



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

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June 4, 2007

Mr. Luis A. Reyes
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Reyes:

On May 23, 2007, the Pre-Application Presiding Officer Board for Yucca Mountain ("PAPO"), established by the Commission, held a hearing on proposed procedures to grant potential parties to the Yucca Mountain licensing proceeding access to sensitive unclassified information, such as Safeguards Information ("SGI"), which would be relevant to the filing of contentions. It became apparent during the hearing that NRC Staff is now retreating from its prior agreement (set forth in a Third Case Management Order proposed jointly by DOE, Nevada, and NRC Staff) that all of Nevada's Yucca Mountain attorneys, experts, consultants and assistants, designated by the Governor, would be exempted from NRC SGI trustworthiness and reliability reviews and findings, as a matter of comity to a sovereign state that is committed to protecting SGI. Apparently, NRC Staff is now willing to grant this exemption only to Nevada State employees, thereby excluding Nevada's attorneys and virtually all of Nevada's experts, consultants, and assistants, some of whom are foreign nationals (citizens of the U.K.) who live outside of the U.S.

However, it also became apparent that NRC Staff has not fully considered the hearing delays its new position will cause. Staff was unable to commit to any time schedule for completing its trustworthiness and reliability reviews, and it had apparently given little or no thought as to how the process would work for foreign nationals. Even worse, NRC Staff was unable to commit to what the decision criteria would be, giving rise to a grave concern that NRC's decision process on trustworthiness and reliability will be completely arbitrary and contrary to due process of law.

Nevada does not agree with the NRC Staff's SGI exemption position but, in the interest of avoiding all unnecessary delay, it is willing to submit a list of names of those needing access to SGI, along with the necessary supporting information, to support Staff trustworthiness and reliability findings for them.

However, we cannot submit these requests without some additional information from Staff. First, how do we know which experts to choose without some indication from NRC Staff of the kinds of information that it will designate as SGI? Can Staff advise Nevada about this matter? Second, in the case of Nevada's experts and consultants living abroad, who are not U.S. citizens, how can FBI fingerprint cards be obtained and filled out? Third, what purpose will be served by submitting FBI fingerprint cards for foreign nationals if the criminal history check is limited to federal, state, and local records in the U.S.? Fourth, even assuming form SF-85 is usable, notwithstanding that it indicates on its face that it is to be used by incumbents and applicants for U.S. Government or U.S. Government contract positions, there are several questions we need answered about the form. Our foreign experts and consultants will not have social security numbers—should we mark “NA” here? The part under “Alien” seems to assume that the alien entered the U.S., registered, and has a registration number, as would normally be the case if the individual were employed or seeking employment in the U.S.—do we put “NA” if this does not apply? The part under “people who know you well” requires references from people who live in the United States. May our foreign experts and consultants give references from people who live abroad? Fifth, some of our experts and consultants have been granted access to sensitive information by foreign governments and national and international organizations. Will the NRC recognize some kind of reciprocity here?

Finally, since decision criteria have not yet been developed, Nevada and its attorneys, experts, consultants and assistants must reserve the right to protest that the NRC decision process is arbitrary and contrary to due process of law.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", written in a cursive style.

Robert R. Loux
Executive Director