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Dorothy N. Callier, RW-44
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

*RE: State of Nevada Comments on DOE's Draft Statement of Work for a
Transportation Integration Contractor*

Dear Ms. Callier:

The following are the State of Nevada's comments on the Department of Energy's "Draft Statement of Work for a Transportation Integration Contractor" for the Office of Civilian Radioactive Waste Management. Nevada contends that the only acceptable vehicle for engaging in planning for spent nuclear fuel (SNF) and high-level radioactive waste (HLW) shipments in Nevada or nationally is the process set forth by the National Environmental Policy Act (NEPA) and its implementing regulations. The NEPA process provides a clear and unambiguous framework by which DOE can set forth its proposal(s) for developing and implementing a transportation system in a manner that assures adequate public involvement and that guarantees consistency and transparency. The State further contends that DOE should have fully and adequately addressed SNF/HLW transportation to Yucca Mountain in the Final Yucca Mountain Environmental Impact Statement, and that the transportation analysis contained in that EIS is legally and substantively deficient and entirely inadequate.

Before a Statement of Work for a transportation contractor can be developed or issued, DOE must commit to the preparation of an adequate environmental impact statement (EIS) for the OCRWM transportation program. Such EIS must encompass an integrated transportation program that covers both the national transportation system and the transportation system within Nevada. The EIS must show how the national and Nevada components function in a consistent and integrated manner, how decisions with respect to the national system affect the Nevada system, and vice versa.

DOE should begin the process by first setting forth its proposed action and alternatives for the national transportation system. Once the national system has been fully scoped and alternatives

identified and described, DOE should develop the Nevada component (proposed action and alternatives) in a manner that is fully consistent with the national system.

Only after a comprehensive transportation EIS has been completed and a record of decision setting forth the preferred action(s) has been issued should DOE proceed, if appropriate, to issue a draft statement of work for a transportation contractor. The EIS process will enable DOE to set forth a comprehensive framework for the transportation program and permit DOE to solicit contractors to implement that program rather than (as appear to be the case currently) blindly seeking a contractor to tell DOE what its program should be.

General Comments on the Draft Statement of Work (SOW)

(1) Lack of Specificity and Lack of Policy Direction

The SOW's lack of specificity and its vagueness highlight the need for a comprehensive transportation EIS (as discussed above) that fully analyzes the SNF/HLW transportation issues from the national level and within Nevada. Such an EIS would be the basis for making decisions that are prerequisites for the SOW - i.e., modal mix; routing; roles of DOE, the contractor, states and tribes and other stakeholders; the regulatory framework used to govern the program; etc. For example, the work required of a potential contractor will be considerably different for DOE's mostly rail or mostly truck shipping scenario. The modal choice affects almost every aspect of planning and operational activities. However, the feasibility of a mostly rail scenario is very much in question, given the difficulties and excessive cost of constructing direct rail access to Yucca Mountain and the problematic (likely infeasible) nature of intermodal and heavy haul truck transport to Yucca Mountain from a rail head within Nevada. Decisions such as mode of transport and routes need to be made before proceeding with a solicitation for a transportation contractor, and the SOW must be significantly more specific as to the nature of the transportation program and the details of the work the contractor is being asked to do. The SOW appears to have been written as justification for hiring a contractor to tell DOE what to do, rather than DOE outlining the major programmatic and policy objectives and parameters and, then, employing a contractor to implement those decisions.

It is significant that there is no statement in the SOW stipulating that the Transportation Integration Contractor (TIC) will follow the maximum rail scenario in its planning. Instead, the contractor is being asked to go site by site and determine shipment numbers and modes. If DOE has, in fact, made a decision to maximize rail transportation, there must be a statement to that effect in the SOW. This relates back to the need for a comprehensive basis document - an adequate transportation EIS - that examines the various alternatives and assesses the feasibility of each. It is one thing to publically indicate a preference for rail transportation for political purposes, as DOE has done, and quite another to carry that preference into the realm of reality. It may well be that, given the problems and expense of direct rail access to Yucca Mountain and the difficulties of rail access at many reactor sites, the mostly rail scenario is not a feasible planning assumption. This issue should be fully evaluated

and put to rest before a transportation services RFP is issued. If DOE has made a decision to maximize rail shipments - and can support that decision in the face of operational realities, there must be a statement to that effect in the SOW.

(2) Failure to Address Related Elements of the Transportation Program

While the work elements in the SOW are presented in a very disorganized way, they nevertheless appear to circumscribe a suite of activities that comprise one element of what should be a three element plan for SNF/HLW transportation, i.e., the national operational planning element, the institutional element, and the Nevada element. The SOW addresses only the national planning component. The other two essential elements are conspicuously missing. Without input from those other components, the SOW is incomplete and unacceptably vague. Again, this comment relates to the need for a transportation-specific EIS as the basis for going forward with a the SOW.

