

October 4, 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: THE U.S. DEPARTMENT OF ENERGY'S NEW LICENSING STRATEGY  
FOR ITS YUCCA MOUNTAIN LICENSE APPLICATION

Dear Mr. Loux:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter, dated September 10, 2007, to Chairman Dale E. Klein. In your letter, you express concern that the U.S. Department of Energy (DOE) may be planning to rely on information that is "...obsolete, technically inaccurate, incomplete, and ... insufficient to defend the LA [license application]." You ask that we inform DOE that "...if it [DOE] doesn't have its act together, it should do the right thing and delay submittal of the LA until it does," and that if it files a license application using its current Total System Performance Assessment, that "... that assessment will be the one DOE must defend in the review process."

NRC will not speculate about DOE's plans for updating its performance assessment nor any other aspect of a license application for the proposed repository at Yucca Mountain. However, I would like to address what I believe to be your principal concern. You raise the possibility that DOE may submit a poor-quality license application as a placeholder to achieve a predefined schedule and later seek to amend it during the license review, thereby wasting NRC and stakeholder resources in the review of an inadequate application.

NRC will treat any license application that DOE submits as a tendered application, and will carry out an acceptance review consistent with the provisions of 10 CFR 2.101(e) and 10 CFR 63.21. NRC's decision to docket any license application will be based on the results of that acceptance review. If NRC's review finds that the application is unsuitable for docketing, it will return the application to DOE with an explanation and instructions, as warranted. NRC believes that the acceptance review will address the concerns with respect to completeness expressed in your letter.

Although the issue of completeness will be evaluated in the acceptance review, technical adequacy and sufficiency will be assessed in the license application review. NRC will not issue a construction authorization, with or without conditions, until we have determined that our regulations have been met. NRC has consistently stressed the need for a high-quality license application to DOE. A high-quality license application is one that contains the data and information necessary and sufficient to support the technical positions presented in the license application. Such data and technical

information must be traceable, transparent, and technically appropriate for their use in the license application.

It is permissible under NRC's regulations for DOE to amend its license application after docketing. If DOE chooses to amend its license application, it must comply with NRC requirements at 10 CFR 2.101(e) and 10 CFR 63.22. These requirements provide that any amendment must be filed and distributed in the same manner as the initial application, and would therefore be available to the public. About your concern for the possible impact of an amendment on the quality of NRC's safety review, let me assure you the NRC staff will review the application, and any subsequent amendment, in a manner consistent with our mission to protect people and the environment.

I appreciate the perspective you provided in your letter. If you have any further questions about this matter, please contact Lawrence Kokajko, of my staff, at (301) 492-3158.

Sincerely,

***/RA/***

Michael F. Weber, Director  
Office of Nuclear Material Safety  
and Safeguards

cc: See attached list.

Letter to R. Loux from M. Weber dated: October 4, 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
M. Yarbro, Lander County, NV	J. Espinoza, GAO
J. Donnell, DOE/OCRWM	A. Gil, DOE/OCRWM
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R. Herbert, NV Sen. Reid's Office	S. Cereghino, BSC
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R. Lambe, NV Congressional Delegation	E. Mueller, Esmeralda County, NV
K. Kirkeby, NV Congressional Delegation	J. Gervers, Clark County, NV
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S. Frishman, State of NV	J. Raleigh, SNL
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	

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J. Kessler, EPRI

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K. Skipper, USGS

W. Booth, Engineering Svcs, LTD

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J. Bacoch, Big Pine Paiute Tribe of 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

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J. Williams, DOE/Washington, DC

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M. Plaster, City of Las Vegas

S. Rayborn, Sen. Reid's Office

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R. Holland, Inyo County

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C. Dahlberg, Fort Independence Indian Tribe

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Sincerely,

**/RA/**

Michael F. Weber, Director  
Office of Nuclear Material Safety  
and Safeguards

cc: See attached list.

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