

**REPORT AND RECOMMENDATIONS
OF THE
NEVADA COMMISSION ON
NUCLEAR PROJECTS**



**Presented to
The Governor and Legislature
of the State of Nevada**

January 2009

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INTRODUCTION

In its past two biannual reports, the Commission on Nuclear Projects has been reporting that the Yucca Mountain program was on the verge of collapse due to serious, even fatal, geotechnical flaws, mismanagement by the U.S. Department of Energy (DOE), and diminishing political support in Congress and even among former allies in the nuclear industry. Despite a frenzied effort to fast track a license application to the U.S. Nuclear Regulatory Commission (NRC) and show progress in identifying a preferred rail spur to the Yucca Mountain site, the program today is characterized by major uncertainties as a new Administration takes power in Washington and the State of Nevada prepares to mount the most extensive and far-reaching licensing intervention in the history of the NRC. While it would be premature to declare victory in Nevada's long fight to stop the Yucca Mountain project, the Commission believes the State is moving closer to halting what has become a bloated and failed program. The following is a summary of major development in the federal high-level radioactive waste program and key State of Nevada Yucca Mountain oversight activities.

DEVELOPMENTS IN THE YUCCA MOUNTAIN PROGRAM OVER THE PAST TWO YEARS

NRC Licensing

NRC licensing is an adjudicatory proceeding where DOE would be forced, for the first time, to defend its flawed and politically-driven science at Yucca Mountain in a forum where the State's team of licensing attorneys and technical experts would be able to question and cross-examine DOE staff and scientists with respect to evidence presented in support of DOE's license application. Nevada must also be prepared to present its own data and information to challenge DOE's conclusions and to support alternative conclusions and findings.

While it would be premature to declare victory in Nevada's long fight to stop the Yucca Mountain project, the Commission believes the State is moving closer to ultimately halting the program.

Preparing for and intervening in a NRC licensing proceeding has been and will continue to be a lengthy, extremely costly and resource intensive process. Like DOE, the State was

required to provide NRC with all of the documents, data and other materials it plans to use in licensing in a format compatible with NRC's licensing support network (LSN). That effort, which the Agency initiated over 3 years ago, involved thousands of documents and hundreds of person-hours as well as the services of a speciality contractor for scanning, formatting and loading the information into a web-compatible database system.

The licensing process itself is an extremely complex one, both legally and technically. It is anticipated that there could be as many as three (3) NRC licensing boards in operation at the same time, requiring attorneys and staff to cover each one. The State of Nevada must be fully engaged in every step in a process that involves reviewing, commenting and, if necessary, challenging NRC licensing regulations and rulings; participating in pre-licensing proceedings and forums; producing detailed technical contentions the State will raise relative to DOE's assertions about site performance and supporting analyses; developing substantive and procedural legal challenges to NRC's implementation of the process; and participating fully in the ultimate NRC proceedings themselves. The effort on the part of the Agency to effectively engage in the NRC licensing arena and adequately protect Nevada's interests is likely to be the most complex and costly activity the Agency and the Nevada Attorney General have engaged in to date with respect to the Yucca Mountain issue.

A continuing major concern for Nevada is assuring that the NRC licensing proceeding is fair, objective, and unbiased. As the Commission's 2004 and 2006 reports noted, there has been a history of inappropriate contacts by NRC staff and DOE in the pre-licensing phase of the project. NRC, very early on, adopted the view that it had a responsibility to assist DOE and assure that the Department was able to produce an acceptable license application for Yucca Mountain. Over the years, the two agencies have interacted repeatedly in subtle and not-so-subtle ways to assure smooth sailing for DOE's increasingly troubled repository program. Despite repeated protestations from the Agency and its legal team, these NRC-DOE interactions continue, casting a shadow over NRC's ability - or inclination - to serve as an impartial arbiter of fact in determining whether to grant DOE a license for a Yucca Mountain facility.

Once the formal licensing proceedings commence, the relationship between DOE (as the applicant) and the NRC staff becomes even more problematic. NRC procedures effectively establish NRC staff as advocates for the license applicant. In essence, NRC staff, once they have reviewed the license application and it has been accepted by the Commission, join with DOE in defending the application before the licensing board. As the primary intervener, the State of Nevada will be facing both DOE and NRC staff as adversaries. Attempts by the State to require NRC to redefine its staff's role in the proceeding have been unsuccessful, but the Nevada Attorney General feels the matter would be ripe for litigation at some future point.

