

From: Moore, Thomas
Sent: Wednesday, June 02, 2010 5:59 PM
To: Julian, Emile
Subject: FW: URGENT for 3 and 4 June Hearings

Please place the forwarded e-mail in the appropriate public docket for the HLW proceeding as a 10 C.F.R. Section 2.315 statement and have it served on parties. Thanks.

From: J Wagoner [mailto:wagonersc@yahoo.com]
Sent: Wednesday, June 02, 2010 5:11 AM
To: Moore, Thomas; Ryerson, Paul; Wardwell, Richard
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Subject: URGENT for 3 and 4 June Hearings

For your consideration:

Questions for DOE regarding motion to withdraw:

1. You cite the AEA and Energy Reorganization Act as the source of the Secretary of Energy's authority to make all decision related to high-level waste, including elimination of the Yucca Mountain project. NWPA, explicitly establishing a national policy regarding high-level waste management, was made law after the authorities you cite. How do you think AEA and ERA override the NWPA, when NWPA became law after the others?

You argue that the Secretary of Energy has the authority under the AEA to set policy of any kind related to high-level waste. I presume that you would agree that such authority, granted by Congress, is extended to all Secretaries of Energy, including not only the current Secretary, but those in the future. That being the case, isn't an attempt to withdraw your license application "with prejudice" an attempt to override the authority granted by Congress -- in effect, denying any future Secretary the authority to set policy as you say the Secretary has the right to do? Does this panel have the authority to overturn this authority granted by Congress? How does this square with the Constitution's separation of powers?

Let's take that issue a little further: Assume for the moment that you are right: in spite of the NWPA, any Secretary of Energy can, at will, change the national policy to either pursue or not pursue the Yucca Mountain Repository. Would not your position result in a "revolving door" of policy rotating at the whim of each Secretary? Isn't this precisely the political stalemate that NWPA was, according to it's own preamble, intended to avoid? (From the "Purpose" section of the NWPA: "*to establish a schedule for the siting, construction, and operation of repositories that will provide a reasonable assurance that the public and the environment will be adequately protected from the*

hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository;" [emphasis added])

2. You argue that NWPA doesn't explicitly prohibit the Secretary of Energy from withdrawing the license application, and that other Congressional actions would be required prior to construction of the repository -- suggesting that Congress didn't really mean that the repository should be built. How does this square with the strongly worded preamble to NWPA that clearly expresses Congress's intent to "get 'er done" in spite of political pitfalls such as that currently before us? Aren't you simply being critical of Congress's words -- suggesting that it's their job to foresee and preclude, in writing, any and all possibilities that might interfere with clearly stated intent? Do you apply this standard to your view of all Congressional acts under which DOE and other government agencies pursue projects? How does DOE ever get anything done?

3. You claim that the Secretary of Energy has determined that the repository at Yucca Mountain "is not an option." Where, other than bald statements in legal motions, is such a determination documented? Did the Secretary really make the determination, or, as stated in your motion, was he simply ordered by President Obama to terminate the project? What is the President's authority to do so under the AEA or the NWPA?

If another Secretary of Energy was to establish a "policy" that a high-level waste repository should be built at some location other than Yucca Mountain, what "burden of proof" relative to the soundness of that policy would apply to the Secretary? Does not the same burden of proof extend to what you describe as the current Secretary's policy decision to stop the Yucca Mountain repository? Has Secretary Chu met that burden of proof relative to his decision on Yucca Mountain?

4. You reference the Nye County suggestion that proceedings be delayed until there is a more sympathetic administration in-place to pursue the Yucca Mountain license application -- implying that Nye County is right: that, even if ordered to pursue the Yucca Mountain license, the current administration might not do so with conviction? Rather than me speculating on what the administration might do, please tell me your understanding of what the administration would do if an un-appealable decision was made that the Yucca Mountain project should go forward.

Question for NRC Staff regarding records:

What are NRC's requirements for management (storage) of records containing information that is important to safety as presented in an applicant's license application? Would you expect DOE to comply with these requirements for (1) information important to safety of pre-closure operations and (2) information

important to post-closure waste isolation? Does NRC expect applicants to meet these requirements where projects (e.g., commercial nuclear power plants) are put on hold? Question for DOE regarding records:

Question for DOE regarding records:

Does DOE, as applicant for this proceeding, have a Records Management System and a Quality Assurance Program that meets NRC's requirements? Does DOE intend to maintain compliance with these NRC requirements for storage of records prior to an un-appealable decision regarding the Yucca Mountain project? (NOTE: these records probably include not only LSN documents, but many others.)

E-mail Properties

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