

EDO Principal Correspondence Control

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FINAL REPLY:

Robert Loux  
State of Nevada

TO:

Chairman Diaz

FOR SIGNATURE OF : \*\* GRN \*\* CRC NO: 05-0296

Reyes

DESC:

ROUTING:

Yucca Mountain License Proceeding Cannot Start  
Until the Commission has Amended its Waste  
Confidence Rule to Eliminate Prejudgment

Reyes  
Virgilio  
Kane  
Silber  
Dean  
Cyr/Dean

DATE: 06/07/05

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

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CORRESPONDENCE CONTROL TICKET

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**AUTHOR:** Robert Loux  
**AFFILIATION:** NV  
**ADDRESSEE:** Nils Diaz  
**SUBJECT:** A Yucca Mountain license proceeding cannot start until the Commission has amended its Waste Confidence Rule to eliminate prejudgment

**ACTION:** Appropriate  
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TK.

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May 25, 2005

The Honorable Nils Diaz, Chairman  
U.S. Nuclear Regulatory Commission  
Washington DC 20555

**Re: A Yucca Mountain license proceeding cannot start until the Commission has amended its Waste Confidence Rule to eliminate prejudgment**

Dear Chairman Diaz and Commissioners:

On March 1 of this year the State of Nevada filed a petition (docketed as PRM-51-8) to amend the NRC's 1990 Waste Confidence Rule. That Rule ties the Commission's licensing of new power reactors to its confident prediction that a geologic nuclear waste repository will become available in the United States by the year 2025. As a practical matter that predicted geologic repository can now only be Yucca Mountain. It is too late for any other possibility. What this means is that the Commission is contemplating initiating a license proceeding for Yucca Mountain, conceivably by next year, in a case in which it has predicted the outcome.

I think you will agree with me that this is an unacceptable state of affairs. It is therefore urgent that the Commission act to revise its Waste Confidence rule promptly. In its March 1 Petition Nevada proposed a simple way of amending the Rule in a way that unties the Yucca Mountain outcome from power reactor licensing. We expect that most concerned parties, including the nuclear industry, would agree with such a change as it would be in their interest. In any case, however, a change is essential in advance of the start of any Yucca Mountain hearing to avoid prejudgment of the result.

We hope the Commission will agree and will act soon. If, however, Nevada is faced with participating in a Yucca Mountain hearing with the current Waste Confidence Rule still in force, in effect, a hearing that is inherently prejudged, then the State will take more formal action.

Sincerely,

Robert R. Loux  
Executive Director

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CHAIRMAN REC'D

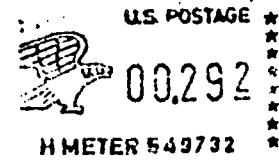
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1005  
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