DOE formally submitted its application to construct and operate a Yucca Mountain repository to NRC in June 2008, six months after it had certified (for the second time) its LSN documents database. In support of its license application, DOE issued three new final

environmental documents (in addition to the 2002 Final Yucca Mountain Environmental Impact Statement), including:

- Final Supplemental Environmental Impact Statement for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (Yucca Mountain FSEIS)
- Final Supplemental Environmental Impact Statement for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor (Rail Corridor FSEIS)
- Final Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada (Rail Alignment FEIS)

Ninety days following DOE's certification, the State of Nevada also certified its licensing documents, as required by NRC regulations. In September 2008, the NRC formally docketed the DOE application, setting in motion the time frame for Nevada (and other potential participants) to submit its petition to participate and intervene in the proceeding together with the contentions it intends to pursue in challenging DOE's application. Nevada filed its petition with 229 separate contentions on December 19, 2008.

In addition to the State of Nevada, other entities seeking to participate in the licensing proceeding include Clark County, the State of California, and the Timbisha Shoshone Tribe (the only Indian tribe granted official "affected tribe" status under the NWPA), among others.

NRC will review the State's petition and contentions, as well as those received from other petitioners, together with DOE's responses over the next 12 months and rule on which contentions are to be adjudicated. The NWPA gives NRC three years, with provision for one additional year, to conclude the licensing process. However, it is highly unlikely that a process of the complexity and scope of a Yucca Mountain license application can be completed in such a short time. The only somewhat comparable proceeding – the licensing process for the proposed private, above-ground spent fuel interim storage facility in Utah (Private Fuel Storage, LLC) took almost 8 years and was not nearly as complex as the Yucca Mountain application. It is very likely that a Yucca Mountain license proceeding could last 10 – 12 years or more.

Developments in the Transportation Arena

In addition to finally submitting its Yucca Mountain license application, DOE also moved to formalize the selection of the Caliente rail corridor as the preferred route for a rail spur to the Yucca Mountain site. As was the case with the hasty and incomplete license application filing, the attempt to move forward with a rail spur was seen as an attempt by DOE to show progress in

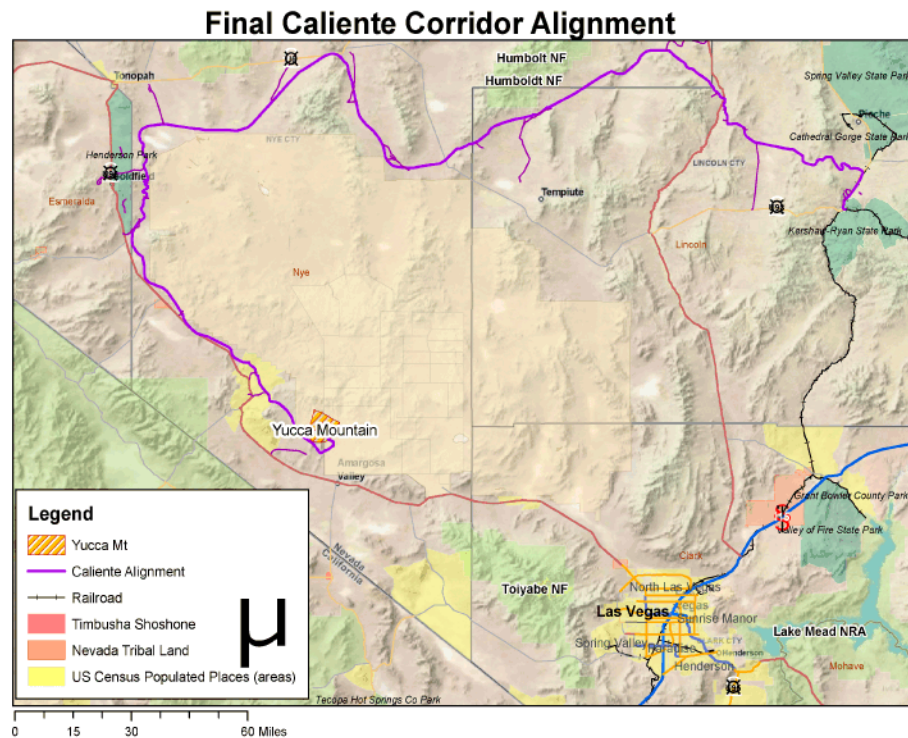
the repository program and to make it as difficult as possible for a new Administration and a new Energy Secretary to change course.

