



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

January 9, 2004

The Honorable Jon C. Porter
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Porter:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter of December 9, 2003, regarding NRC staff audits and evaluations of the Department of Energy efforts being conducted in anticipation of an application for a construction authorization for a high level waste repository at Yucca Mountain. The specific staff activities of concern in your letter were conducted in November and December 2003. A similar activity will be conducted by the NRC staff the week of January 12, 2004.

The NRC has a well-established policy of openness in conducting its various programs and, in implementing that policy, commonly goes significantly beyond what is mandated by law. NRC's high-level waste program is no exception, considering that the vast majority of exchanges with DOE are conducted in open meeting-style forums which the State and other organizations have frequently attended. More specifically, in recognition of the unusual, preapplication relationship between DOE and NRC that is a consequence of the Nuclear Waste Policy Act, this policy is extended with respect to exchanges between DOE and the NRC staff regarding Yucca Mountain, through a specific agreement. Although this agreement broadly provides for public meetings, it also provides that quality assurance audits and surveillance, which are the types of activities in which the staff was here engaged, are not interactions within the scope of the agreement. In addition, it was the view of the NRC staff that the nature of these particular staff evaluations is not conducive to a "meeting"-type environment and that they would be substantively hampered if the evaluations had to be conducted in such a venue. Subject to the guidance provided by the NRC Open Meeting Policy and the NRC staff/DOE agreement, that judgment is within the sound discretion of the staff.

The opportunity for the State and other interested persons to participate meaningfully in the regulatory process associated with both preapplication interchanges and the eventual review of a license application for the Yucca Mountain high-level waste repository is not compromised by the current DOE/NRC staff efforts. The results of the staff's evaluation will, as you've requested, be documented and made publicly available. And, at an appropriate time following receipt of an application from DOE, notice of an opportunity to participate formally in an adjudicatory proceeding will be provided. The provisions of 10 C.F.R. § 63.63, which you invoke, do not, in the context of the concerns raised in your letter, require more.

In conclusion, the Commission concurs in the staff view that in this pre-licensing stage, the effectiveness of some interactions might be substantively hindered if they are conducted in a "meeting"-type environment. Moreover, given that the staff intends to make the substance of such interactions publicly available, we believe that the process the staff is following will keep all

interested groups informed. Thus, the Commission remains satisfied that the NRC can continue to conduct itself in all respects as an impartial decisionmaker in regard to any application that may be filed by DOE for Yucca Mountain.

Please contact me if you have any further questions regarding this matter.

Sincerely,

/RA/

Nils J. Diaz

