

EDO Principal Correspondence Control

FROM: DUE: 04/16/07

EDO CONTROL: G20070225

DOC DT: 04/02/07

FINAL REPLY:

EDATS: 32cy-2007-0086

Robert Loux
State of Nevada
Agency for Nuclear Projects

TO:

Chairman Klein

FOR SIGNATURE OF :

** PRI **

CRC NO: 07-0218

Chairman

DESC:

Interactions of the NRC Staff with DOE Staff re
Preparation of a License Application for a Yucca
Mountain Nuclear Waste Repository

ROUTING:

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

DATE: 04/05/07

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

EDATS

Electronic Document and Action Tracking System

EDATS Number: SECY-2007-0086

Initiating Office: SECY

General Information

Assigned To: NMSS

OEDO Due Date: 4/16/2007 5:00 PM

Other Assignees:

SECY Due Date: 4/19/2007 5:00 PM

Subject: Interactions of the NRC Staff with DOE Staff re Preparation of a License Application for a Yucca Mountain Nuclear Waste Repository

Description:

ADAMS Accession Numbers

Incoming:

Response/Package:

Document Information

Originating Organization: State of Nevada, Agency for Nuclear Projects

Originator Name: Robert Loux

Incoming Task Received: Letter

Date of Incoming Document: 4/2/2007

Document Received by OEDO Date: 4/5/2007

Date Response Requested by Originator: NONE

Addressee: Chairman Klein

Process Information

Action Type: Letter

Priority: Medium

Sensitivity: None

Signature Level: Chairman Klein

Urgency: NO

OEDO Concurrence: YES

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions:

Other Information

Cross Reference Number: LTR-07-0218,G20070225

Related Task:

File Routing: EDATS

Agency Lesson Learned: NO

**OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET**

Date Printed: Apr 04, 2007 08:34

PAPER NUMBER: LTR-07-0218
ACTION OFFICE: EDO

LOGGING DATE: 04/03/2007

AUTHOR: Robert Loux
AFFILIATION: NV
ADDRESSEE: Dale Klein
SUBJECT: Interactions of the NRC stff with the DOE staff

ACTION: Signature of Chairman
DISTRIBUTION: RF, SECY to Ack

LETTER DATE: 04/02/2007

ACKNOWLEDGED No

SPECIAL HANDLING: Made publicly available in ADAMS via EDO/DPC

NOTES: Commission Correspondence

FILE LOCATION: ADAMS

DATE DUE:

04/17/2007
19

DATE SIGNED:

JIM GIBBONS
Governor

STATE OF NEVADA

ROBERT R. LOUX
Executive Director



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April 2, 2007

The Honorable Dale Klein, Chairman
United State Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Klein:

I am writing to call your attention to a situation which has arisen that causes us great concern about interactions of the NRC staff with the Department of Energy staff who are in the process of attempting to rapidly prepare a license application for a Yucca Mountain nuclear waste repository. Your staff apparently intends to participate (and, in fact, already has begun to participate) in a series of secret substantive meetings with representatives of the prospective license applicant to discuss issues germane to the anticipated DOE license application without issuing public notice of the meetings and prohibiting public attendance, even as observers. I am asking that you immediately investigate these plans of your staff to hold closed meetings with DOE, and order a halt to any further plans that would result in your staff's participation in substantive meetings with the DOE regarding matters integral to its license application preparation, unless such meetings are publicly noticed, and open to the public.

I have attached a description of the situation to this letter along with some remarks about its gravity, since it now has occurred after nearly twenty years of pre-licensing interactions between NRC and DOE regarding the potential Yucca Mountain nuclear waste repository site.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Loux", with a long horizontal flourish extending to the right.

Robert Loux
Executive Director

Attachment

cc: ACNW
DOE
NWTRB
Nevada Congressional Delegation

ATTACHMENT

Description and discussion:

In the March 27, 2007 DOE/NRC Quarterly Management Meeting DOE's presentation on Licensing, delivered by Mark Williams, indicated (page 9) a series of scheduled "information gathering meetings" to be held between NRC and DOE staff regarding various topics integral to DOE's ongoing Yucca Mountain Repository License Application preparation. Nine such interactions are listed to occur between March 28, 2007 and September 13, 2007, with the first three meetings to be held on the two days following the March 27 Quarterly Management Meeting. No official public notice of the pending March 28-29 meetings was issued either by NRC or DOE, and the March 27 DOE presentation was the only announcement that any of the meetings were planned to take place.