Following the issuance of the Rail Corridor FSEIS and the Rail Alignment FEIS, DOE issued a Record of Decision (ROD) that formally selected a specific alignment within the Caliente rail corridor as the route for constructing the rail line. Several months later, DOE issued another ROD that committed DOE to the “shared use option” for operating such a rail line.

Because DOE agreed to allow the rail line to be available for shared use, it became subject to Surface Transportation Board (STB) jurisdiction as part of the national rail transportation system. Consequently, in March 2008, DOE also applied to the STB for a Certificate of Public Convenience and Necessity to construct and operate the proposed rail spur. In April 2008, the STB issued a notice, initiating a proceeding for evaluating and eventually ruling on DOE’s application.

To date, the State of Nevada and numerous other parties have filed comments challenging DOE’s application and urging STB to reject it on various grounds, including the application’s lack of completeness, DOE’s failure to include operations plans and other documents necessary for reviewing the application, DOE’s failure to address potential terrorism and sabotage risks posed by the rail line and the cargo it would carry, and DOE’s and STB’s failure to evaluate impacts of the proposed rail line on the national rail transportation system, among others.

In response to the intense interest in DOE’s application and requests by the Nevada congressional delegation, STB took the extraordinary step of scheduling a public hearing on DOE’s application in Las Vegas, which was held on December 4, 2008. As of the date of this



report, the State of Nevada was in the process of preparing a petition to STB asking that the proceedings be reopened for comment and that STB establish a schedule for addressing STB's responsibilities under the National Environmental Policy Act with respect to DOE's application. Nevada has also asked that STB postpone any action on DOE's application until the new Administration has had a chance to appoint new STB members and review the matter.

Other High-Level Radioactive Waste Program Developments

EPA's Yucca Mountain Health Protection Standard

As discussed in the Commission's 2006 report, the U.S. Environmental Protection Agency (EPA) is charged in the NWPA with promulgating a radiation health protection standard for a repository. EPA first attempted to set such a standard in 1985, but the regulation was challenged by several states and environmental groups and invalidated by the courts. The Energy Policy Act of 1992 directed the National Academy of Sciences (NAS) to report on how EPA should develop the new standard and the methodology it should follow. The Act required EPA to conform any Yucca Mountain standard to the recommendations of the NAS report.

EPA tried again in 2002, when it re-issued the regulation to coincide with DOE's Yucca Mountain site recommendation. Nevada, in concert with Clark County, the City of Las Vegas and the Natural Resources Defense Council, immediately challenged the new standard in the U.S. Circuit Court of Appeals for the District of Columbia on the grounds that it did not conform with the NAS recommendations and contained an illegally bifurcated approach to radiation health protection.

In July 2004, the Court granted the State's petition to vacate the EPA's radiation health protection standard for a Yucca Mountain repository and also voided NRC's licensing regulations to the extent that those regulations relied on the rejected EPA standard. The decision struck at the heart of DOE's strategy to mask fundamental deficiencies of the Yucca Mountain site by using manmade barriers (i.e., waste disposal containers assumed to remain intact for 10,000 years or more) as a substitute for geologic containment of spent fuel and high-level waste. The attractiveness of this strategy, for DOE, was that it allowed DOE's performance assessment modelers to ignore troublesome physical characteristics of the site itself. As long as it could be assumed (however unrealistically) that the waste containers would last for 10,000 years, and that the maximum period of time for which DOE was required to demonstrate waste isolation was only 10,000 years, the fact that Yucca Mountain's geology itself contributes almost nothing to waste isolation could be ignored.

