

November 20, 2008

Chairman Dale E. Klein
Commissioner Gregory B. Jaczko
Commissioner Peter B. Lyons
Commissioner Kristine L. Svinicki
Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Commissioners:

As you know, in June 2008 the Department of Energy (DOE) submitted to the Nuclear Regulatory Commission (NRC) what it called a “complete” license application to construct a high-level nuclear waste repository at Yucca Mountain in Nevada. The NRC docketed the application in October 2008, which means that anyone intending to participate in the licensing process must submit contentions by December 22, 2008. Since submitting its “complete” application, DOE has continued to make significant changes to the application, making it extraordinarily difficult to assess what DOE is proposing. We ask that you take immediate steps to require the DOE to finalize all documents, designs, and issues that must be included in a complete and high quality license application and reset the clock to give the public adequate time to evaluate DOE’s new information.

For more than a decade, the Department of Energy has been conducting studies and preparing to seek a license to construct a repository at Yucca Mountain. During this time of Site Characterization, technical exchanges were held between NRC and DOE to determine the most important questions that have to be addressed and answered regarding the suitability and safety of the proposed repository. The public was told that all of this was being done in order to make a sound suitability determination and to insure that an eventual license application would be thorough and complete. Yet, during the last several years the DOE has been delaying or abdicating its responsibility to uphold agreements made with the NRC and others, including failing to provide information and technical and scientific study results. At the same time, the DOE has continued to reassure NRC and the public that all information would be provided in the License Application (LA) and that the application itself would be of “high quality.”

Despite the specific issues that were raised about the completeness of the submitted application in June 2008, the NRC went ahead and docketed the license application in October 2008. As we expected, DOE has continued to submit significant new information about the proposed repository since June. Most recently, DOE released a revision of the repository design basis – a fundamental part of licensing the site. Any party who intends to participate in licensing is now in the position of having to completely reassess contentions that have already been prepared based on the June application by carefully reviewing this new, large document and attempting to compare it to the more than 8,000-page original license application to see what has changed and how significant it is.

Any parties involved in or concerned about Yucca Mountain are at a serious disadvantage compared to the agencies of the federal government, most especially the non-governmental public interest organizations. With very limited budgets and less capable computer equipment, we are trying to represent our members and the general public by participating in this project that will affect people throughout the country. We are attempting to stay up-to-date and on-schedule in order to provide comments on several documents that are now out for public review. At the same time, we are examining how – if it is at all possible – we can participate in the upcoming Yucca Mountain licensing hearings. Trying to do all of this while DOE continually adds to or changes information to make up for omissions in its incomplete license application is an undue burden on the public. One stated goal of the licensing process was to allow public participation and senior NRC management people continue to encourage the public to get involved.

The NRC's mission is to insure public safety and to regulate licensees, including the DOE if a Yucca Mountain license is granted. In the current process, the NRC is far more accommodating to the DOE than it is to the public. If the DOE is allowed to submit significant changes at will throughout the process, other parties and the public are put at an even more severe disadvantage. The actions of the DOE also place a heavier burden on the NRC. If NRC condones these actions by DOE, it appears to all of us that the process is unfair and has the appearance and the actual effect of intentionally putting the public at an overwhelming disadvantage.

We ask that you require the DOE to finalize its license application, including all documents, designs, and issues that must be part of a complete application. All materials must be available in final form so that the other parties have adequate time and a reasonable opportunity to examine the *final* application and supporting documents in order to evaluate the proposal. Sixty days are allowed for the submission of contentions after a Notice of Hearing is published. In order to give the public time to evaluate DOE's application supplements, we ask that you reset that clock now and whenever DOE significantly changes, updates, or supplements the application. Telling us that we can file so-called "late contentions" as we learn more is not acceptable. Filing late contentions makes us players in a piecemeal process and further increases our disadvantage. We ask that NRC put a stop to the DOE's abuse of the process and instill public fairness for the benefit of all.

Sincerely,

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