(3) Lack of Clarity About Roles and Involvement of States and Tribes

Because, as set forth in the SOW, it is the contractor that is responsible for developing the various plans, there is a question of what the relationship of affected states, tribes and other stakeholders is to DOE in terms of both involvement in and oversight of those efforts. Where does states/tribes input come in? Who is responsible for securing that input - DOE or the TIC?

(4) Lack of Clarity Regarding the Regulatory Framework

There is a major deficiency in the SOW with respect to the relationship of the planning work being sought from the TIC and the regulations and requirements of NRC and USDOT. There is no reference at all to USDOT regulations. The only clear application of NRC regulations is the cask certification requirements contained in 10 CFR Part 71. This leads one to assume that DOE is planning to use its own regulations in place of NRC regulations governing SNF/HLW transportation. In a letter to Congress last summer, NRC Chairman Meserve indicated that he believed NRC's only area of responsibility in the transportation arena was the certification of shipping casks. The implication was that DOE would be self-regulated with respect to other areas. The SOW seems to reinforce this assumption.

A thorough explication of the regulatory framework, as well as extra-regulatory requirements needed to provide for enhanced safety and public acceptance, should be done as part of a transportation EIS in advance of any contract solicitation. At a minimum, however, the SOW should direct the TIC to advise DOE on how to comply with the all applicable NRC and USDOT regulations. The SOW should go further and instruct the TIC to include in its planning extra-regulatory measures that enhance shipment safety and public/official confidence in and acceptance of such shipments (such as those implemented in the WIPP transportation program). The preamble to the SOW should state

unequivocally that all aspects of DOE's transportation program must comply with NRC and USDOT regulations governing SNF and HLW shipments and with the identified extra-regulatory requirements.

(5) Lack of Emphasis on Safety and Public Acceptance

The emphasis throughout the SOW is on economics and efficiency. There is very little reference to safety and public acceptance as major guiding principles for both the planning effort and the transportation program. The SOW does not indicate how the TIC is to prioritize safety and public acceptance vs. other competing prerequisites (i.e., efficiency, economics, schedule, etc.).

(6) Failure to Address Full Scale Cask Testing

The SOW does not specify a requirement for full scale testing of any casks to be procured for use in the transportation program. This should be a prerequisite for cask procurement.

(7) Ambiguity About Route Selection

The SOW is contradictory and ambiguous about the selection of modes and routes. Like prior drafts of the RFP, this one says only that "preliminary routes will be selected in accordance with applicable NRC regulations for all modes selected" (see Section 2.1.3 - Campaign Operations Plan). For SNF and HLW shipments, NRC only requires routes to be identified seven (7) days prior to shipment, and this is done by the carrier. As noted in previous comments by the State of Nevada,¹ the Western Interstate Energy Board,² and others, this is unacceptable for repository shipments. Routes must be identified, in conjunction with states and tribes, at least 3 and preferably 5 years prior to the onset of shipments to provide states adequate time to identify alternatives within their borders (if necessary) and to carry out required training and preparatory activities.

(8) Lack of Schedule and Time Frames

¹ Comments of the State of Nevada on prior drafts of DOE's privatization RFP are available at the following web addresses: <http://www.state.nv.us/nucwaste/trans/privcom1.htm> (State - May 1997) and <http://www.state.nv.us/nucwaste/trans/prfp2-98.htm> (State - 1998).

² Comments of the Western Interstate Energy Board on prior drafts of the privatization RFP are available on the WIEB web site at: <http://www.westgov.org/wieb/reports/priv.htm> (WIEB - May 1997) and <http://www.westgov.org/wieb/reports/rfp0298.htm> (WIEB - 1998)

The SOW does not contain time frames for implementing key activities. It should contain a table or chart showing when various activities need to be accomplished and the interrelationships between the various tasks.

(9) Relationship Between SOW and State/Local Emergency Preparedness Planning

The disconnect between the Emergency Preparedness activities described in the SOW (which would pertain to “DOE management personnel” - whoever they are) and the Nuclear Waste Policy Act Section 180(c) emergency preparedness activities for state and local responders is a major planning deficit. While it appears DOE intends to follow an unspecified separate path for planning and implementing Section 180(c) training, the SOW should clearly require the TIC to integrate its activities with those of the Section 180(c) program.

Conclusion

The State of Nevada urges DOE to withdraw the draft SOW for a transportation integration contractor until such time as the necessary prerequisites for such a contract are in place, i.e., until legally and substantially sufficient NEPA documentation has been prepared and issued that adequately sets forth the planning and regulatory framework within which a contract is to function.

In addition to the comments provided above, the State endorses comments on the SOW provided by the Western Interstate Energy Board’s High-Level Radioactive Waste Committee.

Sincerely,

Robert R. Loux
Executive Director

RRL/cs

cc Governor Guinn
Nevada Congressional Delegation
Doug Larson, WIEB
Nathan Christiansen, WGA
Local governments and tribal representatives