The listed "information gathering meetings" are as follows:

- Preclosure criticality: March 28, 2007
- Facility layout and operations (Canister Receipt and Closure Facility): March 28-29, 2007
- Wet handling facility pool and canister handling process: March 29, 2007
- Unsaturated zone testing: April 10, 2007
- Human reliability analysis: May 31, 2007
- Near-field environment: June 19, 2007
- Multiscale thermohydrologic models: June 20, 2007
- Colloids and in-package chemistry: July 10, 2007
- Drift degradation: September 13, 2007

Inquiry by my staff as to the meaning of "information gathering meetings" between DOE and NRC revealed that these meetings are intended to be held under the authority of Appendix 7 of the 1998 revision of the *Agreement Between U.S. Department of Energy/Office of Civilian Radioactive Waste Management And U.S. Nuclear Regulatory Commission/Office of Nuclear Material Safety and Safeguards Regarding Pre-Licensing Interactions*. Appendix 7 details the guidelines which govern communication between the NRC staff on-site representative (OR), including any NRC or contractor personnel temporarily assigned to the OR office and DOE and contractor staff. The stated purpose of the OR "is to serve as a point of prompt informational exchange and consultation, to preliminarily identify concerns about investigations relating to potential licensing issues, and to serve as a point of contact for informal communications between" NRC and DOE staffs and their respective contractors. Appendix 7 is intended to facilitate, through detailed guidelines, the effectiveness of the OR in carrying out the OR office's day-to-day duties. For this reason Appendix 7 meetings "are intended to be focused discussions of technical topics on site characterization and related activities" and "at the discretion of DOE and NRC, external parties may be notified and invited to observe OR meetings..."

It has been customary that when Appendix 7 meetings, such as those announced by DOE on March 27, are planned, the Nevada Agency for Nuclear Projects and affected units of government have been notified and invited by NRC staff to observe the meetings. These are meetings that are generally of a broader scope and interest than the day-to-day "prompt informational exchange and consultation" with the OR and involve NRC headquarters staff and contractors discussing technical issues and data with DOE staff and contractors. Preparation of written reports and meeting summaries are not required because the scope of the meetings is not intended to include regulatory considerations such as additional information and data needs for NRC staff review and resolution of potential licensing issues. These matters are intended for discussion in Technical Exchanges for which the agreement regarding pre-licensing interactions requires public notice and the opportunity for public participation. In fact, the staff previously has urged Technical Exchanges with DOE on the subjects now slated for closed "information gathering meetings."

The Appendix 7 meetings announced on March 27, just by the period over which they are scheduled, clearly are not intended as "prompt informational exchange and consultation" with the OR. Under current circumstances, where DOE's highest priority is to prepare and submit a license application by June 30, 2008, and the NRC staff priority is to be sufficiently informed of DOE's pre-licensing plans and work to be able to efficiently and effectively review the license application, these planned meetings appear to cross the threshold that requires that they be publicly noticed as Technical Exchanges, and the opportunity afforded for public attendance and participation.

Conclusion:

If the NRC and DOE persist in holding these closed "information gathering meetings" two questions arise, one being procedural, and one having to do with the integrity, independence, and objectivity of the NRC as DOE's prospective regulator.

First, were the NRC headquarters and contractor staff who attended the March 28-29 meetings temporarily assigned to the OR office for purposes of these interactions, and was DOE timely notified of these assignments, as required by paragraph 2 of the agreement regarding pre-licensing interactions? If not, these were not valid Appendix 7 meetings, and cast grave doubt about NRC's commitment to openness and independence in its relations with DOE, the prospective license applicant.

And second, how can NRC's interest in being perceived as an impartial, independent, and objective regulator be served by arranging to meet with DOE in private, without prior notice or opportunity for observers' attendance, at this crucial time during which DOE is rushing to prepare a license application for which it has a great desire for approval from the NRC? While DOE may intend to hide full disclosure of its work from potential interveners in order to confound the license hearing process, the NRC should be doing everything in its considerable power as the regulator to assure and preserve the integrity of the licensing process for all parties. This certainly does not include condoning and participating in closed meetings with DOE, the announced applicant for a Yucca Mountain repository license from the NRC.

As DOE quickens its pace leading to submittal of its Yucca Mountain license application for NRC review, it is incumbent on the NRC staff to remain firm in its adherence to the Commission's openness policies when engaged in pre-licensing interactions with DOE. I urge your intervention in the situation described above in order to assure that your staff has clear guidance in the matter of acceptable practice for informing and including the public in its activities when engaged with DOE in matters pertaining to its license application.