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October 11, 2017

Dr. Andrew Bates
Chairman, LSNARP
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Licensing Support Network Advisory Review Panel Issues

Dear Dr. Bates:

Writing on behalf of the State of Nevada (“Nevada”), I want to, first, thank you for providing (through correspondence from Mr. Russell Chazell) the identity of all the addressees of your August 11, 2017 Memorandum. The content and distribution of your Memorandum caused me to look briefly at the history and role of the LSNARP (Licensing Support Network Advisory Review Panel), a history with which you were intimately involved, while I was not.

What I learned is that from its inception, the LSNARP was intended to – and early on did – provide critical advice and information to the NRC on the technical issues relating to the operation and maintenance of the LSN. Unfortunately, it appears that the LSNARP has now been reduced to a mere afterthought. In 2016, NRC created an “ADAMS LSN Library” without any input whatsoever from the LSNARP. Your Memorandum pays lip service to seeking (belated) LSNARP input regarding the NRC’s reconstitution of the LSN – and yet, NRC plans to hold webinars to provide information to the public regarding the functioning of that database before any LSNARP meeting. This sequence is a classic example of “putting the cart before the horse” by holding a single LSNARP meeting to “paper over” that which was done without input from the Panel, perhaps hoping to obtain its imprimatur on what is already a fait accompli.

The scope of the LSNARP’s advisory role became clear to me when I read a detailed 1999 analysis by the “Technical Working Group” – an extension of the LSNARP – of potential LSN methodology. I also reviewed transcripts of LSNARP meetings in 1999 and 2003, which compelled the conclusion that the LSNARP was a small, serious, and well-informed group, befitting its role as advisor to the NRC.

The importance of the LSN and its worldwide reach was made clear by the NRC in NUREG/BR-0301 Rev. 1 (June 2004):

Who May Use the LSN?

- There are no restrictions. Any Internet user worldwide can use the LSN to access Yucca Mountain repository licensing documents.

NUREG/BR-0301 Rev. 1 “Licensing Support Network for Documents Relating to Yucca Mountain Licensing Proceeding,” at p. 2, 06/30/2004, ML041760035.

That broad scope of the LSN was recognized in a 2004 Memorandum by the NRC’s Chief Administrative Judge, G. Paul Bollwerk III, wherein he said:

Stakeholders interested in the construction authorization proceeding regarding the Yucca Mountain high-level waste (HLW) repository may include individual members of the public, members of Congress, NRC licensees, other Federal agencies, States, Indian Tribes, local governments, industry, industry workers, technical societies, the international community, and citizen groups.

“Communications Plan for the Licensing Support Network (LSN),” at p. 1, 01/20/2004, ML040210687.

Judge Bollwerk attached to his Memorandum the January 2004 “Communication Plan for Informing the Public, Parties, and Potential Parties to the Yucca Mountain High-Level Radioactive Waste Repository Licensing Proceeding About the Effective Use of the Licensing Support Network (LSN),” which mentions (at p. 2) that, as of 2000, some 690,000 households in Nevada alone had internet access – thus concluding that web availability of the LSN was “the preferred approach” due to its broad access. The Plan also identified (at pp. 14 and 15) some 19 “Organizations Active in Yucca Mountain Issues” and (at p. 16) 19 “Native American Tribal Organizations with Yucca Mountain Interests.” (The list excluded the National Congress of American Indians because it was a member of the LSNARP.) One would assume that these 38 organizations would be on the distribution of your August 11, 2017 Memorandum to Interested Members of the Public; but one would be wrong, since only one of the 38 was sent your Memorandum. The Plan also observed that:

The key to a successful communication strategy with formal organizational entities is to include LSN topics in planned exchanges such as LSNARP meetings. . . .

“Communication Plan for Informing the Public, Parties, and Potential Parties to the Yucca Mountain High-Level Radioactive Waste Repository Licensing Proceeding About the Effective Use of the Licensing Support Network (LSN),” at p. 3, 01/20/2004, ML040210696.

