



OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS

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February 6, 2018

Dr. Andrew Bates
Chairman, LSNARP
Office of the Secretary
U.S. Nuclear Regulatory Commission

RE: January 4, 2018 letter to Robert J. Halstead

Dear Dr. Bates:

Thank you for your letter dated January 4, 2018, to which this letter responds.

The State of Nevada (Nevada) was interested to read your observation that “the NRC Staff was not consulted regarding or provided a copy of the options paper prior to its December 18 distribution. . . .” Nevada had previously believed that only one of the 18 parties to the Yucca Mountain licensing proceeding had input into the NRC’s option paper referred to in your letter. However, your clarification now confirms that no party to the licensing proceeding had input into your consideration and publication of options to replace or reconstitute the Licensing Support Network (LSN). To this point, you have identified and evaluated selected options and conducted multiple public training sessions on NRC’s preferred option. You are also proposing a two-day meeting, devoted largely to further exposition of your considered options, and another training session as to the use of your preferred option. You ask the parties, separately, to respond by February 13, 2018, and to articulate a different option of their preference, so long as it has “a significantly different technical basis” from those you have previously identified. This could possibly result in 18 different new options, none of them having been evaluated by other parties.

Your August 11, 2017 memorandum to the parties promised a procedure “similar” to that which resulted in the original LSN, in an effort to replace or reconstitute it, for use in a resumed proceeding. However, the procedure you are currently following is not similar to that employed in establishing the original LSN.

A review of history is relevant here, for it explains the creation of the original LSN, which procedure ought to be replicated, if its replacement or reconstitution is to be seen as in any sense “similar.” Both “ancient” history and recent history are instructive in NRC’s consideration of how best to proceed to replace or reconstitute the original LSN.

In 2000, as part of its Licensing Support Network Advisory Review Panel (“LSNARP” or “Panel”) Charter duties, the LSNARP considered architecture alternatives as part of transitioning from the abandoned Licensing Support System (LSS) to the LSN. The LSNARP considered five alternative architecture alternatives developed in detail by the Technical Working Group established, consistent with the LSNARP Charter, in 1999 by the Panel. In a letter from LSNARP Chairman John Hoyle to Paul Bollwerk, the NRC Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, the five alternatives were described and discussed, and the LSNARP members’ consideration and conclusion with regard to each was summarized.

Consistent with the LSNARP Charter, the Panel was also consulted in the development of both the LSN Guidelines and the proposed LSN rule in 10 CFR Part 2, Subchapter J. The same approach should be followed again now as the best method to provide recommendations to the Commission.

In 2013, Nevada submitted a filing in the Yucca Mountain licensing proceeding which argued:

If the concept of electronic full-text search capability of all the relevant documents is to be abandoned, or if another method of full-text search capability (for example, ADAMS) is to be substituted, then the LSNARP should be convened, their members’ views considered, and a rulemaking proceeding must be initiated and completed to amend 10 C.F.R. Part 2. The creation of the LSN (and its predecessor, the LSS) entailed several rounds of rulemaking, including special outreach efforts to interested parties and a negotiated rulemaking (*see, e.g.,* 52 Fed. Reg. 29024 (Aug. 5, 1987); 53 Fed. Reg. 44411 (Nov. 3, 1988); 54 Fed. Reg. 14925 (Apr. 14, 1989); and 63 Fed. Reg. 71729 (Dec. 30, 1998)). It would not only be unlawful, but also tragic, if the effort required to produce the LSN were to be relegated to the dustbin of history by a preemptory Commission decision that included no rulemaking and no special outreach efforts to interested citizens.

State of Nevada Comments in Response to the Secretary’s August 30, 2013 Order, 09/30/2013, at p. 7.

More recently, the Commissioners considered an NRC Staff recommendation which recommended, *inter alia*, that \$299,000 be appropriated for re-convening the LSNARP. The NRC Staff’s recommendation is instructive and assumes that a similar procedure will be employed in replacing the LSN, as was followed in establishing it the first place, with the LSNARP meeting and providing the NRC with advice, “prior to” any NRC implementation decision:

1. LSN Advisory Review Panel (LSNARP) Meetings

The LSNARP is a Federal Advisory Committee Act (FACA) body that consists of those state and local governmental bodies, Native American tribes, and industry and public interest groups concerned about the Yucca Mountain proceeding. The

LSNARP is intended to provide the agency with advice, as well as be a vehicle for public input, regarding the various information technology (IT) components, including the LSN, established by Subpart J for the Yucca Mountain construction authorization proceeding. Prior to agency development and implementation of the LSN, input was sought from the LSNARP regarding system capabilities and configuration. To provide the Commission with similar input regarding reconstituting the LSN or putting in place a replacement system, we plan to conduct as many as three LSNARP meetings. . . .

COMSECY-17-0019: Yucca Mountain Project Activities, 05/25/2017, ML17145A253, at p. 2.

Commissioner Baran confirmed his identical understanding of the primacy of the LSNARP's role in assessing how best to replace the LSN:

Re-convening the LSNARP after several years of dormancy would be a significant step with resource impacts extending beyond NRC. It would involve gathering numerous interested parties, including states, local governments, tribes, and non-governmental stakeholders to evaluate options for reinstituting or replacing the Licensing Support Network.

VR-COMSECY-17-0019 Yucca Mountain Project Activities, 07/31/2017, ML17213A265, at p. 3.

Commissioner Baran also recognized that if the multiple LSNARP meetings suggested by NRC Staff were held, “[t]he agency would be asking interested parties to begin spending their own resources to prepare for a proceeding that may or may not move forward.” *Id.* (Commissioner Baran’s dissenting solution was not to proceed, because to do so would be premature and costly to the parties.) It should be noted that the Affected Units of Local Government in Nevada were represented on the original LSN’s LSNARP. Under the current NRC methodology, their input and that of the other current LSNARP members is limited and belated.

