

July 16, 2004

Robert R. Loux, Executive Director
Office of the Governor
Agency for Nuclear Projects
State of Nevada
1761 E. College Parkway, Suite 118
Carson City, Nevada 89706

Dear Mr. Loux:

I am responding to your letter of June 4, 2004, in which you expressed concern that I may have prejudged matters that will arise in a potential Yucca Mountain proceeding. In particular, you referred to my testimony at the March 25, 2004 hearing of the Subcommittee on Energy and Air Quality of the House Committee on Energy and Commerce. At that hearing, Representative Otter questioned me about NRC disagreements with the Nuclear Waste Technical Review Board about high temperature corrosion effects on waste packages. You have referred to my responses which address the staff's interaction with the Board. In your letter, you stated that my remarks "indicate that you have formed an opinion on a key issue in the licensing proceeding that you will ultimately have to judge...." You suggested that my testimony raised doubt whether I "can still judge the Yucca Mountain case fairly."

I can and will make a fair, impartial decision on the issues in any potential licensing proceeding pertaining to the proposed repository at Yucca Mountain. As you are aware, 10 CFR Parts 2 and 63 allow NRC to perform work in preparation for DOE's anticipated submission of a license application for Yucca Mountain. The NRC technical staff has been studying intensively the scientific issues likely to arise during the licensing proceeding. This preliminary work will ensure the NRC staff's readiness to perform a capable and timely review when we receive the application. Any view developed by the staff represents preparation to review any license application submitted by DOE, not prejudgment. Such views are a necessary part of building technical competence in any scientific field.

As Chairman of the NRC, I am generally aware of many of the Yucca Mountain-related issues that the NRC staff is preparing to address. My remarks at the March 25, 2004 hearing pertaining to the waste package corrosion issue at Yucca Mountain were intended to address preliminary NRC staff thinking and its interactions with the Nuclear Waste Technical Review Board, not the views of myself or the Commission as a collegial body. As I said at the time: "We are looking at how to best address these issues. Of course, they will have to eventually be resolved during the licensing process." My statement was based on the fact that any views of the NRC staff about waste package corrosion and other concerns about Yucca Mountain are entirely preliminary, and there is nothing improper in NRC staff having these views.

I am certain that I have not prejudged the resolution of potential issues pertaining to waste package corrosion. I was not offering a conclusion on the resolution of these issues when I acknowledged the existence of some differences between current NRC staff analysis and that of the Board. On the contrary, I was referring to the fact of continuing interactions in this area.

In my statement to the Committee, I emphasized that “the NRC must conduct a full and fair public hearing on the application prior to reaching a decision on whether to authorize construction of the repository, which would be based on the information before us at that time.” I assure you, as I assured the Committee, that any NRC decision in a Yucca Mountain licensing proceeding will be impartial and based on the record.

Sincerely,

/RA/

Nils J. Diaz