



Board of County Commissioners

Lincoln County, Nevada

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October 3, 2005

October 14, 2005 (11:35am)

Secretary

Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE: Comments to Petition for Rulemaking PRM-51-9

To Whom It May Concern:

The Board of Lincoln County Commissioners submits the following comments to Petition for Rulemaking PRM-51-9, filed by the State of Nevada and seeking to delete 10 CFR 51.109(a)(2) and proposing a new paragraph (h) to 10 CFR 51.109. Lincoln County, Nevada is one of ten units of local government designated by the Secretary of Energy pursuant to the Nuclear Waste Policy Act (NWPA), as amended, as potentially affected by the proposed deep geologic repository at Yucca Mountain. For reasons stated below, Lincoln County supports the State of Nevada's petition to amend 10 CFR 51.109.

Lincoln County participated fully in the administrative process undertaken by the Department of Energy (DOE) to comply with the National Environmental Policy Act (NEPA) with respect to the DOE's recommendation of the Yucca Mountain, Nevada site as a geologic repository for the disposal of reactor spent fuel and other high-level radioactive waste. Such involvement by Lincoln County included provision of extensive written and verbal comments to the scope of the Draft Environmental Impact Statement; provision to DOE of a comprehensive impact report and supporting documents for use in developing the Draft and Final Environmental Impact Statement; provision of lengthy written and verbal comments to the Draft Environmental Impact Statement; and provision of extensive written comments to the Final Environmental Impact Statement (FEIS). Notwithstanding Lincoln County's participation in the DOE's NEPA compliance initiative for Yucca Mountain, the County in its comments to the FEIS found the document to be inadequate and non-compliant with the requirements of NEPA. A rural local government with limited financial resources, Lincoln County's involvement with DOE's NEPA

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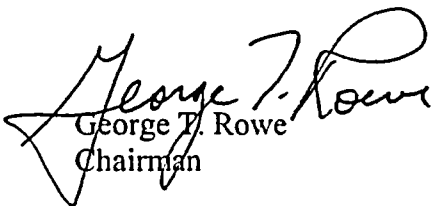
compliance initiatives was limited to administrative procedures and was unable to pursue the matter through judicial proceedings.

Lincoln County has anticipated that NRC would undertake an independent review of DOE's FEIS and that said review process will afford County input to NRC regarding the adequacy of DOE's NEPA compliance initiatives. Consequently, Lincoln County is very concerned with the process to be employed by NRC in complying with section 114(f)(4) of the NWPA providing that an FEIS "shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository," and that "to the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under NEPA and no further consideration shall be required, except that nothing in this subsection shall affect the independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954."

Lincoln County agrees with the State of Nevada's conclusions in its petition for rulemaking that 10 CFR 51.109 appears to allow NRC to adopt the DOE's FEIS without the independent analysis required under Council on Environmental Quality (CEQ) NEPA implementing regulations for the adoption of another agency's EIS. Nevada's position mirrors that stated by CEQ in its September 10, 1988 comments to NRC at the time the Commission was considering adoption of 10 CFR Part 51. By amending 10 CFR 51.109 as proposed by the State of Nevada, Lincoln County believes its ability to participate in an effective NRC administrative proceeding concerning the Commission's independent review of the DOE's FEIS will be ensured, despite the fact that Lincoln County did not previously pursue judicial remedies regarding the adequacy of the FEIS.

Lincoln County respectfully requests the NRC to grant the State of Nevada's petition to amend 10 CFR 51.109.

Sincerely,


George T. Rowe
Chairman