In October 2008, EPA again re-issued its Yucca Mountain radiation health protection standard. The new regulation again embodied a bifurcated radiation exposure standard of 15 millirem for the first 10,000 years and 100 millirem for the period from 10,000 years to 1 million years. In November 2008, the Nevada Attorney General filed suit, again challenging EPA's

regulation as not conforming with the recommendations of the NAS and again illegally bifurcating the exposure standard. No schedule for court action has been set as of the date of this report.

DOE's Report on the Need for a Second Repository and Report on Interim Storage of Spent Nuclear Fuel

The original NWPA envisioned a two-repository waste management system, with the first repository to be located in the western part of the country and the second in the east. However, in 1986, responding to election-year political pressure from members of Congress in states being considered for the eastern repository, DOE arbitrarily suspended the search. When Congress enacted the 1987 amendments to the NWPA, it included a provision formally canceling the second repository program, but required DOE to report to Congress on the need for a second repository "on or after January 1, 2007, but not later than January 1, 2010."

In November 2008, DOE issued its report, concluding that the proposed Yucca Mountain site could be expanded to accommodate all of the waste for current reactors and those envisioned for the foreseeable future. Not surprisingly, DOE's report cautioned that, if Yucca Mountain should not be licensed and built, it would be necessary to reinstitute the search for other repository sites in other states. If DOE were to pursue either a second repository or an increase in Yucca Mountain's capacity, new congressional legislation would be required.

In another report required by Congress and released by DOE almost contemporaneously with the Second Repository report, DOE examined whether it has the necessary authority to site and develop facilities for above-ground, temporary storage of spent nuclear fuel and high-level waste. That report concluded DOE does not have the requisite legal authority to proceed with development of interim storage sites, since the provisions governing such storage in the original NWPA have expired, and new legislation authorizing DOE to pursue temporary spent fuel storage would be required.

AGENCY AND COMMISSION ACTIVITIES

Licensing

The primary focus for Nevada's Yucca Mountain activities during the past two years continued to be on preparations for successfully intervening in the licensing process for DOE's license application to the NRC. Activities included development and certification of the State's LSN database (a prerequisite for participating in the NRC licensing process), challenging the adequacy of DOE's LSN certification, participating in pre-licensing activities through the Pre-Licensing Application Presiding Officer (PAPO) board, and developing contentions (and supporting materials) challenging DOE's LA findings.

LSN Certification

NRC licensing regulations requires entities seeking to be participants in the Yucca Mountain licensing proceeding to make available all documentary material such entities plan to rely on in licensing (or that other parties might rely on) ninety days following DOE's certification of its LSN documents. The State of Nevada, as a participant in the licensing process, is therefore required to have all of the documents and materials it will rely on in licensing loaded into the NRC web-base information system. In addition, NRC also requires the State (and other participants) to include in the database materials that DOE or other licensing parties might be reasonably expected to need to respond to contentions made by the State. This placed an extraordinary burden on the State in that it meant that thousands of documents had to be converted to electronic files and loaded onto the web-based system, at considerable cost and effort.

Development of Contentions and Petition to Intervene in NRC's Proceeding

By far, the greatest effort in terms of time, resources and effort on the part of the Agency for Nuclear Projects over the past two years has been the preparation for intervening in the NRC licensing process and, particularly, the development of contentions challenging specific inadequacies in DOE's license application.

The licensing process is an extremely complex one, both legally and technically. The effort on the part of the Agency to effectively engage in the NRC licensing arena and adequately protect Nevada's interests is and will continue to be the most complex and costly activity in which the Agency has engaged to date.

To carry out its responsibilities in this regard, the Agency has assembled a first-rate team of legal and technical experts with experience and expertise in the highly specialized NRC legal, regulatory and adjudicatory arenas and in critical scientific and technical disciplines directly related to key areas of site/waste isolation systems performance and overall Yucca Mountain licensability.

