



January 14, 2005

Secretary  
U.S. Nuclear Regulatory Commission (NRC)  
Washington, D.C. 20555-0001  
Attn: Rulemakings and Adjudications Staff

Re: RIN 3150-AH52

Dear NRC Secretary and Rulemakings and Adjudications Staff,

As national environmental and public interest organizations, we submit these comments on behalf of our members across the United States regarding your proposed direct final rule "Broadening Scope of Access Authorization and Facility Security Clearance Regulations," RIN 3150-AH52.

We are very concerned that this proposed direct final rule does not make clear that public intervenors, such as environmental and public interest organizations that plan on taking part in the Yucca Mountain licensing proceeding, would be granted access authorizations and security clearances. We seek clarification as to how broadly or narrowly NRC will apply "need-to-know" limitations upon potential intervenors in the proceeding, such as environmental and public interest organizations. If parties to the proceeding that advocate in favor of a construction and operation license for a national high-level radioactive waste repository at Yucca Mountain (such as the U.S. Department of Energy and the Nuclear Energy Institute, representing the special interests of nuclear utilities) enjoy security clearances while environmental groups, public interest organizations, and concerned members of the public with contentions against the proposed repository have restricted access to vital documentation, then the proceeding would be entirely unfair. Advocates for the license would enjoy a huge advantage over intervenors with contentions against the license. Blocking public interest and environmental intervenors' access to vital documentation would amount to tremendous prejudice and bias in favor of granting the construction and operating license. This is unacceptable and would entirely undermine the legitimacy of NRC's Yucca Mountain licensing proceeding.

We are also very concerned that any proposed rule changes, including this proposed direct final rule, not be used by NRC or any other federal agencies involved in the Yucca Mountain licensing proceeding (such as DOE) to inappropriately restrict access to documents by improperly classifying documents vital to intervenors' contentions against the proposed repository. NRC's tendency to invoke more and more secrecy in nuclear licensing proceedings, as in the current Louisiana Energy Services and Private Fuel

Storage licensing proceedings, is deeply troubling. It serves to keep the public in the dark on issues of vital societal importance, and undermines the democratic decision making principles of our nation. We urge that NRC maximize openness, transparency, and access to documents in its Yucca Mountain licensing proceeding. This is essential to environmental and public interest organizations' effective intervention. It is also in keeping with the highest democratic ideals of our nation.

We seek clarification as to which categories of information, as well as specific documentation, NRC and other federal agencies involved in the Yucca Mountain licensing proceeding plan on declaring "classified." Although NRC's proposed direct final rule refers only to "classified information," we question if NRC intends to effectively also include "sensitive" and "safeguards" information. We urge that this point be clarified, and that comprehensive definitions for "sensitive" and "safeguards" be given.

Denying security clearances while inappropriately classifying vital documentation would effectively shut public interest and environmental organizations out of the licensing process. This would violate NRC regulations, which require public hearings. It would also violate the public trust, which is served by open and transparent licensing proceedings. An open and transparent licensing proceeding is especially important for the Yucca Mountain repository application, for it will be the largest and most complicated in NRC history. An open and transparent hearing is the main way the wider public can learn about the Yucca Mountain proposal, which is of vital national importance.

Please withdraw the direct final rule in order to clarify the proposal and allow adequate time for additional public comments in response. We urge that our organizations be given an opportunity to comment upon NRC's answers to these many questions.

Sincerely,

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