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June 30, 2003

VIA OVERNIGHT MAIL

Dr. Andrew L. Bates
Office of the Secretary
U.S. Nuclear Regulatory Commission
Mail Stop O-16 C1
One White Flint North
11555 Rockville Pike
Washington, DC 20852

Dear Dr. Bates:

I am responding to your June 13, 2003 (e-mail) request for comments on matters related to the Licensing Support Network ("LSN") that arose at the June 3, 2003, meeting of the Licensing Support Network Advisory Review Panel ("LSNARP"), on which the Nevada Agency for Nuclear Projects represents the State of Nevada as a member. The Agency for Nuclear Projects is the State Agency designated by the Nevada Legislature to oversee the federal high-level nuclear waste program and its activities as they affect the state.

As we understand it, a suggested change to 10 C.F.R. Part 2 to allow the use of optical storage media (*e.g.*, CDs/DVDs) is intended to expedite the Department of Energy's ("DOE") transmission of documents in support of a construction authorization application for the Yucca Mountain repository. A rule change is needed because submission of such optical storage media would not meet the "electronic" submission requirement of 10 C.F.R. Part 2, Subpart J.

Nevada has doubts about the quality of access to the document components that reside only on the optical storage media. These concerns pertain both to the assurance of the attributes necessary for full user access to document components originally filed on optical storage media, and assurance of necessary, accurate, and timely physical receipt of document components on optical storage media under the pressing constraints of an adjudicatory process involving numerous parties and externally imposed time limitations for completion of the process. While it

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is conceivable that the specific language proposed to implement the suggestion for use of optical storage media could alleviate some of these concerns, no language has been offered that addresses the issues satisfactorily.

Other suggestions involve the requirement for PDF and 300-dpi as the format for filings, and the avoidance of duplication in LSN submissions by parties. We appreciate the need to avoid duplication, but it is important that the PDF format requirement be exclusive and not allow exceptions (*e.g.*, a Tag Image File Format) TIFF in particular can pose serious problems for numerous potential users.

Because of the magnitude and complexity of the anticipated Yucca Mountain licensing proceeding, its generally untried nature, and uncertainty regarding the scope of participant interest and involvement, any changes to 10 C.F.R. Part 2, Subpart J or NRC's interpretation of this regulation could have broad impact on the parties and potential users. This is sufficient reason to exercise caution.

DOE's June 11, 2003, request to the LSN Administrator that it index its own documents and provide its index to the NRC at the same time it submits its LSN documents and certification that all available relevant documentary material is electronically available, no later than six months prior to submission of its license application, contains a significant assumption. That assumption is that by so doing, DOE will be assisting in expediting the LSN Administrator's ability to accept the DOE's certification, because, according to DOE's request, the Administrator would have had the opportunity to oversee and comment on DOE's indexing activities. This would result in an unauthorized and detrimental change in the role of the LSN Administrator, from one whose duty includes administratively assuring that the LSN, in all respects, equitably serves the common need of all the parties (the index of documentary material being integral to serving the common need), to one of oversight and comment on DOE's execution of its responsibilities.

The issue of the need for and effectiveness of the LSNARP was raised in the Panel meeting only because of the question of the financial ability of some of the Panel members to participate, due to uncertainties about their continued funding by the DOE, the potential license applicant. This Panel is a function of the NRC, and it is the NRC's responsibility to assure its viability, as long as it is seen as an asset to the agency, regardless of whether the potential license applicant has an interest in its viability.

Regarding participation in testing of the NRC Electronic Information Exchange ("EIE") and submission of electronic docket materials, the State of Nevada is interested in being included. As an initial point-of-contact, please communicate with Michael O'Mealia, at Egan, Fitzpatrick & Malsch, 7918 Jones Branch Drive, Suite 600, McLean, VA 22102 (Tel. 703-918-4942).

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We appreciate the opportunity to comment on the NRC's suggestions regarding changes in the LSN rule. If you have questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a stylized flourish at the end.

Robert R. Loux
Executive Director

cc: Mr. Daniel J. Graser
NRC LSN Administrator

Mr. Michael K. O'Mealia
Egan, Fitzpatrick & Malsch, PLLC