

EDO Principal Correspondence Control

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FINAL REPLY:

Robert R. Loux
State of Nevada
Agency for Nuclear Projects

TO:

Chairman Klein

FOR SIGNATURE OF :

** GRN **

CRC NO: 06-0589

Strosnider, NMSS

DESC:

NRC's Actions and Policies Concerning Yucca
Mountain

ROUTING:

Reyes
Virgilio
Kane
Silber
Johnson
Burns
Mallett, RIV
Cyr, OGC

DATE: 11/22/06

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OGC. Add EDO and the Commission on
for concurrence. Commission to review prior to
dispatch.

KENNY C. GUINN
Governor

STATE OF NEVADA

ROBERT R. LOUX
Executive Director



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November 16, 2006

The Honorable Dale Klein, Chairman
US Nuclear Regulatory Commission
Washington DC 20555

Dear Chairman Klein:

I have written to the Commission repeatedly to express the State of Nevada's concern over NRC actions and policies that demonstrate the agency has prejudged the licensing of the Department of Energy's Yucca Mountain site as a radioactive waste repository. Yet, despite the Commission's responsibility to be independent and to withhold judgment until presented with evidence from all parties in a formal proceeding, nothing seems to change.

Now I am informed that members of your staff are planning to present, at an international meeting in the Netherlands later this month, results of their calculations on the projected dose to members of the public from the Yucca Mountain site. This is precisely the calculation that DOE will have to present to qualify for a license. The NRC staff members who prepared the presentation for the Netherlands are the same staff members who will review the DOE calculations.

The NRC staff has come up with public doses that are very low. Whatever the staff's intentions, the practical meaning of this presentation is that the staff is signaling to DOE that it has an expectation of seeing similar low values in the forthcoming application. In fact, the assumptions that go into these calculations—for example, the extent to which localized corrosion plays a role—are highly questionable and remain to be litigated. But that distinction will be lost in the broader arena. Having presented such results to an international audience of their professional peers, and having committed themselves to the underlying assumptions on which they are based, will the staff then be open to results that show them to have been wrong?

There is something very wrong with this picture, and it is not ameliorated by the weak disclaimer at the end of the proposed slide presentation that the views expressed "do not constitute a final judgment . . ." No one is fooled by this.

I urge you to cancel this presentation. The slides are public, but a cancellation will underline that, while the NRC is exercising the TPA codes on the basis of various assumptions, it is doing so to be ready to review DOE's application and not to come up with a view in advance of that application. A cancellation would also remind the staff that they have serious public responsibilities to carry out a fair and impartial review of the Yucca Mountain application and must conduct themselves in a manner that inspires confidence.

This instance raises a larger issue, that of the role of the NRC staff in reviewing the DOE application and later as a party in the hearing. By pretending that the proceeding has not started because there is not a formal license application from DOE—even though the NRC staff has been reviewing bits and pieces of what will become the DOE application for years—the Commission has avoided the *ex parte* and other restrictions that come into force at that point. The obverse of this, however, is that at this point the NRC staff reviewers are under your direction, and when they prejudge it is as if you prejudge. That is even truer if you do not act to clear the record.

This instance also underlines what we have written to you about in the past—the inappropriateness of the NRC staff appearing as a party in the Yucca Mountain proceedings: a party that has to defend a position. The present arrangement leads to a confusion of responsibilities. The NRC staff reviewers and attorneys are supposed to represent the public and give the Commission the best possible advice, not to come to the proceedings arm-in-arm with the applicant to boost the applicant's chances of qualifying for a license. Yet in a recent Yucca Mountain-related hearing on documents, the NRC staff lawyers were fiercer in defending DOE's position than even the DOE lawyers. And now the technical staff presents calculations on Yucca Mountain doses that are more optimistic and favorable to DOE qualifying for an application than anything DOE has presented. This is not independent regulation. I look forward to your response.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Robert R. Loux
Executive Director