

EDO Principal Correspondence Control

FROM: DUE: 06/03/04 EDO CONTROL: G20040344
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FINAL REPLY:

Robert R. Loux
State of Nevada

TO:
Travers, EDO

FOR SIGNATURE OF : ** GRN ** CRC NO:
Travers, EDO

DESC: ROUTING:
Security Clearances for Access to Classified Information Related to the Yucca Mountain Repository Licensing Proceeding
Travers
Norry
Virgilio
Kane
Collins
Dean
Burns
Mallett, RIV
Springer, ADM
Cyr, OGC

DATE: 05/18/04
ASSIGNED TO: CONTACT:
NMSS Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:



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May 13, 2004

Dr. William D. Travers
Executive Director of Operations
U.S. Nuclear Regulatory Commission
Mail Stop O16 E15
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

RE: Security Clearances

Dear Dr. Travers:

As you know, the State of Nevada ("Nevada") is by law given full-party status in the anticipated Yucca Mountain repository licensing proceeding. Nevada intends to fully participate in every aspect of that proceeding.

To that end, it will be essential that appropriate persons involved in Nevada's participation have access to all documentary materials and discussions relating in any way to licensing issues. By way of example, Nevada must be privy to the Department of Energy ("DOE") License Application ("LA") and all supporting or referenced materials, as well as to all documents on the Licensing Support Network ("LSN") of DOE, NRC, or other parties.

On February 25, 2004, during the course of an open meeting between DOE and NRC Staff on Yucca Mountain safeguards matters, DOE informed a representative of Nevada that some portions of the LA or supporting materials may contain classified Restricted Data or National Security Information, access to which would require a security clearance, but that no final decision on classification had been made. The NRC also informed the Nevada representative at the time that no classification determination had been made. Since February 25, neither NRC nor DOE has informed Nevada about any classification decision. Nevertheless, since it is at least possible some documents and discussions relevant to the licensing proceeding

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may be classified, the Yucca Mountain repository licensing proceeding may implicate section 181 of the Atomic Energy Act and 10 C.F.R Part 2, Subpart I, which provide for granting security clearances for access to classified information to parties' representatives so that parties' procedural rights will not be impaired unnecessarily.

Given both the time required to process security clearances and DOE's current plans to provide LSN certification and then tender an LA later this year, it is clearly prudent to begin the process of obtaining security clearances immediately. Nevada would propose to limit clearances to key people, some of whom have had clearances in the past.

We will be happy to provide the names of experts and legal counsel who will participate in the proceeding (and supplement that list as necessary) to include whatever background information is prerequisite to securing the necessary clearances. Please advise with respect to what steps we must take and with whom we should communicate in order to immediately initiate the security clearance process, to ensure complete access of Nevada's representatives in the licensing proceeding to any and all relevant but classified information.

We, of course, are aware that 10 C.F.R. § 2.907 could be read to suggest that the process could be delayed until issuance of the Notice of Hearing or possibly later, but we believe that such a delay would not be in anyone's interest because, if classified information is involved, this would force a delay in filing contentions, the conduct of discovery, and holding of evidentiary hearings on all matters involving such information.

Sincerely,



Robert R. Loux
Executive Director

cc: Joseph Egan
Marta Adams