



**OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS**

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August 26, 2004

Chairman Nils J Diaz
U.S. Nuclear Regulatory Commission
Washington DC 20555

Dear Chairman Diaz:

On August 17th the Department of Energy (DOE) sent two letters to the Nuclear Regulatory Commission (NRC) that demonstrate once again DOE's unwillingness to accept its responsibilities as an NRC license applicant.

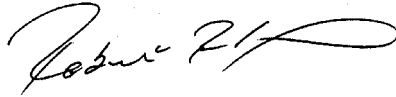
In the first of the letters, Mr. Joseph Ziegler informs you that DOE is not going to answer any more NRC questions on Yucca Mountain Key Technical Issues (KTI), in this case on a high-risk KTI on igneous activity. It is clear that DOE believes it is in charge of the licensing process and that NRC has only a ministerial role.

I write to you because Nevada is counting on NRC to provide a fair forum for examining the validity and acceptability of DOE's submission. That is not going to happen unless the commissioners protect the NRC staff from bullying by DOE. In this case DOE is acting in violation of its agreement with NRC to resolve KTI issues before DOE submits a license application (LA). It is up to the commissioners to enforce the agreement with DOE.

In the second letter Mr. Ziegler asks NRC to review and approve a minimal submission DOE plans to make in its License Application. DOE apparently thinks that in the pre-licensing interaction it is DOE that asks the questions and NRC that provides the answers. In this case DOE wants pre-approval to leave out of its LA any detail on possible retrieval of waste from Yucca Mountain and alternate storage. They ask for this pre-approved waiver even though the NRC Review Plan (NUREG-1804) makes clear DOE must include this material and the law requires a proven capability for retrieval. It is an outrageously irresponsible request.

These August 17th DOE letters are further indications of the Department's unwillingness to play by the licensing rules. The Yucca mountain review is only going to get further out of control unless the Commission asserts its authority firmly and promptly and imposes discipline on this unruly applicant.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a large, stylized flourish at the end.

Robert R. Loux

Executive Director

RRL:njc

cc: Joe Egan