

STATEMENT OF ROBERT R. LOUX
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BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
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Thank you for the opportunity to appear before you today. I am Robert Loux, Executive Director of the Nevada Agency for Nuclear Projects, which is a branch of the Office of the Governor of the State of Nevada. The Agency was established by the Nevada Legislature in 1985, to carry out the State's oversight duties under the Nuclear Waste Policy Act. I have served as the Agency director since it was established. Our Agency also serves as staff for the Nevada Commission on Nuclear Projects.

The current status of the Yucca Mountain high-level nuclear waste repository project can be described in a single word: unknown – not even uncertain, but unknown. You have heard from the Department of Energy's Office of Civilian Radioactive Waste Management that it cannot provide a schedule for submittal of a Yucca Mountain repository license application to the Nuclear Regulatory Commission (NRC) for its review. But, Department representatives have said that it will not take place in FY 07. You also have watched the progression of potential repository opening dates go from the statutory 1998 date to a more recent estimate of 2010, and now to maybe 2015 to 2020. Multiple episodes of "redirection" of the program, both from within the Department of Energy and from the Congress, define the past twenty years of the Yucca Mountain project history. The current status of the Yucca Mountain project, within the Office of Civilian Radioactive Waste Management, is a product of fundamental, persistent and unresolved problems, with both the site and the project execution, overlain by layers of redirection that wrongly assume the problems have been, or will be resolved.

Site Recommendation and Technical Basis for License Application

At the time of the Secretary of Energy's Site Recommendation for development of a Yucca Mountain repository on February 14, 2002, it was stated that a license application would be submitted to NRC in late 2004. This plan was announced despite the Nuclear Waste Policy Act requirement that a license application be submitted not later than 90 days after the site designation becomes effective by an act of Congress, which occurred in July 2002. In November 2004, it was announced that the license application would not be submitted during the following month, and it was not known when it would be submitted.

This failure to submit the license application in 2004 came as no surprise, since a regulatory prerequisite for license application submittal had not been met. The Nuclear Regulatory Commission Licensing Support Network Rule requires that DOE certify it has made all documentary material in its possession on the proposed Yucca Mountain high-level waste repository publicly available, in a prescribed manner, at least six months prior to submission of a license application. The intent of this is to expedite the discovery phase of the licensing hearing to meet the tight statutory schedule for a licensing decision by the NRC. On August 31, 2004, the NRC Atomic Safety and Licensing Board ruled that the DOE's June 30, 2004 certification was based on incomplete documentation, and the manner in which DOE made the material publicly available on its own internet web site failed to satisfy the regulations. Nevada's July 12, 2004 motion to strike the certification was granted. This all transpired two years after the Yucca Mountain site designation became effective. DOE has not tendered a new certification, and in its monthly status reports to the Atomic Safety and Licensing Board, as late as this month, stated that it does not have a schedule for resumption of the process.

At the time of the Site Recommendation, DOE announced its priorities for FY 03 were to:

- a) "continue vigorous scientific investigation of repository system behavior;
- b) develop a repository license application; and
- c) accelerate the transportation program."

This confirms that, contrary to statements by then Secretary Abraham and President Bush, the repository program managers were not prepared to move forward with the licensing process, since by law, site characterization, i.e. scientific work, is complete at the time of Site Recommendation with respect to the sufficiency of information for a license application. President Bush, in a February 15, 2002 letter to the President of the Senate and the Speaker of the House, said, "This recommendation.. .will permit commencement of the next rigorous stage of scientific review of the repository program through formal licensing proceedings before the Nuclear Regulatory Commission." (emphasis added).

Even the Nuclear Regulatory Commission understood that at the time of Site Recommendation, the information for a license application was insufficient because, in its statutorily required statement to the President of its view on whether the "at depth site characterization and waste form proposal seem to be sufficient for inclusion" in the license application, its response was a forecast, not a finding. The Commission indicated confidence that the information would be sufficient at the time of license application, but still pending with the Commission was the resolution of 293 Key Technical Issues that DOE had agreed with the NRC staff to have resolved prior to submission of a license application.

The Nuclear Waste Policy Act also required that a Final Environmental Impact Statement (FEIS) for a Yucca Mountain repository accompany the Site Recommendation by the Secretary to the President. The FEIS is the primary document that explains and