INTRODUCTION

In the preface to the first report of the Nevada Commission on Nuclear Projects in 1986, former Governor and Chairman Grant Sawyer observed that, “[w]hen it established the Commission on Nuclear Projects, the 1985 Nevada Legislature did much more than simply create another State oversight body. It sent a clear message to the federal government that Nevada intends to exercise its full rights and responsibilities to assure that the health and safety of present and future Nevadans and our State’s unique environment and economy are adequately protected in the face of continuing federal attempts to locate a high-level nuclear waste repository in Nevada.”

Fourteen years later, efforts to protect Nevada and its citizens from this federal program are reaching a critical stage. Today, Nevada and the nation must contend with what has become a single-minded, coercive federal effort to turn Yucca Mountain into a radioactive waste disposal site at any cost and by any means, while the mountain’s flaws and the program’s uncertainties continue to mount. Over the years, science has given way to raw politics as the U.S. Department of Energy (DOE) and supporters of DOE’s repository project in Congress have sought to obfuscate and compensate for an ever-multiplying set of flaws and problems with the site and with the notion of transporting unprecedented amounts of deadly spent nuclear fuel and high-level nuclear waste across the country.

In that first Commission report, Governor Sawyer set forth what was then and what must be today the final criteria for decision-making with respect to a repository, whether in Nevada or anywhere else in the country:

“[A] nuclear waste repository should not be built until it can be shown, beyond the shadow of a doubt, that the facility can, in fact, do what its advocates claim - isolate radioactive materials from the biosphere for more than 10,000 years - and that construction of such a repository will be benign in its effects upon the people, the environment and the economy of the state or region within which it would be located. We owe nothing less to our state or to our nation.”

This seventh report of the Commission on Nuclear Projects demonstrates that Yucca Mountain fails Grant Sawyer’s test on all counts. What began in 1983 as a noble piece of federal legislation that sought to place science ahead of politics, and fairness, equity, and openness above congressional parochialism has degenerated into a technical and ethical quagmire, where facts are
routinely twisted to serve predetermined ends and where “might makes right” has replaced “consultation, concurrence, and cooperation” as the federal mantra for the program.

As we approach the New Year - the first official year of the new millennium - Nevada faces a series of major challenges with respect to the high-level nuclear waste program and the proposed Yucca Mountain repository site. If DOE’s current schedule holds, a decision whether the Secretary of Energy should formally recommend that the President proceed with development of a repository at Yucca Mountain will be made in July, 2001. A decision in the affirmative, which is overwhelmingly likely given DOE’s historical blindness to the site’s flaws, will initiate a series of necessary actions on the part of the State of Nevada that will have lasting - some may say everlasting - ramifications.

The Site Recommendation Decision and Nevada’s Response

Under the provisions of the federal Nuclear Waste Policy Act of 1983, as amended in 1987 (NWPA), the Secretary of Energy is required, upon completion of site characterization work at Yucca Mountain, to recommend to the President whether or not the site should be developed as a high-level radioactive waste repository. If the Secretary determines that Yucca Mountain is unsuitable for such a facility, the Secretary is directed to cease all work at the site, reclaim and remediate disturbed areas, and report back to Congress for instructions as to how to proceed.

If, however, the Secretary recommends that a repository be built at Yucca Mountain, the President is required to formally make that recommendation to Congress. The Secretary’s recommendation is to be accompanied by a final environmental impact statement (EIS) for the Yucca Mountain program, prepared pursuant to the requirements of the NWPA and the National Environmental Policy Act (NEPA), together with the State of Nevada’s report on impacts of the project to the State and affected communities. Once the recommendation is sent to Congress, the State of Nevada has sixty days of continuous session to submit a “notice of disapproval,” accompanied by a “statement of reasons” why the State believes Yucca Mountain is unsuitable. To override the State’s notice of disapproval requires a majority vote by both houses of Congress.

The State of Nevada must be prepared to submit a notice of disapproval, should the President recommend Yucca Mountain to Congress. This will require a strong and united front on the part of the Governor and Nevada Legislature, as well as close cooperation with the State’s bipartisan congressional delegation. All parties in Nevada must be extraordinarily careful to assure that no actions are taken to weaken the State’s position or lessen the State’s opposition with respect to the Yucca Mountain issue.
The Yucca Mountain Environmental Impact Statement

In August 1999, DOE released for public comment a draft EIS for the Yucca Mountain repository project. After conducting an extensive review that resulted in the submission of over 500 pages of comments, the State of Nevada concluded that the draft EIS was seriously deficient, both legally and substantively.3

DOE’s Yucca Mountain EIS is extremely important for several reasons. First, as noted above, the Secretary of Energy is required by law to include a final EIS with any site recommendation to the President. Without a final, statutorily adequate EIS, the site recommendation cannot go forward.

Second, the U.S. Nuclear Regulatory Commission (NRC) is required by the NWPA to adopt, “to the extent practicable,” the DOE Yucca Mountain EIS as the NEPA compliance document governing any decision NRC makes with respect to granting a license to DOE to construct and operate a repository. If DOE’s final EIS is shown to be legally deficient, that fact will seriously impact NRC’s licensing process.