The Agency has also been engaged in a sustained and concerted effort to develop specialized and highly technical contentions related to key technical and scientific issues in DOE's license application. To that end, the Agency has engaged nationally and internationally recognized scientists and experts in fields of hydrology, geochemistry, volcanism/seismicity, and health physics. These scientists worked closely with the State licensing team, compiling data from over two decades of Agency-sponsored research on the Yucca Mountain site, carrying out new research and preparing some 229 specific contentions that were submitted to NRC as part of the State's petition for full party status in the Yucca Mountain license proceeding. The full 1,566 page petition, including the contentions, was formally filed with NRC on December 19, 2008 and is available on the Agency's web site at:

<http://www.state.nv.us/nucwaste/news2008/pdf/nv081219nrc.pdf> .

Nevada's petition urges the NRC to move quickly to deny DOE's application to construct the proposed Yucca Mountain nuclear waste repository. The 229 contentions indicate that releases of radionuclides will be greater and occur much earlier than DOE claims. In addition, the State's petition asserts that whole areas of relevant science have been excluded from consideration, including greenhouse gas-induced climate change and the lowering of the topography of Yucca Mountain by erosion.

One of the most glaring deficiencies is DOE's plan to keep nuclear radiation from leaking into the environment by installing over the waste packages so-called titanium drip shields, which have yet to be invented, and are planned by DOE to be installed more than 100 years after the repository is built and loaded with waste. Another is DOE's

proposed waste "aging" facility, nothing more than a thinly veiled and illegal temporary storage facility, calculated to get the country's nuclear waste into Nevada at the earliest possible date.

The petition filed by the State of Nevada to intervene in the Yucca Mountain licensing proceeding represents the most extensive and complex intervention by any participant in the history of NRC's nuclear facilities licensing activities.

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Transportation Activities – Opposition to DOE's STB Application

Following DOE's formal designation of the Caliente rail corridor as its preferred route and the identification of a specific alignment within the corridor for a rail spur to Yucca Mountain, DOE applied to STB in March 2008 for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate a rail line. As noted above, approval for the new rail line fell under STB jurisdiction due to DOE's decision to allow the line to be operated in a "shared use" fashion. Absent a "shared use" decision, the rail spur would have come under the regulatory authority of the State of Nevada.

STB initiated a formal proceeding to review DOE's application and make a decision on granting the CPCN for the rail line. The Agency, in conjunction with the Nevada Attorney General, filed motions with STB challenging DOE's application and asking STB to either reject the application outright or require DOE to provide sufficient documentation before proceeding with the review. Issues raised by Nevada in its opposition briefs included DOE's failure to provide sufficient operational data and a detailed operation plan; failure to adequately assess the risks of sabotage and terrorism as required by regulation; failure to evaluate impacts to the national rail transportation system; failure to adequately evaluate risks and impacts to the Las Vegas metro area; lack of adequate assessment of impacts to land users and cultural resources along the more than 300 mile route, and inadequate NEPA analyses and faulty EISs, among other deficiencies.

In response to a request from Nevada's congressional delegation, STB took the very unusual step of holding a public hearing on DOE's application in Las Vegas on December 4, 2008. That hearing was well attended, and the testimony presented appeared to have been well received by the three STB board members in attendance. Representatives from both the Agency and the Attorney General's Office urged STB to reject DOE's application as incomplete and inadequate. The Attorney General urged STB to reconsider its current course and schedule for processing DOE's application and asked that STB postpone any decision until the new Administration is in place and has had time to review the entire Yucca Mountain program and determine how it intends to proceed. It was noted that President-elect Obama has expressed serious doubts about the wisdom of the Yucca Mountain project and promised to end the project if elected. The Attorney General argued that this fact alone should suffice for STB to suspend its proceedings on DOE's application.

NEPA Reviews

During 2007 and 2008, DOE issued a total of six draft and final EISs related to the Yucca Mountain project. The publication of these environmental documents was geared towards DOE's June 2008 target date for submitting a license application to the NRC. Although DOE had prepared a final EIS for the Yucca Mountain program in 2002 to accompany the Secretary of Energy's recommendation of the Yucca Mountain site to the President for development as a repository, DOE subsequently made significant changes to the design of the project that required supplemental NEPA documentation. In addition, DOE decided to supplement its environmental analyses with respect to the proposed Caliente rail corridor and to prepare a separate EIS supporting the selection of a rail alignment within the preferred corridor.