In the memo from the LSNARP (through Brian Newell) dated September 11, 2017, it was requested that primary Points of Contact (POCs) and alternate POCs were designated. POCs have nothing to do with the LSNARP and had already been designated. In fact, on July 6, 2007, the NRC’s Atomic Safety and Licensing Board responsible for the Yucca Mountain licensing

proceeding required each party to identify an LSN POC and encouraged appointment of an alternate POC.

No later than the time each potential party certifies its LSN document collection pursuant to 10 C.F.R. § 2.1009(b) it shall file a notice identifying the person who will serve as its primary point of contact (POC). . . All potential parties are encouraged to designate at least one alternate POC.

“Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution),” at p. 8, 07/06/2007, ML071900146.

The existence of, and membership in, the LSNARP is a serious matter, created in compliance with the Federal Advisory Committee Act (Pub.L. 92-463, 86 Stat. 770, enacted October 6, 1972). It is memorialized by NRC Regulation, NRC Federal Register Notice, and the Panel’s very Charter. In January of this year, NRC published a notice of the renewal of the LSNARP in the Federal Register (82 Fed.Reg. 3363, “Notice of renewal of the Charter of the Licensing Support Network Advisory Review Panel (LSNARP),” Jan. 11, 2017). With respect to the carefully defined and listed membership on the LSNARP, the NRC notice stated:

Membership on the Panel will continue to be drawn from those whose interests that could be affected by the use of the LSN document collection, including the Department of Energy, the NRC, the State of Nevada, the National Congress of American Indians, affected units of local governments in Nevada, the Nevada Nuclear Waste Task Force, and nuclear industry groups.

Id.

The renewed Charter of the LSNARP continues to identify the same seven members. The Charter contemplates the possible expansion of the Panel’s membership, but only via appointment by the Secretary of the Commission:

[T]he Secretary of the Commission may appoint additional representatives, giving particular consideration to potential parties to the HLW licensing proceeding, those who later acquire actual party status, and interested governmental participants.

“LSNARP Charter,” at p. 3, 01/05/2017, ML17005A181, emphasis added.

As far as I am aware, no new members have been appointed by the Secretary. The importance of membership on the Panel is reflected in the applicable NRC regulations. 10 C.F.R. § 7.12 requires at least 15 days advance notice of any LSNARP meeting, to be published in the Federal Register:

(c)(1) Except when the President or designee determines in writing that no notice should be published for reasons of national security, at least 15 days prior to an NRC advisory committee meeting, a notice that includes the following information shall be published in the *Federal Register*.

10 C.F.R. § 7.12, Public participation in and public notice of advisory committee meetings.

10 C.F.R. § 7.18 authorizes compensation for Panel members, including travel expenses:

(c)(1) Subject to the provisions of paragraph (c)(2) of this section, if the Commission determines that compensation of a member of an NRC advisory committee is appropriate, the amount that will be paid shall be fixed by the Chairman of the Commission at a rate that is the daily equivalent of a rate in NRC's General Grade Salary Schedule, unless the member is appointed as a consultant and compensated at a rate applicable to NRC consultants.

(f) A member or staff member of an NRC advisory committee engaged in the performance of duties away from his or her home or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, United States Code, for persons employed intermittently in the Government service.

10 C.F.R. § 7.18, Appointment, compensation, and expense reimbursement of advisory committee members, staffs, and consultants.

Perhaps most significantly, new members appointed to the Panel are required to be subjected to multiple reviews relating to relevant laws and regulations concerning their possible conflicts of interest (10 C.F.R. § 7.20:

The Designated Federal Officer or alternate for each NRC advisory committee and the General Counsel or designee shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

10 C.F.R. § 7.20, Conflict of interest reviews of advisory committee members' outside interests.

Again, Nevada is unaware of any new Panel appointment or any such conflict of interest reviews since the commencement of the Yucca Mountain licensing proceeding in 2004.