The original LSNARP composed and considered five alternative options and it took years of effort, many meetings, and the appointment of a Technical Working Group, staffed in part by paid IT experts, to complete these tasks. Because the member entities of the LSNARP anticipated serious litigation, they brought that perspective to the table. The importance of this real world litigation experience can be illustrated by a stark difference between the original LSN and the Public ADAMS LSN Library (PALL). Only recently (January 18, 2018), one of our paralegals performed a subject matter search on PALL which concluded with numerous responsive “hits.” When she sought to print a list of responsive “hits,” she was unable to do so. When she asked for assistance, it took over two weeks for the LSN technical team to post a “work round” (as an updated list of “FAQs”) that allows the list of hits to be printed. The librarian then provided an e-mail response to our paralegal that referenced the new FAQs. The workaround is extremely cumbersome and very difficult to accomplish if multiple pages are to be printed. There should be no need for any workaround; printing results should be as easy as a mouse click or two, as it is in the vast majority of other search engines.

Obviously, there were good reasons why the framers of the LSN, its guidelines and 10 C.F.R. 2, Subchapter J, recognized the critical input by the licensing proceeding participants themselves, with respect to the primary tool of discovery. It is essential that in its quest to replace the LSN, you confer on the current participants the opportunity to assess their litigation needs, and recommend criteria and standards to respond accordingly. This can be achieved without the need to postpone the meeting now scheduled for February 27, 2018. Since you have indicated in the January 10, 2018 Federal Register Notice that the agenda for this meeting is subject to change, we offer the following suggestions:

1. Since anyone who wants to will have read your lengthy options paper, there is no need to have the two-day meeting dominated by its reiteration. It can and should be limited to a summary on the morning of February 27th.
2. Nevada (and presumably others) are reviewing that paper, and can make observations about it at that meeting (not February 13th).
3. Nevada is (as you can see from our earlier comments about our recent efforts to print search results) utilizing and testing the PALL for its functionality as a litigation database, and will be prepared to make a presentation on that subject (as well as your options paper) at the time of the meeting. We ask you to modify the agenda to allow at least one hour for that presentation.
4. Consistent with the long standing role of the LSNARP, we propose that (after Nevada, and any other party who wishes to do so, has a presentation opportunity) the rest of the meeting should be set aside for an open conference of the LSNARP members (present or by telephone) to discuss and plan their path forward, including future meetings. In that regard, Nevada believes that all subsequent meetings should only take place if and when Congress appropriates further Yucca Mountain licensing proceeding funds, and it appears evident that the proceeding will resume; otherwise, this procedure is premature.

With respect to your suggestion that Nevada “propose . . . any option that has a significantly different technical basis” (than those in your options paper), Nevada believes that such a course, for Nevada or the remaining parties, would be inappropriate. It is not the job of Nevada or each of the myriad other parties in the proceeding to independently propose options. Rather, it is the responsibility of representatives of each to meet, as often as necessary, to jointly arrive at recommendations to the NRC. That is the role of a Federal Advisory Committee, such as the LSNARP.

Respectfully,



Robert J. Halstead
Executive Director

cc: Office of Governor Brian Sandoval
Office of Attorney General Adam Laxalt
Senator Richard Bryan, Chairman, Nevada Commission on Nuclear Projects
LSNARP members

Newell, Brian

From: Bates, Andrew
Sent: Tuesday, February 06, 2018 5:10 PM
To: Bollwerk, Paul; Vietti-Cook, Annette; SECY, LSNARP
Cc: Newell, Brian; Welkie, Andrew; Chip Cameron; Janney, Margie; Deucher, Joseph; Golshan, KG
Subject: FW: Response from the State of Nevada
Attachments: 02062018 Bates letter LSNARP.pdf

From: Shawnee J. Hughes [mailto:sjhughes@nuc.state.nv.us]
Sent: Tuesday, February 06, 2018 5:07 PM
To: Bates, Andrew <Andrew.Bates@nrc.gov>
Cc: Bob J. Halstead <bhalstead@nuc.state.nv.us>; Joe Strolin <jstrolin@nuc.state.nv.us>; Susan Lynch <szeeee@nuc.state.nv.us>; steve.fr@hotmail.com; Wayne Howle <WHowle@ag.nv.gov>; Belinda A. Suwe <BSuwe@ag.nv.gov>; JSmith@ag.nv.gov; NTrutanich@ag.nv.gov; J. Brin Gibson <JGibson@ag.nv.gov>; Marta Adams (adamsnaturalresourcesllc@gmail.com) <adamsnaturalresourcesllc@gmail.com>; cfitzpatrick@nuclearlawyer.com; mmalsch@nuclearlawyer.com; jlawrence@nuclearlawyer.com; Laurie Borski <lborski@nuclearlawyer.com>; Susan Doyle <sdoyle@nuclearlawyer.com>; 'Roger B. Moore' <rbm@landwater.com>; FARNHAM, DENISE <DFARNHAM@FCLAW.com>; Senator Richard H. Bryan (rbryan@fclaw.com) <rbryan@fclaw.com>; Jennifer Brooks <jlb Brooks@gov.nv.gov>; Pam Robinson <probinson@gov.nv.gov>
Subject: [External_Sender] Response from the State of Nevada

Dear Dr. Bates;

I have attached a letter from Executive Director, Robert J. Halstead. This is a response to your letter date January 4, 2018.

If any additional information is needed from our office, please feel free to contact us.

Best regards,

Shawnee J. Hughes, Executive Assistant

Nevada Agency for Nuclear Projects

Office of the Governor

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