

## AMERICAN NUCLEAR SOCIETY

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August 22, 2011

The Honorable William D. Magwood  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike – M/S O-16G4  
Rockville, MD 20852

Dear Commissioner Magwood:

On behalf of the 11,000 members of the American Nuclear Society (ANS), and after consultations with other ANS leaders, I write to express our deep concern about the U.S. Nuclear Regulatory Commission's inability to complete consideration of the Yucca Mountain license application in a scientifically objective and technically meritorious manner. We fully understand that the U.S. Department of Energy (DOE) has sought to withdraw its application for an NRC license; however, it has become clear that DOE's actions do not relieve the Commission from its duty.

As a scientific and professional organization, the ANS has avoided entering the political disputes over the Yucca Mountain Project, and decided not to take a position on the suitability of the Yucca Mountain site as a geological repository. Our most recent position statement, approved in 2009, supports the "expeditious processing of the Yucca Mountain license application in an open, technically sound manner ..." We also expressed confidence that the NRC would make a licensing determination, "fairly and only after thoroughly reviewing the scientific information in the application."

Subsequent events have eroded that confidence.

In June 2010, the NRC's Atomic Safety and Licensing Board (ASLB) determined that the DOE's motion to "withdraw" the Yucca Mountain license application does not relieve the Commission of its duty to review it and make a decision on its technical merits. Despite the ASLB ruling, the NRC, without an open formal decision of its own, has suspended its review of the application and heretofore refused to release the main technical licensing document prepared by NRC staff, the Safety Evaluation Report (SER).

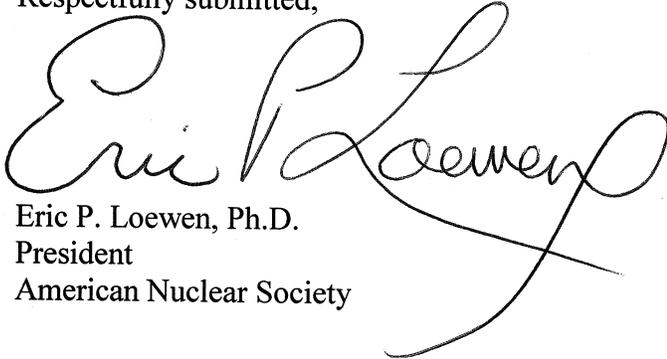
On July 1, 2011, the U.S. Court of Appeals ruled that the Nuclear Waste Policy Act "requires the Commission to review the application," that the deadline for Commission action is "at hand," and that the Court would issue an order of mandamus if necessary to correct "transparent violations of a clear duty to act" or an attempt by the NRC "to insulate itself from judicial review by refusing to act."

On behalf of the ANS, I urge you to perform your duties mandated by the Nuclear Waste Policy Act and complete the Yucca Mountain licensing process. The July 1, 2011 Court of Appeals decision makes clear that the NRC is required to act. Our members are concerned that if the Commission does not act, the Court will order it to do so, thereby inflicting indelible harm to the Commission's reputation for scientific professionalism and independence.

I also encourage you to facilitate the public release of the staff's Safety Evaluation Report. The recently released "Technical Evaluation Report" has little merit and does not provide a pathway for the licensing process. Moreover, efforts to promote the "Technical Evaluation Report" as meeting NRC obligations under the NWPA have created the perception that the NRC withheld key safety information for political reasons, thus further tarnishing the Commission's reputation and credibility.

In closing, while we recognize that the Commission must operate within a political context, it must also remain independent. We urge you to protect the Commission's traditions of openness, objectivity and excellence by completing the scientific review of this matter.

Respectfully submitted,



Eric P. Loewen, Ph.D.  
President  
American Nuclear Society

cc: United States President Barack Obama  
U.S. Secretary of Energy Dr. Steven Chu  
Senator Barbara Boxer, Chair, U.S. Senate Committee on Environment & Public Works  
Senator James M. Inhofe, Ranking Member, U.S. Senate Committee on Environment & Public Works  
Congressman Fred Upton, Chairman, U.S. House Energy & Commerce Committee  
Congressman Henry A. Waxman, Ranking Member, U.S. House Energy & Commerce Committee

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