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October 2, 2008

Dr. B. John Garrick  
US Nuclear Waste Technical Review Board  
2300 Clarendon Blvd, Suite 1300  
Arlington, VA 22201

Dear Dr. Garrick:

On September 18, 2008, the Department of Energy (DOE) informed the US Nuclear Waste Technical Review Board that, because the license application (LA) for Yucca Mountain is now formally docketed by the NRC Staff, DOE “does not intend to formally respond to issues regarding the LA raised by the NWTRB or others outside the context of the NRC licensing proceeding.” The ostensible reason for this position is that the NRC provides for a “very structured process for raising and resolving LA-related issues.” DOE appears to be proceeding as if there were some general principle whereby the existence of one structured technical review process before one federal agency somehow precluded the continued existence of another complementary review process before another agency. In fact, no such general principle exists and, indeed, DOE’s apparent refusal to cooperate with and respond formally to the Board violates section 504 of the Nuclear Waste Policy Act, which provides that DOE shall provide to the Board “such...information as may be necessary to respond to any inquiry of the board under this title.” The fact that this Administration supports the continued statutory function of the Board is underscored by a September 25, 2008 White House Personnel Announcement that states the President intends to appoint four named individuals to be Members of the Nuclear Waste Technical Review Board.

As you know, the Board was established by the 1987 amendments to the Nuclear Waste Policy Act of 1982. In establishing the Board, the Congress was quite aware of the existence and applicability of the structured NRC licensing process and provided (in a new section 510 of the Nuclear Waste Policy Act) that the Board’s advisory functions

would end not with the beginning of that process, but rather only with the beginning of disposal activities in a repository. Moreover, the Congress noted that “an analogous advisory board, the Advisory Committee on Reactor Safeguards, has usefully advised the Nuclear Regulatory Commission and its predecessor agency on nuclear safety issues since 1957.” See H.R. Rep. No. 100-425, Part 1, November 5, 1987 at page 19. The ACRS continues with its advisory functions during active NRC licensing reviews and hearings. The Congress, in drawing this analogy to the ACRS, must have contemplated that the Board’s advisory functions would also continue during the NRC licensing review and hearing of the Yucca Mountain License Application.

The State of Nevada urges the Board to continue with its advisory functions during the NRC review and hearing process for the License Application, including technical issues discussed in the LA, and to inform the Secretary of DOE that the Board expects DOE to cooperate fully in this regard.

Sincerely,

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

Robert R. Loux  
Executive Director