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OFFICE OF SECRETARY
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DOCKET NUMBER PR 51
PROPOSED RULE (54 FR 39765)

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

ATTENTION: Docketing and Service Branch

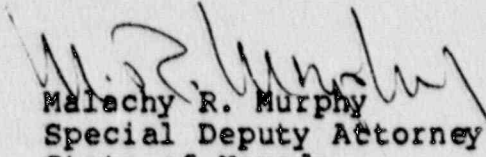
Re: Waste Confidence Decision Review and Proposed
Revisions to 10 CFR Part 51

Dear Mr. Chilk:

Enclosed please find the State of Nevada's comments on
the Commission's proposed revisions to its Waste Confidence
Decision and 54 FR 39767, and to its proposed revisions to
10 CFR Part 51 (54 FR 39765).

Thank you for your assistance.

Yours very truly,


Malachy R. Murphy
Special Deputy Attorney General
State of Nevada

MRM:jfe
Enclosure

cc: Bob Loux
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STATE OF NEVADA'S COMMENTS ON WASTE CONFIDENCE DECISION
REVIEW AND PROPOSED RULE AND CONSIDERATION OF
ENVIRONMENTAL IMPACTS OF TEMPORARY STORAGE OF
SPENT FUEL AFTER CESSATION OF REACTOR OPERATION

The State of Nevada submits these comments on the Commission's review and proposed revision of its Waste Confidence Decision (54 FR 39767 et. seq.), and the accompanying amendment to 10 CFR Part 51 (54 FR 39765).

The proposal with respect to the Waste Confidence Decision would revise Findings 2 and 4 of the original decision. Finding 2 would be revised to find a reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century and that sufficient repository capacity will be available within thirty (30) years beyond the licensed life for operation of any reactor. Finding 4 would be revised so that the Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least thirty (30) years beyond the licensed life for operation of any reactor. Nevada, although it supports and endorses the overall approach the proposed revision to the Waste Confidence Decision takes, does not think that the revised findings accurately reflect the current state of DOE's Civilian Radioactive Management Program, nor uncertainty surrounding the Yucca Mountain project, and therefore suggests that the proposal needs further revision.

The proposed Waste Confidence Decision revisions should be revised and republished to reflect the recently released Reassessment Of The Civilian Radioactive Waste Management Program in which the Department of Energy sets forth a new repository availability date of 2010. Much of the analysis on which the proposed revisions are based is grounded on a lack of confidence in DOE's ability to bring a repository on-line by its earlier target date of 2003, or by 2007-9, which the original decision anticipated. The reasons for this lack of confidence now have been confirmed. More thought should be given to even 2025 as a date the Commission should take much comfort in. That date, taken from the ACNW report, reflects the time necessary to find another site should Yucca Mountain prove unsuitable, which the proposed revision acknowledges could well be the case. If that decision were made late in DOE's new schedule, either by the Department itself or the Commission in a licensing proceeding, there may very well not be enough time to locate, characterize, license and construct another site by 2025. Given the history of delays in this program, even that date seems quite optimistic in the event of Yucca Mountain's unsuitability.

With respect to Finding 4, Nevada believes that that proposal does not go far enough. The scientific evidence available would support a reasonable assurance that, if necessary, spent fuel can be stored safely and without significant environmental risks for much longer than thirty (30) years beyond the licensed life for operation of any reactor. The State

thus suggests that Finding 4 of the Waste Confidence Decision, as well as 10 CFR §51.23, be amended to reflect reasonable assurance that spent fuel can be stored safely and without significant environmental risk in dry casks at reactor sites for up to one hundred (100) years.

Finally, in light of the DOE's reassessment the Commission, in the exercise of its responsibilities to the public and to the nuclear utilities, should come right out and say that the utilities will need to have interim storage available well into the next century, and that Congress take notice of this inevitable requirement.