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STATE OF NEVADA

ROBERT R. LOUX
Director

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EXPRESS MAIL

May 10, 1985

Samuel J. Chilk, Secretary
Nuclear Regulatory Commission
Matomic Building
1717 H Street, N.W.
Washington, D.C. 20555

Dear Secretary Chilk:

Enclosed please find comments of the State of Nevada regarding the Nuclear Regulatory Commission's proposed rule on Decommissioning Criteria for Nuclear Facilities, 50 FR 5600.

Should you have any questions, do not hesitate to contact me.

Sincerely,

Robert R. Loux
Director

RRL/gjb

Enclosure

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Acknowledged by card SEP 3 1985

COMMENTS ON NRC'S PROPOSED RULE ON DECOMMISSIONING CRITERIA FOR NUCLEAR FACILITIES, 50 FR 5600

The proposed amendments to 10 CFR parts 30, 40, 50, 51, 70 and 72 regarding the decommissioning criteria for nuclear facilities presupposes that any and all materials in facilities subject to those parts will have removed any spent fuel or other material constituting high-level radioactive waste from those facilities by the time that operation of the facility is terminated and decommissioning is therefore appropriate. Any environmental impact statement prepared at the time of licensing at a particular facility, particularly those licensed under part 50, would have analyzed the environmental impacts of decommissioning on that presupposition.

The passage of the Nuclear Waste Policy Act, providing that title to all high-level radioactive waste existing at power reactors would transfer to the United States on a date certain seemed to have confirmed the presupposition upon which decommissioning impacts were originally analyzed and on which NRC's proposed rule is based. Hopefully, the assumption that a federal repository or other facilities will be available in time to allow removal of all high-level radioactive waste from licensed facilities by their date of natural decommissioning will become reality. However, the Department of Energy has been unsuccessful at meeting the early statutory deadlines of the Nuclear Waste Policy Act. It is conceivable that the federal government will not have a nuclear waste repository or other facilities capable of taking actual possession of the radioactive waste in place when title transfers pursuant to contracts entered as a consequence of the Nuclear Waste Policy Act.

The Commission's assumptions underlying the proposed rule are reasonable and fair. The basic construct for dealing with the decommissioning problem, requirement for authorized termination of an operating license, is a sensible one in which to raise the appropriate decommissioning issues. However, the rule should be clear that a licensee should not be entitled to an authorized termination of an operating license until all materials which constitute high-level radioactive waste have been physically removed from the licensee's premises. In other words, a licensee should not be able to compel the federal government's physical acceptance of its spent fuel or high-level radioactive waste if the government does not yet have the facilities available to house it just because the licensee wants to terminate its license and decommission its facility.

The Commission has appropriately identified that decommissioning involves the major question of reduction of radioactive waste volumes. We presume that the waste volume discussed would all be low-level radioactive waste, (see pages 5603, 5605, 5610). The Commission should also consider, however, the high-level radioactive waste issues raised by decommissioning if the facilities contemplated by the Nuclear Waste Policy Act are either not yet in operation or have insufficient capacity to accomodate the high-level radioactive waste produced by the facilities about to be decommissioned.

Notwithstanding the Commission's logical discussion at page 5610 that environmental impact statements prepared in connection of the issuance of the construction permit and operating license for a facility have already considered the environmental impacts occurring at decommissioning, no NRC decision which permits termination of license and decommissioning prior to the existence of a high-level nuclear waste repository other federal facility capable of accepting physical possession of a facilities high-level nuclear waste should be taken without

some environmental analysis of the altered circumstances which could not have been considered at the time the original environmental statement was prepared.

Nevada agrees with the Commission's apparent understanding that the concept of decommissioning does not apply to repositories licensed under 10 CFR 60 in the same way as it does to other facilities. No amendment is proposed to part 60 by this proposal. However, we would caution the Commission that § 112(b)(iii) of the Nuclear Waste Policy Act contemplates that 10 CFR 60 will eventually include "technical requirements and criteria that [NRC] will apply . . . in approving or disapproving - (iii) applications for authorization for closure and decommissioning of such repositories." The general approach taken by the NRC in developing standards and procedures within part 60, namely looking to other parts for general provisions applicable to that part, should not be used in contemplating which approach to use for the deinstitutionalization of monitoring and surveillance of part 60 facilities.