

August 20, 2003

The Honorable Shelley Berkley
United States House of Representatives
Washington, D.C. 20515

Dear Congresswoman Berkley:

I am responding on behalf of the Nuclear Regulatory Commission (NRC) to your letter of July 10, 2003, concerning the U.S. Department of Energy's (DOE) plan to "bundle" or group the responses to the NRC/DOE agreements on Yucca Mountain into 14 technical basis process groups. The goal of the pre-licensing issue resolution process is to ensure that enough information is available on an issue to ensure that there is a common understanding of the information that will be necessary for submission of an acceptable and docketable license application. Therefore, I can assure you that the NRC would not accept a DOE approach that would result in NRC receiving less documentation and information than it needs to perform a review of the license application.

In your letter, you express concern that DOE is reversing its earlier commitments. In a letter to NRC dated June 23, 2003 (copy enclosed), DOE proposed to take what it describes as a more integrated approach to addressing the agreements by grouping them into subject areas that correlate with the relevant parts of the Yucca Mountain Project's post closure analysis. As a potential applicant, DOE has flexibility to pursue this approach. The staff is now reviewing DOE's approach and expects to conduct a public meeting with DOE on this approach later this year to ensure that NRC staff fully understands the approach and its bases. At this time, the NRC has not formed an opinion on the proposed DOE strategy to integrate or "bundle" agreement responses. Although there could be advantages to such an approach where the technical issues represented in the agreements are well-organized, integrated, and placed in the context of repository performance, NRC's opinion on the "bundling" approach will be shaped only after further public dialogue with DOE on this matter. Specifically, we will consider whether the agreements are bundled appropriately.

You also express concern that risk-ranking not be used as an excuse to abandon certain NRC/DOE technical agreements defined as "low risk significance." As you are aware, the NRC staff developed a risk insights baseline and a risk significance-ranked listing of the agreements in response to the Commission's request. The staff is currently using risk insights to focus staff resources on the more risk significant agreements and on certain technical areas. Classification of an aspect of repository performance as "high risk" connotes that there is a potential for the agreement information to have a significant affect on overall performance, while "low risk" agreements are generally considered to represent more routine baseline information and thus are of less risk significance. Completion of "low risk" agreements could be expected to require less information than agreements ranked as "high risk." It is also important to note that the risk ranking of each agreement could change as new information is collected and analyzed and as DOE's repository design matures. However, NRC continues to expect

that DOE will address all agreements before a license application is submitted, regardless of the risk ranking results. DOE has committed to do so. According to DOE's current schedule, some information related to a few agreements may be submitted after the license application. It has always been the staff's view that information should continue to be submitted throughout the licensing process to confirm conclusions about repository performance or raise new safety questions, as appropriate. As discussed further below, NRC will not make a licensing decision until it is satisfied that it has received sufficient information to support such a decision. During the Quarterly NRC/DOE Management meeting on July 16, 2003, DOE stated that it intends to revisit its current schedule, based on NRC's risk-ranking results, to determine whether schedule modifications are needed.

Finally, you stated that NRC should not accept an incomplete or technically indefensible license application. By way of background, the NRC requires all license applicants to provide enough information in a license application to allow the NRC staff to begin its more detailed licensing review, which includes conducting a safety review. Once it is determined that enough information has been provided, the license application is officially docketed and the review begins. Also, during the course of a license review, the staff will typically generate requests for additional information to supplement the license application. The NRC does not make a licensing decision until it is satisfied that it has received sufficient information to demonstrate that an application has satisfied the Commission's regulatory requirements. This approach will be applied to the review of the DOE license application for Yucca Mountain.

I want to assure you that NRC takes its statutory responsibility for the licensing and oversight of the potential repository at Yucca Mountain very seriously. If you have any questions about this information, please contact me.

Sincerely,

/RA/

Nils J. Diaz

Enclosure: As stated