

June 30, 2006

The Honorable Jon C. Porter
Chairman, Subcommittee on Federal
Workforce and Agency Organization
Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In response to your request dated May 8, 2006, the Nuclear Regulatory Commission (NRC) appreciates the opportunity to review S. 2589, but is not taking a position on provisions in the legislation that would facilitate eventual operation of the proposed repository at Yucca Mountain in light of its licensing and adjudicatory role in the matter. However, the Commission offers the following comments on provisions in the bill that would affect the timing of the Commission's review.

If Congress wants the NRC to perform its review to the level of our current standard, then Section 4(b) of the bill gives the NRC insufficient time to review an application to license receipt and possession of waste at the proposed repository. Section 4(b) imposes a 1-year limit (with the possibility of a six-month extension) on the NRC's licensing decision. The limit appears to us to be unachievable on at least three counts.

First, the NRC staff's technical, environmental, and legal review is likely to take in excess of one year, particularly given that the staff is almost certain to ask questions about, and request additional information in support of the review of the application to amend the construction authorization and obtain permission to receive and possess. Even the staff's reactor renewal reviews, which are widely recognized as efficient, have required about two years for each application (22-30 months, depending upon whether a hearing is requested and granted), even though those reviews focus on a relatively narrow range of issues.

Second, even the informal proceeding called for in the bill would contain certain necessary processes that cannot be carried out quickly. For example, the bill provides for limited discovery; but even though the Commission's own default proceedings are less formal than trial-type proceedings, they call for written testimony, allow for questioning by the presiding officer, and allow for appeal of the presiding officer's decision to the Commission. The NRC cannot complete the staff's safety review and these proceedings in one year.

Third, another provision in Section 4 might increase the scope of the licensing decision, and thus the time needed to make the decision: Section 4(a) of the bill provides that an application for construction authorization "need not contain information on surface facilities other than surface facilities necessary for initial operation of the repository." This provision might be read simply to place certain surface facilities outside the NRC's jurisdiction, in which case the provision would reduce the time licensing might take, or the provision might be read to provide for staged consideration of surface facilities. The NRC would review certain facilities as part of its decision on construction authorization, but review others during the later receipt

and possession phase. Under this latter interpretation, Section 2(a) would increase the scope of the receipt and possession review, and yet Section 2(b) would decrease the time allowed for that review. In either case, additional clarification of the intent of these words is recommended.

It would also be beneficial if the language in Section 2(b) calling for informal proceedings were clarified. It should specify whether the use of informal proceedings is intended to apply to the multiple amendments to the license to receive and possess that are envisioned with a phased approach for the potential repository.

For all of these reasons, the NRC would urge that the time for deciding on receipt and possession of waste be increased to two years after the docketing of the application, with the possibility of an extension of six months.

If you have any questions or comments, please contact Rebecca Schmidt, Director of NRC's Office of Congressional Affairs, on 301-415-1776.

Sincerely,

/RA/

Nils J. Diaz

cc: Representative Danny K. Davis