In October 2007, DOE issued the following draft EISs with a ninety-day comment period:

- Draft Supplemental Environmental Impact Statement for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (Draft Yucca Mountain SEIS)
- Draft Supplemental Environmental Impact Statement for a Geologic Repository for Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada – Nevada Rail Transportation Corridor (Draft Rail Corridor SEIS)
- Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada (Draft Rail Alignment EIS)

Agency staff, supported by the State's legal team and technical experts, reviewed each of the draft EISs and provided extensive comments. Those comments can be found on the Agency's web page at:

<http://www.state.nv.us/nucwaste/news2008/pdf/nv080109seis.pdf>
<http://www.state.nv.us/nucwaste/news2008/pdf/nv080109rail.pdf>

In commenting on the three draft EISs, the Agency focused on the extensive deficiencies in documents. The comments, in particular, noted that the actions proposed by DOE in the three EISs, when taken together, comprised nothing less than a major restructuring of the entire Yucca Mountain high-level radioactive waste management program. **The proposed changes affected the universe of repository program elements, including the actual design of repository surface facilities, the characteristics of the waste disposal packages and engineered barrier systems, the thermal characteristics of the repository subsurface, the long-term performance of the waste isolation system and how that is modeled, the repository waste acceptance process, including waste packaging and storage activities at 72 commercial reactor sites and 4 DOE facilities, and the entire national and Nevada waste transportation systems.**

The actions proposed by DOE in the three EISs, when taken together, represent nothing less than a major restructuring of the entire Yucca Mountain high-level radioactive waste management program.

State comments on the Draft Yucca Mountain SEIS indicated the document so materially departed from the 2002 EIS that the program it described and analyzed could no longer be presumed to be the one authorized by the President and the Congress in 2002 and, accordingly, concluded that DOE should return to the President and the Congress with a new Site Recommendation based on the new project description and revised NEPA analysis.

Comments on the Draft Rail Corridor SEIS and the Draft Rail Alignment EIS concluded that those EISs were premature in the absence of a national DOE spent fuel and high-level radioactive waste transportation plan. Comments also faulted DOE's failure to conduct a national scoping process; the inadequate analysis of rail corridors in Nevada and the inappropriate selection of the Caliente rail corridor; the inappropriate and potentially illegal inclusion of the Mina rail corridor as an alternative to the proposed action (since the route could not be used due to objections by the Walker River Paiute Tribe); DOE's failure to provide basic information about the Caliente and Mina rail alignments that is necessary for impact assessment; DOE's failure to provide reliable cost information about the proposed Caliente and Mina rail alignments; insufficient assessment of land use and other impacts; DOE's failure to assess impacts to Las Vegas and Clark County as well as impacts to the Reno-Sparks metropolitan area, Washoe County, and communities along the I-80 corridor; incomplete and inadequate assessment of adverse impacts to Native Americans; and inadequate treatment of accidents and terrorism/sabotage impacts, among other deficiencies.

Following the end of the comment period, DOE proceeded to finalize the three NEPA documents and issued the final versions in conjunction with the submittal of the license

application to NRC in June 2008. The final EISs reflected almost no changes in response to the state's comments.

Under the provisions of the NWPA, NRC is required to adopt DOE's Yucca Mountain EIS "to the extent practicable."

PROSPECTS FOR THE YUCCA MOUNTAIN PROGRAM

The Presidential Election and the Future of Yucca Mountain

During the 2008 presidential campaign, considerable attention was given to the Yucca Mountain issue in the strongly contested Nevada caucuses that were held very early in the process in February. All the major Democratic contenders pledged to terminate the Yucca Mountain project if elected. During the general election campaign, Senator Obama repeatedly voiced skepticism about the need for the Yucca Mountain project and the wisdom of going forward with it in the face of fierce opposition on the part of the State.

While the November elections may have altered the political landscape in Nevada's favor and there is reason for a certain optimism about the State's chances of defeating the Yucca Mountain project, it would be extremely premature to declare victory. Much work remains to be done, and it is essential that the State continue to press its strong and compelling scientific and technical case in NRC's licensing proceeding.

NRC's Licensing Proceeding – What Happens Now?

