

June 29, 2007

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

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION'S PLANS TO CONDUCT AN
INDEPENDENT REVIEW AND FAIR ADJUDICATION OF THE
U.S. DEPARTMENT OF ENERGY'S LICENSE APPLICATION FOR YUCCA
MOUNTAIN

Dear Mr. Loux:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter, dated June 4, 2007, to Chairman Dale E. Klein. In your letter, you request, on behalf of the State of Nevada, that the Commission ensure it "...will conduct a fully independent review and fair adjudication of the proposed repository." The Commission's rules and procedures will result in a fair and impartial adjudication.

Your letter also raises a potential concern that NRC would docket a license application that defers significant safety issues, beyond the construction authorization decision, to the decision to receive and possess waste. Part 63 of the Commission's regulations provides what is required for a license application. Specifically, the requirements for the contents of the application, at 10 CFR 63.21, state "[T]he application must be as complete as possible in the light of information that is reasonably available at the time of docketing." When 10 CFR Part 63 was finalized, the Commission provided the following explanation of how additional information would be considered throughout the licensing process:

Part 63 provides for a multi-staged licensing process that affords the Commission the flexibility to make decisions in a logical time sequence that accounts for DOE collecting and analyzing additional information over the construction and operational phases of the repository. The multi-staged approach comprises four major decisions by the Commission: (1) construction authorization; (2) license to receive and emplace waste; (3) license amendment for permanent closure; and (4) termination of license. The time required to complete the stages of this process (e.g., 50 years for operations and 50 years for monitoring) is extensive and will allow for generation of additional information. Clearly, the knowledge available at the time of construction authorization will be less than at the subsequent stages. However, at each stage, DOE must provide sufficient information to support that stage. DOE has stated its intent to submit, and NRC expects to receive, a reasonably complete application at the time of construction authorization to allow the Commission to make a construction authorization decision.
(66 FR 55738-9; November 2, 2001)

R. Loux

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In summary, if a license application is submitted, NRC will conduct an independent review and fair adjudication of the U.S. Department of Energy's (DOE's) license application for Yucca Mountain consistent with its regulations and procedures. The application must be as complete as possible, in light of information that is reasonably available at the time of docketing. DOE has stated its intent to submit, and NRC expects to receive, a reasonably complete application at the time of construction authorization, to allow the Commission to make a construction authorization decision.

If you require further clarification about this topic, please contact N. King Stablein, of my staff, at (301) 492-3199, or by e-mail, nks@nrc.gov.

Sincerely,

/RA/ Jack Davis for

Lawrence E. Kokajko, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: See attached list.

Letter to R. Loux from L. Kokajko dated: June 29, 2007

cc:

A. Kalt, Churchill County, NV	A. Elzeftawy, Las Vegas Paiute Tribe
R. Massey, Churchill/Lander County, NV	J. Treichel, Nuclear Waste Task Force
I. Navis, Clark County, NV	W. Briggs, Ross, Dixon & Bell
E. von Tiesenhausen, Clark County, NV	R. Murray, DOE/OCRWM
J. Birchim, Yomba Shoshone Tribe	G. Runkle, DOE/Washington, D.C.
R. Damele, Eureka County, NV	S. Bokhari, DOE/RW
L. Marshall, Eureka County, NV	S. Gomberg, DOE/Washington, D.C.
A. Johnson, Eureka County, NV	D. Curran, Harmon, Curran, Spielberg & Eisenberg, L.L.P.
S. Schubert, Sen. Reid's Office	R. Dyer, DOE/OCRWM
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D. Cornwall, NV Congressional Delegation	P. Harrington, OPM&E
T. Story, NV Congressional Delegation	M. Mason, BSC
R. Herbert, NV Sen. Reid's Office	S. Cereghino, BSC
M. Murphy, Nye County, NV	B. Gattoni, Burns & Roe
R. Lambe, NV Congressional Delegation	E. Mueller, Esmeralda County, NV
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S. Lynch, State of NV	J. Kennedy, Timbisha Shoshone Tribe
P. Guinan, Legislative Counsel Bureau	B. Durham, Timbisha Shoshone Tribe
R. Clark, EPA	R. Arnold, Pahrump Paiute Tribe
R. Anderson, NEI	

cc: (Continued)

R. McCullum, NEI

S. Kraft, NEI

J. Kessler, EPRI

D. Duncan, USGS

K. Skipper, USGS

W. Booth, Engineering Svcs, LTD

C. Marden, BNFL Inc.

J. Bacoch, Big Pine Paiute Tribe of the Owens Valley

P. Thompson, Duckwater Shoshone Tribe

J. Egan, Esq.

D. Feehan, GAO

E. Hiruo, Platts Nuclear Publications

G. Hernandez, Las Vegas Paiute Tribe

K. Finfrock, NV Congressional Delegation

P. Johnson, Citizen Alert

M. Williams, DOE/OCRWM

J. Williams, DOE/Washington, DC

A. Robinson, Robinson-Seidler

M. Plaster, City of Las Vegas

S. Rayborn, Sen. Reid's Office

L. Lehman, T-REG, Inc.

B.J. Garrick, NWTRB

T. Feigenbaum, BSC

M. Urie, DOE

J. Brandt, Lander County

R. Holland, Inyo County

B. Sagar, CNWRA

V. Trebules, RW/DOE

R. Warther, DOE/OCRWM

Connie Simkins, Lincoln County

S.A. Orrell, SNL

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E. Bonano, SNL

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In summary, if a license application is submitted, NRC will conduct an independent review and fair adjudication of the U.S. Department of Energy's (DOE's) license application for Yucca Mountain consistent with its regulations and procedures. The application must be as complete as possible, in light of information that is reasonably available at the time of docketing. DOE has stated its intent to submit, and NRC expects to receive, a reasonably complete application at the time of construction authorization, to allow the Commission to make a construction authorization decision.

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Lawrence E. Kokajko, Director
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 Office of Nuclear Material Safety
 and Safeguards

cc: See attached list.

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