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1/12/04

Nye County Nevada Comments On Proposed LSN Rule

DOCKETED
USNRC

10 CFR Part 2

January 13, 2004 (11:30AM)

Licensing Proceeding for the Receipt of High-Level Radioactive
Waste at a Geologic Repository: Licensing Support Network,
Submissions to the Electronic Docket

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

~~DOCKET NUMBER~~
~~PROPOSED RULE~~ 2
(68 FR 66372)

RIN 3150-AH31

Nye County, Nevada, the prospective host county for the proposed high-level nuclear waste repository at Yucca Mountain, Nevada, with one minor exception, supports the staff proposal to amend the LSN Rule, 10 CFR Part 2, Subpart J. We appreciate the opportunity to review the staff proposal, and particularly the exposure of the staff's proposal to full review and discussion by the Licensing Support Network Advisory Review Panel (LSNARP).

The proposed rule changes address five areas of the LSN Rule, and its impact on potential licensing proceedings involving Yucca Mountain. They are:

- Clarifying certain definitions and establishing filing requirements and format standards for submission of documents to the LSN and the electronic docket.
- Clarifying that the Secretary's determination of electronic accessibility under 10 CFR §2.1012(a) will be based on demonstrating that the DOE license application can be accessed through ADAMS, rather than the electronic hearing docket in the first instance.
- Clarifying that parties need not load duplicate documents on their individual LSN web sites, and that the primary responsibility for making documents available through the LSN lies with the party or potential party who created the document, or on whose behalf the document was created.
- Clarifying the continuing obligation of LSN participants to update their documentary material throughout the licensing proceeding.
- Establishing that correspondence between a party and the Congress is excludable from the LSN.

All of the proposed changes, except the categorical exclusion of congressional correspondence, reflect, in Nye's view, either the spirit or the intent of the original rule adopted after a protracted negotiated rulemaking. Providing the clarifications in the proposed rule will serve to reduce any possible confusion, and should only assist the parties, and the LSN Administrator and ASLBP, in complying with and administering the provisions of the rule in the manner intended.

Template = SECY-067

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SECY-02

The categorical exclusion of congressional correspondence seems overbroad, however. It is entirely conceivable for example, that somewhere in correspondence with a member of Congress or of the congressional staff DOE, or any other party, may have made relevant and admissible statements about some technical issue affecting the licensibility of Yucca Mountain. To exclude all such correspondence categorically is unwarranted. A better approach, in Nye's view, would be to frame the exclusion to make it clear that it applies only to routine correspondence involving such matters as budget, program management, etc., and does not encompass correspondence involving technical, scientific or regulatory compliance information.

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