

March 7, 2002

The Honorable Kenny C. Guinn
Governor of Nevada
101 N. Carson Street
Carson City, Nevada 89701

Dear Governor Guinn:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter of November 2, 2001, which objected to the process by which the NRC concurred on the U.S. Department of Energy's (DOE's) draft final "General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories" (10 CFR Part 960) and its "Yucca Mountain Site Suitability Guidelines" (10 CFR Part 963). I apologize for the delay in acknowledging your letter, which was not received by the NRC until early January. I assume that your letter was included with the many other pieces of mail delayed by the extra screening following the outbreak of anthrax exposures in the Brentwood postal facility and other postal locations in the Washington Metropolitan area.

We recognize that both the State of Nevada and Nye County requested that the Commission follow the same decision-making process it used in 1984, when it first concurred in earlier DOE guidelines. For reasons I will discuss below, the Commission decided it was neither necessary nor appropriate to apply the process developed in 1984, given the very different circumstances we faced in 2001.

The 1984 guidelines were developed for identifying multiple candidate sites for characterization as potential host sites for a geologic repository for the disposal of spent nuclear fuel and other high-level radioactive waste. Although not legally required to do so, the Commission elected to solicit public comment as part of its 1984 concurrence decision-making process. However, in the 1987 Amendments to the Nuclear Waste Policy Act of 1982, Congress identified Yucca Mountain as the only site to be characterized. As a result, DOE elected to issue separate guidelines (Part 963) for determining whether the Yucca Mountain site, once characterized, is suitable for recommendation to the President. Having been called on to concur in the DOE guidelines, for this different purpose, the Commission notified the State and Nye County that it would make a final determination on an appropriate concurrence process after it had received the NRC staff's analysis of the DOE guidelines and that it would take full advantage of public comments received by DOE. The Commission also committed to promptly notify the State and Nye County of its decision with respect to the concurrence process.

After reviewing the staff's analysis of the DOE guidelines, the Commission determined that sufficient information was available in the record regarding stakeholder concerns as to make further stakeholder involvement prior to the Commission's concurrence unnecessary. The Commission reached this decision based on full knowledge and extensive consideration of the

views of interested stakeholders, including the State, affected local governments and the public. In particular, DOE completed its Part 963 rulemaking with full public notice and opportunity for comment, and the Commission had complete access to the public comments received by DOE. Further, Part 963 is consistent with the Commission's regulations at Part 63, and NRC received extensive public comment and conducted five public meetings in Nevada in the course of the Part 63 rulemaking. The substantial record of public comment resulting from these two related rulemakings allowed the Commission to make its final decision on the concurrence process in parallel with providing that concurrence to DOE.

The Commission issued its decision to concur in DOE's guidelines and not to seek further stakeholder input in an internal September 24, 2001 staff requirements memorandum, which directed the staff to prepare a Federal Register notice documenting the Commission's decision and to prepare letters to DOE, the State, and Nye County notifying them of the Commission's decision. Unfortunately, the meeting on September 26, 2001, to which you refer in your letter, took place before those documents were finalized and, therefore, before the Commission was in a position to announce its decision publicly.

We regret the State's disappointment with the Commission's decision-making process. However, for the reasons stated above, we remain confident that all the issues of concern to the stakeholders with respect to the Part 963 guidelines were fully considered by the Commission in its concurrence decision.

If you have any questions or comments, please contact me.

Sincerely,

/RA/

Richard A. Meserve

cc: Senator Harry Reid
Senator John Ensign
Congressman James Gibbons
Congresswoman Shelly Berkley