The foregoing background brings us to the summer of 2017, when the NRC, having published its ADAMS LSN Library in 2016 (devoid of any LSNARP input) announced that a single, virtual LSNARP meeting would be held at some indefinite date in the future. As you know, NRC Staff sent the Commissioners a Memorandum on May 25, 2017, suggesting three LSNARP meetings and a resource allocation of \$427,000. (“COMSECY-17-0019: Yucca Mountain Project Activities,” at pp. 2, 3, 05/25/2017, ML17145A253) Despite the NRC Staff recommendation, the Commission directed the Staff to conduct one LSNARP meeting to, among other things, “gather input from LSNARP members. . . regarding reconstitution of the LSN or a suitable replacement system,” and allocating only \$110,000 for this and other endeavors. (SRM-COMSECY-17-0019: Yucca Mountain Project Activities, 07/31/2017, ML17212B393.)

The foregoing direction by the Commission was disingenuous at best. NRC had already published its LSN replacement in August 2016, with no LSNARP input.

Your August 11, 2017 Memorandum negates any reasonable belief that the Panel responsible to advise the NRC on this subject will have any serious input. In your Memorandum, you state:

The NRC previously sought input from the LSNARP concerning system capabilities and configuration to inform the development and implementation of the LSN. The Commission seeks similar input regarding reinstating the LSN or establishing a replacement system. To that end, the input received from the virtual LSNARP meeting with the Panel's members will be used to make recommendations to the Commission regarding reconstitution of the LSN in an appropriate form. The LSNARP meeting will be open to the public and comments will also be accepted from the public at that time.

“Memorandum: Information-Gathering Activities Associated with the Licensing Support Network (LSN),” at p. 2, 08/11/2017, ML17223A063, emphasis added.

To suggest that a single, virtual LSNARP meeting could possibly provide “similar input” to the conduct of numerous, detailed technical meetings over a decade, is nonsensical, if not inane. Moreover, any potential LSNARP input at this point is too little, too late. On December 1, 2015, NRC Staff, as previously directed by the Commission, informed the Commission that:

OCIO in December will initiate the project, as described under Option 2 in enclosure 3 to COMSECY-14-0041, to create, operate, and maintain an LSN library in Public ADAMS with enhanced search capabilities that incorporates all the LSN documents now found in the ADAMS LSN non-public library, as well as the staff’s LSN documents now housed in ADAMS.

“SECY-15-0150 Initiating Activities to Make Licensing Support Network Documents Publicly Available,” at p. 3, 12/01/2015, ML15335A395.

The LSN project ordered by the Commission was completed more than a year ago. Your August 11 Memorandum contemplates the conduct of webinars on “the new ADAMS LSN Library and its search capabilities” prior to the single planned LSNARP meeting, thus making such a meeting a moot point. Even the Commission itself, in its current Monthly Status Report to Congress, talked about “planned fall 2017 training to familiarize them [Panel members] with the functionality and operations of the recently-completed ADAMS LSN Library.” (“NRC Monthly Status Report Activities Related to Yucca Mountain Licensing Action for August 2017,” at p. 4, 09/26/2017, ML17229B269)

The same NRC Report stated that “the LSNARP Chairman contacted advisory panel members.” Who are they? My inquiry to Mr. Chazell asking for the identity of the LSNARP members you contacted resulted in his providing a list of all addressees of your August 11 Memorandum. He listed some 30 organizations, including 124 names of individuals. He did not

distinguish as to which were LSNARP members and which were “interested members of the public” (the two types of addressees named in your Memorandum). I assume that LSNARP membership has not been conferred on 30 organizations or their representatives. If it has, may I inquire when they were appointed by the Secretary of the Commission (in accordance with the LSNARP Charter), or when they were vetted for conflicts of interest, in accordance with 10 C.F.R. § 7.20?

Therefore, the State requests that NRC first revive a functioning, representative LSNARP and then and only then, with the advice of that ARP, proceed to develop a new LSN that is easily accessible and searchable on the internet by all parties and the general public.

Thank you for your attention to this matter.

Respectfully,



Robert J. Halstead
Executive Director

Cc: Governor's Office
Attorney General's Office
Senator Bryan, Chairman, Commission on Nuclear Projects
Congressional Delegation