On December 19, 2008, the State of Nevada submitted a petition to participate as a full party in the Yucca Mountain license proceeding to the NRC. The petition encompassed 1,566 pages and contained 229 specific technical challenges or contentions with regard to DOE's license application. The filing represented the most extensive and complex intervention in the history of NRC's licensing of nuclear facilities. In addition to the State, petitions and contentions were also filed by Clark County, Nye County, Lincoln County, Esmeralda County, Churchill County, Mineral County, White Pine County, Inyo County, the State of California, and the Timbisha Shoshone Tribe, among others.

Under NRC's regulations, DOE will have 50 days to respond to the various contentions. Nevada would then have 14 days to reply to DOE's responses. NRC will then set a schedule for the formal licensing hearings, which will likely be held before two and possibly three concurrently convening licensing boards. Under the provisions of the NWPA, NRC is give three years, with the

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option of a fourth year, to conclude the proceeding. However, since there is no penalty for missing that deadline (and almost every other deadline set forth in the NWPA has been missed - some by decades), it is very likely that a proceeding as contentious and complex as that for a Yucca Mountain repository will take considerably longer – as many as 10 years or more according to some observers.

RECOMMENDATIONS

The following recommendations are designed to assist the Governor and Legislature in addressing the federal high-level nuclear waste program and maintaining the State's strong, unified and successful opposition to the Yucca Mountain project.

(1) *There is a continuing need for a strong and determined State effort to oppose DOE's License Application*

The Agency for Nuclear Projects and the Nevada Attorney General must have adequate resources to fulfill their obligations as participants in the licensing process and to pursue timely legal challenges to the Yucca Mountain program. The State has assembled a first rate team of licensing attorneys and technical experts to represent Nevada in these proceedings and see to it that the real facts regarding Yucca Mountain's fitness (or lack thereof) as a geologic repository prevail. The Commission finds that technical challenges the State has brought in the NRC licensing proceeding in the form of the 229 contentions challenging almost every aspect of DOE's license application are overwhelmingly compelling. In any objective licensing proceeding, the Commission believes Yucca Mountain cannot be licensed as a geologic repository.

The Commission recognizes, as well, that the cost to effectively participate in the NRC licensing proceeding will be substantial and that the funds to do so will be hard to come by, given the current fiscal crisis facing the State. However, the Commission is convinced that a well-funded, well-prepared, proactive participant like the State of Nevada has an excellent chance of prevailing. Just the knowledge that Nevada is prepared to mount an extensive, highly competent and adequately funded challenge to DOE's licensing application has already had a major positive impact on the NRC licensing process.

(2) *It is crucial for the State of Nevada to maintain a strong and effective oversight agency for the purpose of carrying on the State's opposition*

The Commission cautions that this is not the time for the Legislature or the Governor to in any way signal a relaxing of the strong and united opposition to the project that has characterized Nevada's efforts to date. With the focus of national program shifting to the NRC licensing arena, DOE, for the first time ever, will be forced to defend its

conclusions and decisions in an adjudicatory process where its questionable science and faulty conclusions will be subject to intense scrutiny by some of the best attorneys and most qualified technical experts in the country and internationally. As noted above, the Commission believes Nevada is well-positioned to successfully contest DOE's license application.

The Commission concludes that, far from being inevitable, the State of Nevada appears to be within striking distance of successfully halting the Yucca Mountain project. It is crucial, therefore, that Nevada's elected leaders continue to actively oppose DOE's Yucca Mountain program at every turn and to do so in a consistent and unified manner.

- (3) *The Commission considers it to be absolutely essential that the Governor and Legislature resist any calls by Yucca Mountain supporters and others for the State to negotiate for benefits or other considerations with respect to Yucca Mountain.*

Nuclear industry lobbyists and Yucca Mountain supporters have for years been urging Nevada's leaders to accept the inevitable and negotiate with the federal government for benefits in exchange for accepting the project. The industry has been attempting to use the **fiction** of large financial and other benefits as a wedge to fracture Nevada's united front of opposition to the program. Recently, there have been intensified efforts on the part of certain groups and industry surrogates urging negotiations, using the State's fiscal crisis as a rationale for seeking benefits from the federal government in exchange for dropping State opposition to the Yucca Mountain project.

