Meeting Minutes – Commission on Nuclear Projects

November 13, 2013

NEVADA COMMISSION ON NUCLEAR PROJECTS
WEDNESDAY, NOVEMBER 13, 2013; 1:00PM
CLARK COUNTY GOVERNMENT CENTER
COUNTY COMMISSION CHAMBERS, 1ST FLOOR
LAS VEGAS, NV 89155

Commissioners in Attendance:
Senator Richard Bryan, Chairman
Dr. Marie Boutte
Lawrence Brown
Michon Mackedon
Aurelia Roberts
Paul Workman

Senator Bryan called the meeting of the Commission on Nuclear Projects to order. Executive Director Halstead specified that the meeting agenda had been posted per the open meeting law.

The minutes from the June 10, 2013, Nevada Commission on Nuclear Projects meeting were approved as amended. Motioned by: Lia Roberts. Second by: Paul Workman. All were in favor.

Senator Bryan tendered the floor to the public for anyone would like to speak on the agenda items. No response was given.

Report from Executive Director Robert Halstead

- August 13, 2013 order issuing a writ of mandamus from the U.S. Circuit Court of Appeals for the DC Circuit, directed the NRC to begin anew the licensing process for Yucca Mountain.
  - Shortly we are expecting the NRC to issue an order to restart the licensing proceeding. The order will possibly follow the approach of the NRC staff filing to the Commission, which will probably have the greatest impact on what the NRC does. Basically, NRC staff states what will be required to complete the Safety Evaluation Report, which are the staff’s views on the license application, safety and environmental issues. NRC would have to update the DOE Environmental Impact Statement, which the staff found to be deficient in the ground water area, and handle the matter of reconstituting the computerized searchable database of documents, the LSN.
  - NRC staff believes it would take 12 months and the better part of the 11-14 million dollars remaining to do the three tasks.
  - Nevada requested that if hearings resume to be held in Las Vegas, closer to the possible site. The Agency is preparing for the resumption of the licensing process; we have contacted all of our technical experts and expect to fully participate in any resumption of the adjudicatory hearings and fully prosecute all of the 200+ contentions the State has filed.
Senator Bryan stated that the budget for the NRC is a residual amount, not new money. Director Halstead agreed that no new money has been appropriated for the last three federal fiscal years. Depending on if you account for the obligated and unobligated funds, the NRC has about 11 to 14 million dollars in left-over funds. We’ve estimate that they will need at least 100 million dollars to appropriately carry out the licensing proceeding. The Department of Energy has somewhere between 17 and 30 million dollars, again depending on how you count obligated funds that might be reprogrammed. Department of Energy reports that they already spent 600 million dollars on licensing through the end of 2007. And they actually have a budget document out where they said they might need more than a billion and half dollars to do the licensing over the ten year period up through 2017. So clearly there is not enough money on the federal agency side.

Director Halstead discussed the State’s financial status and stated that the Agency and the Attorney General’s office are working with the Interim Finance Committee, the Legislative High-Level Waste Committee and the Governor’s office on the possibility of additional funds that the State might need to participate in any new licensing hearings.

The Senate Energy and Natural Resources issued a “discussion draft” of a committee bill to implement the BRC for 30 days and took public comments. At the end of May, they then put out a formal draft version whose primary sponsors are Senators Wyden of Oregon and Murkowski of Alaska. The bill number is S1240. It basically follows the guidelines of the Blue Ribbon Commission. The basic recommendations of the BRC are:

1. A volunteer or consent based process for picking sites, to take the program out of the Department of Energy.
2. Be assigned to an independent federal agency somewhat modeled on the Environmental Protection Agency. The Blue Ribbon Commission had argued for a Federal Corporation based on the Tennessee Valley Authority model.
3. To restructure the waste fund. A comprised approach where the annual payments into the fund would be directly available without Congressional Appropriation to the new entity but any use of what is called the corpus of the waste fund and the annual interest payments would require the normal Congressional Appropriation.

The Agency has had discussions with Senators Reid and Heller offices regarding this bill and will continue to work closely with both senators. We are waiting for a mark-up of the bill. The problems we have with the bill are that 1) it grandfathers in the Yucca Mountain program; 2) it gives all the authority from the NWPAA to the Administrator of the new governing agency; 3) does not extend the consent agreement language to the Yucca Mountain program and the State of Nevada; and 4) the transportation aspects of the bill are inadequate.
• DOE Environmental: Consideration of the U233-U235 issue
  o DOE has been looking at the option of sending unusual nuclear materials to Nevada for disposal at Area 5. No precedent for disposing of this type of waste as low-level waste. An agreement has been reached to reevaluate this issue and to create a new working group to reevaluate Nevada’s and DOE’s relationship regarding disposal at NNSS. DOE is proposing that the 403 canisters, in reality special nuclear material, can be shipped to Nevada as low-level waste. Each canister contains a ceramic oxide of more than 5lbs of uranium, 75% is U235 and 10% is U233. Radioactive surface dose rate = 300rem per hour. This is not the usual low-level waste historically disposed at the NNSS. This waste is considered low-level waste by default, not by definition.

