

February 20, 2001

Mr. Robert R. Loux
Executive Director
Agency for Nuclear Projects
1802 N. Carson Street, Suite 252
Carson City, Nevada 89701

Dear Mr. Loux:

I am responding to your letter of January 17, 2001, concerning a possible modification to the Nuclear Regulatory Commission's (NRC's) hearing procedures applicable to a potential application from the Department of Energy (DOE) for a license for a geologic repository for the disposal of high-level waste at Yucca Mountain, Nevada. You proposed that the NRC staff not be a party in the licensing proceeding "to mitigate the fact that an agency of the federal government will be the applicant for a permit from a federal regulatory agency, when the two agencies have a common ancestry, the Atomic Energy Commission."

At the outset, let me assure you that, although the NRC and DOE are descendants from the Atomic Energy Commission (AEC), the NRC is wholly independent and separate from DOE. In fact, Congress passed the Energy Reorganization Act of 1974 for the express purpose of separating the licensing and regulatory functions of the AEC and establishing the NRC as an independent regulatory agency. In the years since its creation, NRC has zealously protected and defended its independence and operates at arm's length in dealing with all regulated parties. In those areas where NRC has regulatory authority with regard to DOE, NRC has dealt with DOE in the same manner as other regulated parties.

Under the Commission's current regulations, any hearing for the potential licensing of a repository would be conducted under the formal hearing procedures of 10 CFR Part 2, Subparts J and G. After recently considering rulemaking to propose changes to our hearing procedures, the Commission has issued a staff requirements memorandum dated February 16, 2001, reconfirming our intention to use formal hearing procedures for the proceedings on the initial construction authorization and the initial license to receive and possess high-level waste at a geologic repository. As envisioned in those procedures and in the Commission's regulations for the licensing of a repository, the NRC staff, with the assistance of the Center for Nuclear Waste Regulatory Analyses (CNWRA), will conduct an independent technical review of DOE's license application and Safety Analysis Report if and when they are received and will prepare a Safety Evaluation Report (SER) documenting the review and conclusions. Then, the NRC staff, as a party in the hearing, will independently present and support its technical analyses and SER insofar as it bears on the issues placed in controversy in a potential hearing and will take and support a position on those issues based on the staff's and CNWRA's expert analyses. The staff's analyses, positions, and regulatory conclusions will be wholly independent of those of DOE.

The Commission believes that the staff's participation as a party is useful to the Atomic Safety and Licensing Board, the other parties, and the public as it will provide an independent regulatory perspective for the record. The Atomic Safety and Licensing Board, other parties, and the public will benefit from the staff's participation as it relates to the relevant staff documents. Both the Commission and the NRC staff are fully aware of and committed to maintaining objectivity in regulating the activities of DOE or any other regulated entity. That objectivity will not be undercut -- indeed, it will be enhanced -- by the presentation by the staff of its independent views as a party in a potential hearing. Further, the staff does not have the role of the decision maker for the issues considered in a hearing. The decisions on those issues will be made by the Atomic Safety and Licensing Board and, ultimately, by the Commission based on the evidence presented by the intervenors, the interested governments, DOE and the NRC staff. For all these reasons, we decline to adopt the modification you have suggested.

The NRC staff will be an objective, independent reviewer of any potential license application, even though the application would be submitted by another Federal agency. Nonetheless, as I noted to you when we met, all the parties to the repository licensing proceeding will have ample opportunity to explore the staff's evaluation and position on the issues at the hearing.

Please contact me if you have any questions.

Sincerely,

/RA/

Richard A. Meserve