The Commission believes that such calls for negotiations are not only bogus, but they are specifically aimed at undermining Nevada's fight against Yucca Mountain at precisely the time when, after years of strong and unified opposition, the State is in an excellent position to prevail. It is no coincidence that increased calls for capitulation are coming just when Nevada has filed the most extensive and comprehensive intervention in the history of NRC nuclear facilities licensing proceedings and when a new and skeptical Administration in Washington is reviewing the viability of the entire federal approach to high-level radioactive waste management.

Nevada's opposition to the Yucca Mountain project is founded in a long history of sound scientific research documenting systemic deficiencies with the site and with DOE's persistent attempts to mask those deficiencies with one bogus engineering 'fix' after another. There is also a long history of legislative resolutions formalizing State opposition to the project, dating back over 25 years, and the Legislature even passed a law in 1989 that made it illegal to store high-level radioactive waste in Nevada. Calls for negotiations fly in the face of this long and compelling history.

The case for rejecting negotiations is overwhelming. No amount of money or benefits can change the fact that Yucca Mountain is an unsafe and unsuitable repository site. It is simply not possible or morally defensible to put a dollar figure on people's lives, a safe environment, clean water, and the health and safety of future generations. DOE actually plans to contaminate the Amargosa Valley aquifer as part of its "waste isolation strategy" for Yucca Mountain, using dilution of the radioactive waste in the underground water as a way of making it appear that site is able to meet EPA's radiation health protection standards. The only argument is WHEN, not if, contamination would occur. Yucca Mountain is such a poor repository site, geologically speaking, that it would be irresponsible, even unconscionable, for any State leader to even entertain the notion of accepting the facility in exchange for monetary or other benefits.

Even if it were possible to consider negotiations for a repository (which it isn't), research by the State of Nevada and others has shown that the costs and risks to the State would far exceed any benefits of the project. Yucca Mountain would cost Nevada and its jurisdictions billions in costs associated with dealing with the direct effects of the program and the tens of thousands of waste shipments that are part of it. Studies show that, if there is an accident involving radiation, the costs to Nevada would be in the tens to hundreds of billions of dollars, and the potential damage to the State's tourism economy would be devastating and perhaps irreversible.

Any negotiation or even evidence of a willingness to negotiate would cripple Nevada's legal cases and seriously, perhaps fatally, undercut the State's ability to successfully intervene in the NRC licensing proceeding. The single most important reason Yucca Mountain supporters are trying to entice Nevada and its local communities with promises of benefits is that they realize Yucca Mountain can only be built if the State drops or compromises its opposition. Once Nevada indicates even a willingness to talk benefits or compensation, the battle is over and the state would have capitulated. That is exactly what the nuclear industry lobbyists are hoping for, and their calls for negotiations are part of a purposeful strategy to derail what the industry recognizes as Nevada's strong and compelling legal and scientific licensing challenges to the project.

The fact is Nevada has an excellent chance of defeating the Yucca Mountain program outright. The State has been preparing to contest the project in the legal and technical arenas for almost three decades and has already won an important legal case that stopped the program in its tracks for almost 4 years. From now on, DOE is going to be forced to defend its inadequate science and faulty conclusions in the courts and before the NRC's licensing board, where DOE's assertions will be subject to challenge and cross examination by some of the best attorneys in the country, supported by Nevada's first rate scientific and technical experts. The Commission believes the only thing that can bail DOE out at this point is for Nevada to voluntarily give up the fight.

Finally, DOE and the federal government cannot be trusted to live up to any commitments that might be made. Once Yucca Mountain is built and waste begins to flow, there is no longer any incentive for DOE, future administrations, or Congress to live up to any commitments made for compensating the State or local governments. The nuclear waste fund that supports the program through fees collected on electricity generated by nuclear power plants is already woefully inadequate to pay for the cost of constructing and operating a repository. That means the nation's taxpayers would have to pick up the tab for a good portion of the overall repository costs, and any "benefits" the State might negotiate for would be competing with all of the other project costs every year in the annual congressional appropriation process. The reality of the federal appropriations process is that there is no way to bind one administration or Congress into a funding commitment made by a previous administration or Congress. In effect, any benefits agreement that might be negotiated is, essentially, unenforceable.