According to its current schedule, DOE plans to issue a final Yucca Mountain EIS sometime in the June - July 2001 time frame. The State of Nevada must be in a position, at that time, to mount a major legal challenge of that EIS. The Commission believes, based on the State’s review of DOE’s draft EIS and subsequent legal analysis, that Nevada has a very good chance of prevailing in such a challenge, especially if DOE moves ahead, as expected, with its current inadequate approach to NEPA compliance. To mount a successful legal challenge to the final EIS, however, will require adequate resources and specialized assistance in NEPA litigation.

U.S. Nuclear Regulatory Commission Licensing Proceedings

If DOE is successful in making a site recommendation and Congress overrides Nevada’s notice of disapproval, DOE is required by law to apply to the NRC for a license to construct and, eventually, operate a repository at Yucca Mountain. The NRC licensing process is a formal, adjudicatory proceeding wherein the State of Nevada will be able to present its technical case against the project. However, like most governmental regulatory proceedings, this one is not as straightforward as it may appear.

First, it is NRC that sets the ground rules for any licensing action. There is a long history - both temporal and legal - of NRC nuclear power plant licensing activities where procedures, rulings, court actions, and other intervening factors have established procedural and legal precedent that NRC will rely on in implementing the licensing process for Yucca Mountain.

Licensing is a legal jungle where even savvy and experienced participants have not always fared well. This is especially true with respect to interveners who have sought to have licence applications denied. There has developed around the NRC licensing process a body of law and procedure that requires highly skilled and specialized expertise and experience if a State like Nevada, with virtually no experience with such proceedings, hopes to not only prevail, but also make precedent in successfully opposing the award of a license for a Yucca Mountain repository.

A great deal of the groundwork for the State’s intervention in the NRC licensing process has already been laid with the extensive body of technical work and over 16 years of Yucca Mountain oversight experience. Probably no other intervener in the history of NRC licensing proceedings has been as well prepared as the State of Nevada will be if it is required to challenge DOE’s application. Nevertheless, it will take more than a strong technical case to prevail. It will require the best legal assistance from attorneys who specialize in NRC licensing law and procedures.

The National Arena - Where the Political Battle Must be Won

The many serious technical deficiencies of the Yucca Mountain site and DOE’s flawed approach to geologic disposal notwithstanding, the most potentially explosive aspect of the federal program is the reality that tens of thousands of shipments of deadly spent nuclear fuel and high-level radioactive waste will travel the nation’s highways and railroads - through 43 states and thousands of communities, day after day for upwards of 40 years. A very severe transportation accident or successful terrorist attack in an urban area could release radioactive materials to the environment, causing hundreds of latent cancer fatalities, and costing hundreds of millions, or even billions, of dollars for cleanup and compensation. DOE and its allies in Congress have long recognized that nuclear waste transportation is the Achilles’ heel of the Yucca Mountain program. Once states and communities along potential shipping routes become aware of the unprecedented volumes of waste to be shipped, the duration of the required shipping campaign, and the potential adverse consequences of accidents and terrorist incidents, opposition to the entire effort is likely to increase throughout the country.

DOE has gone to great lengths to keep the lid on this aspect of the Yucca Mountain project nationally. DOE has ceased any work on the identification of national routes for Yucca Mountain shipments. Funding for most transportation planning activities has been suspended, including termination of grants to regional organizations such as the Western Interstate Energy
Board. DOE’s draft Yucca Mountain EIS intentionally concealed the specific routes used in DOE’s national transportation impact assessment, and DOE went so far as to avoid any mention of shipping routes - or even the notion of nuclear waste shipments - in notices for public hearings on the draft Yucca Mountain EIS in communities outside Nevada where such hearings were held.

During the next two years, as Nevada challenges or confronts DOE, Congress, and, perhaps, the NRC concerning various aspects of the Yucca Mountain program, it will be equally important to undertake efforts to assure that the issue of radioactive waste shipments, including the routes such shipments will use and the cities and communities that will be impacted, is given wide exposure nationally. This will require an effort on the part of the State to identify potentially affected states and communities and target information to reach people, governments, and institutions in those places.

**The Case Against Yucca Mountain**

The Commission believes that the Yucca Mountain program poses significant and unacceptable risks not only for the State of Nevada, but also for the nation as a whole. The case against Yucca Mountain is set forth in summary below. It is a strong and compelling case that, when combined with the extraordinary impacts of the project on the country, clearly calls for a change in national nuclear waste policy and direction. Neither Nevada nor the nation can afford the risks or the costs of the current program.

As the Commission observed in its 1992 Report to the Governor and Legislature, “... the importance of a strong and consistent State policy relative to the [Yucca Mountain] issue ... cannot be over-emphasized in terms of helping to bring about [a] rethinking and reassessment of national policy. Consistent opposition to the biased, unfair, and heavy-handed Yucca Mountain program has prevented a repository from being sited in an unsuitable and potentially dangerous location. Tough, competent, and farsighted State oversight ... [has] helped to identify fundamental problems with the current program and point out ways these flaws can be avoided in future [federal] waste management efforts.”

As Nevada approaches critical junctures in 2001 with respect to Yucca Mountain and DOE’s civilian radioactive waste management program, it is even more imperative today that we stay the course.

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