We would like to learn the Commission's position on this question prior to oral argument of this case before the Ninth Circuit. Although that has not yet been scheduled, an argument this fall is likely.

Thank you again for your continued concern that Nevada's opinions be heard.

Sincerely,



Robert R. Loux
Executive Director

RRL:cs
Enclosures