



OFFICE OF THE GOVERNOR

KENNY C. GUINN
Governor

November 20, 2006

Samuel Bodman, Secretary
US Department of Energy
1000 Independent Avenue S.E.
Washington, DC 20585

Dear Secretary Bodman:

I am writing to bring to your attention a matter of continuing and growing importance to both Nevada's citizens and the nation. As you know, Edward Sproat, Director of the Department's Office of Civilian Radioactive Management, has announced that June 30, 2008 will be the submission date for a license application to the Nuclear Regulatory Commission (NRC) for construction of a high-level nuclear waste repository at Yucca Mountain, Nye County, Nevada.

As a prerequisite to this submission, the department must certify to the Nuclear Regulatory Commission that its Licensing Support Network (LSN) electronic database of relevant licensing documentary material is complete and publicly accessible. This must be accomplished at least six months prior to submission of the license application, according to NRC's licensing regulations. Mr. Sproat has scheduled the department's application for LSN certification of its documents on December 21, 2007, some 13 months from now.

The purpose of the LSN is to make documentary material available electronically to parties, potential parties, and interested governmental participants to the licensing proceeding, beginning in the pre-license application phase. The department's first effort to certify its LSN, on June 30, 2004, was set aside as insufficient by the NRC's Pre-License Application Presiding Officer Board. Promptly thereafter, working to remedy the shortcomings in its LSN collection, which ultimately will include millions of documents, the department committed to the board to continue providing the LSN administrator with documents "on a rolling basis for indexing" into the LSN. Recent information indicates that as of one month ago, 2,123,265 additional documents have been turned over to the LSN administrator for processing since June 30, 2004. Mr. Sprout estimates that approximately 6.8 million more documents will be placed on the LSN at the time of certification. More than one million documents of the original certification effort are currently publicly available on the LSN Internet website maintained by the LSN administrator.

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I am deeply concerned that the two million-plus documents provided since 2004, and subsequently indexed by the LSN administrator, under instruction by the department, have not been made publicly available on the LSN, and that the balance of the 6.8 million documents that the department will continue to provide to the LSN over the next 13 months will likewise not be made publicly available. The NRC's LSN regulations appear to permit such instruction by any participant in the LSN, but the regulations authors and those commenting during the rule-making did not contemplate a six-year gap between the Secretary's 2002 Site Recommendation, and Congressional designation of the Yucca Mountain potential repository site, and the department's submission of a license application. The Nuclear Waste Policy Act calls for the license application to be made six months after Congressional site designation - which obviously did not occur. Thus, we have faced a period of many years in which a large part of the department's repository plans at Yucca Mountain remain a mystery.

The department's design and operational approach, and Total System Performance Assessment for the Yucca Mountain repository license application have changed significantly since the 2002 Site Recommendation, and they continue to evolve. To date, the department has released only very limited information on these changes developed over the past three-and-a-half years. Thus the information is critical to advance public understanding of the planned repository system, the documentation leading up to these changes has literally been "embargoed" by the department. Ironically, on the instruction of the department, the LSN administrator, literally with the flip of a switch, could make these additional two million-plus documents publicly available for pre-application review by parties (such as Nevada and the NRC staff), potential parties, and interested governmental participants. They would also then be available to NRC's important Advisory Committee on Nuclear Waste, as well as the Nuclear Waste Technical Review Board, an entity created by Congress to advise federal legislators on Yucca Mountain technical issues. It is needlessly punitive and nothing short of tragic to withhold such information from the public and these important entities and parties when it can so easily be made available.

In order to meet the Nuclear Waste Policy Act mandate for a license decision to be made by the NRC within three to four years after the department's submission of the license application, participants and potential participants must have adequate opportunity during the pre-license application phase, as contemplated by the LSN regulations, to review as much of the available relevant documentary material as possible in preparation for what has been termed the largest administrative court case in U.S. history. There is no justification for withholding public access to these documents now when the task of reviewing them is so overwhelming.

I am requesting your assistance in lifting the "embargo" on both the Department's Office of Civilian Radioactive Management documentary material that exists now and readily can be released to the public on the LSN Internet site, and those subsequent documents that are received by the LSN administrator and indexed for public use and review. This will not only facilitate Nevada and the NRC staff in carrying out their pre-license application duties, but this transparency will greatly assist the efficiency of any license application review and hearing process. In a demonstration of good faith, the State of Nevada has now publicly released all of

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its documents that the state has placed on the LSN and we will continue to make new documents publicly available on an ongoing basis.

We look forward to your favorable intervention in facilitating the release of these documents and the culmination of this repository siting and license application review process that has been of great interest and concern to the people of Nevada for more than 20 years.

Sincerely,



KENNY C. GUINN
Governor

RLoux/KGM/rc

cc: Nevada Congressional Delegation
Nuclear Regulatory Commission
Advisory Committee on Nuclear Waste
Nuclear Waste Technical Review Board
Edward Sprout
Robert R. Loux

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