  Primary concerns are 1) since this is an unusual type of nuclear material, does this set a precedent for future disposal decisions of “unusual” nuclear material, given budget considerations for DOE; 2) the NEPA compliance determination of this type of disposal. The current NEPA document for the NNSS does evaluate this type of material for disposal at NNSS. The state does not believe that DOE can legally proceed without some type of NEPA compliant determination of the disposal of this material at NNSS. The third area of concern is the transportation of this waste. Disposal of this material would take 50-100 shipments that would be shipped as special nuclear material. The transportation of this material should use the DOE Office of Secure Transport; however, the waste form of the material and the shipping package do not include the dedicated trailer. A hybrid solution has been proposed. This also needs to be addressed in a NEPA document.

  Commissioner Mackedon asked about the cask design of the shipping container for the CEUSP containers. Mr. Halstead explained the type of canisters that might be used to ship this type of material.

Report from Chief Deputy Attorney General Marta Adams

• The State of Washington, the State of South Carolina, Aiken County, South Carolina, and some other participants including Nye County brought a law suit against the NRC, arguing that the Federal Nuclear Waste policy act as amended does prescribe that once the license application is docketed, there is three to four years in which the NRC can proceed to some decision one way or the other. The NRC did suspend the licensing preceding after having dealt with early procedural types of issue, but did not deal with the substance per say of the extreme deficiencies that we see in the application, which go directly to the inadequacy of the Yucca Mountain site. The proceeding was suspended basically because Congress has refused to fund this project for three years.

• Nye County did file a suit seeking recusal of the NRC chairman Allison MacFarlane. Chairman MacFarlane has been involved as a geologist in a variety of contexts in the repository program, one of which includes authoring and bringing together a compilation of scientific works called Uncertainty Underground. Apparently, Nye County felt that her book constituted some sort of a conflict of interest. The case remains pending although
the US Court of Appeals in the District of Columbia did deny the injunctive relief sought. So, we consider that as a relatively positive development.

- Pending cases
  - Water Related Issues
    - Las Vegas – Judge Hunt
      - U.S. versus State of Nevada
        (State Engineer declined to grant water for the project)
  - DC Circuit of Appeals
    - Challenge to the EPA Standard Case
    - Challenge to the NRC License Rule Case
  - 9th Circuit
    - Challenge to the Caliente Rail Corridor

Commissioner Mackedon asked Ms. Adams if the new senate bill, S.1240, replaces the Nuclear Waste Policy Act or if it was an amendment to the existing act. Ms. Adams stated that the new senate bill was a new direction for the nuclear waste program that follows the recommendation of the Blue Ribbon Committee and it does not replace the NWPA. Commissioner Mackedon also asked if there was a lot of industry opposition to the senate bill. Ms. Adams stated that she had not heard of any industry opposition to S. 1240. Chairman Bryan stated that the language in the new senate bill exempts the Yucca Mountain program from the new direction specified in the bill and unless wording changes are made to the bill, Yucca Mountain can still go forward.

Commissioner Brown asked how the writ of mandamus discussed the funding of the renewed licensing proceedings. Ms. Adams stated that the writ specified that the NRC had to spend its leftover funds that had not been spent in previous years. No new funding is called for by the court. Chairman Bryan added that, given the limited funding, the full adjudicatory process cannot move forward.

Affected Units of Local Government and Tribal Representatives

- Local Government: Phil Klevorick, Program Manager of the Clark County Nuclear Waste Division. Briefing and update on the NRC Waste confidence issues – 80% of the comments were focused on Yucca Mountain. Mr. Klevorick discussed the DOE meetings held regarding the CEUSP canisters. DOE has never worked with emergency planners and has no structure or protocol set up on how to deal with any potential issues on the transportation of this type of material.

Comments from the public

- Dr. Jacob Paz discussed of the needed supplemental EIS regarding groundwater to the Yucca Mountain license application. He also stated that the Yucca Mountain site could end up being a Superfund site because of the large quantities of heavy metals, RCRA materials.
• Senator Bryan thanked Vinny Spotlson from Senator Reid’s office for attending.

• Judy Triechel, Nuclear Waste Task Force:
  • Concerned about the Waste Confidence issue mentioned by Phil Klevorick. She also discussed the huge public opposition for shipments of waste across the country, such as the CEUSP canisters. Chairman Bryan stated that there is no national security issue involved that requires moving this waste. The sole motivator is so DOE can save money in Tennessee by sending the waste to Nevada.

Commissioner Brown discussed the “propaganda material” issued by the County Board of Commissioners for Nye County. Commissioner Brown wanted to make sure that the Commission members knew that there were still people out there that want Yucca Mountain built, no matter the cost or problems.

**Next Commission meeting:** April time frame.

Chairman Bryan called for the adjournment of the meeting. All were in favor.