

NEVADA COMMISSION ON NUCLEAR PROJECTS  
WEDNESDAY, January 25, 2023; 1:00pm-3:00pm

LOCATIONS:

Zoom Web-based Meeting.

Commissioners in Attendance:  
Senator Richard Bryan, Chairman  
Michon Mackedon  
M. Paul Workman  
Brian Knudsen  
Ross Miller  
Frankie Sue Del Papa

**Call to Order**

Senator Bryan called the meeting of the Commission on Nuclear Projects to order. Roll call was done. Senator Bryan announced for the record we have a quorum.

Director Dilger specified that the meeting agenda had been posted per the open meeting law. We are in compliance with the open meeting law.

Senator Bryan tendered the floor for anyone who wanted to comment in respect of the agenda. We will also do that at the end of the meeting.

**Comments from the public**

No comments

**Approval of minutes of the October 26, 2022, Commission on Nuclear Projects Meeting**

Senator Bryan - the next thing on the agenda is the action of approval or discussion of the October 26<sup>th</sup> commission meeting. Commissioner Workman moved to approve the minutes and it was seconded by Commissioner Mackedon. All voted in favor.

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**Report from Executive Director Fred Dilger**

Report and Recommendations of the Nevada Commission on Nuclear Projects  
Everyone should have a digital or hard copy of the 2023 Report from the Commission to the Legislature. We have circulated this before for any kind of comments and we'd like approval on this so we can distribute it to the legislature. In response to Governor Sisolak language access program, we've also for the first time had this report translated in Spanish. We have multiple copies printed up.

In terms of my report first are the administrative things. Our budget hearing will be on February 20, 2023, and 8:00 a.m. We are going to reach out to the Nevada State committees on growth and infrastructure to let them know what we're doing and familiarize them with this effort. We know there are a lot of new people in this legislature, and we want to be sure they are familiar with what's happening.

We have not yet heard back from the Nuclear Regulatory Commission (NRC) about the motion we filed on September 26th. We know that the NRC is spending money from its Yucca Mountain carryover funds to look at our motions and we expect to hear back from the NRC at any time. We're watching it very carefully, it's entirely possible that the response could come in the NRC equivalent of a consent agenda and simply be waved forward. Regardless of the response we get from the NRC, we've got press releases prepared for the delegation and the Governor to respond to whatever decision is made.

To bring you up on some other events. The Department of Energy (DOE) was awarded an additional amount of money for its interim storage efforts last year, so it has increased the amount of money up to 23 million dollars and 16 awards. This is basically to help them understand how they can create a process for a consolidating interim storage facility. In our work with the Western Interstate Energy Board (WIEB) has been asked to partner with some of the groups that are applying for this money. They are looking at about 16 grants, about 2 million dollars each. People have approached the WIEB asking for the Board's support, and we have evaluated several of their proposals and we're frankly going to offer them lukewarm letters of support. It's all contingent on what they produce because we do not want to have a report produced that says okay here is where the ideal place is to put this interim storage facility. We want to have the DOE work on getting its process right before they get further on down the road. We just don't know where that's going.

Next item the NRC approved new scales small modular reactor design yesterday. At the same time that approval was issued, as I mentioned in our last meeting, the cost has gone up. The small modular reactor cost originally aimed at \$53.00 dollars a megawatt an hour is now estimated at \$89.00 dollars and megawatt hour which puts it more expensive than solar, wind and natural gas. Once again, the cost for a new nuclear renaissance to take place they will have to address the cost and time issues that they haven't done.

Some events in Congress Representative Levin from California, newly reelected in a new district, reintroduce his legislation on what would prioritize the movement of fuel at sites where a nuclear power plant has closed. That stranded fuel he intends to have that moved first. This is aimed at fixing the problem at San Onofre, California just outside San Diego.

Additionally, Nevada delegation is planning on reintroducing the nuclear waste informed consent act. We're having a delegation staff call next week to discuss that and look at options for maybe making that legislation more comprehensive.

**Senator Bryan** – Any Questions?

**Commissioner Mackedon** – In our last meeting you mentioned WSCB interim storage. You reported that both Texas and New Mexico had petitions in effect for intern storage. Do you have any update on the status? They were private Industry as I recall and that both States Texas and New Mexico were objecting to those. Do you have any updates?

**Director Dilger** – The Andrews site has received its licensing from the NRC. The rumor is that New Mexico site will receive its license in February. We have reached out to Texas and New Mexico extensively over time to recommend that they adopt Nevada’s successful approach to this kind of issue, and we've not been as successful as we would prefer. At the same time representative Quale contacted representative Lee This morning about possibly working together on this issue and that's one of the topics that the delegation call will have next week. We're going to try to help Mexico get out in front of this.

**Senator Bryan** – Any Questions? No questions.

**Senator Bryan** – We have some new legislators, and our adversaries are always out there generating problems for us, support for reprocessing and all of that. I suggested to Fred to reach out to the newly elected legislators to offer them a briefing by you.

**Director Dilger** – What we are going to do is send out emails to the Senate and Assembly Committee on Growth and Infrastructure. I spoke with Betsy McCabe who's the Facilities Manager for the State Library and Archives and we are looking into having an open house over there where we put up some of our maps, diagrams, that sort of thing and invite the legislators to come by. It's close to the capital and we will have the staff there to talk them through what it is that we do and what this is about.

**Commissioner DelPapa** - I don't see where the Legislative Committee on Energy has been appointed yet. I'm assuming that when we do this that we will include that committee as well.

**Director Dilger** - We can make that happen.

**Senator Bryan** – Any other comments or questions about the report that’s going to legislator? Move to approve? Commissioner Mackedon first and Commissioner Workman second. Report has been approved.

### **Report from the Nevada Attorney General’s Office – Status of Litigation and Legal Issues**

**Senior Deputy Attorney General Dan Nubel** - Thank you so much for letting me speak today. The Senator is totally correct that much of this litigation is endless it's been around for a long time. I will give a brief overview of each of the cases were working with.

The first one that I will discuss is Nevada versus the United States Environmental Protection Agency (EPA) and that's within the DC Circuit Court. Nevada filed suit on October 10th, 2008, against the EPA challenging the revised radiation standard for the proposed Yucca Mountain repository. This challenge goes to the heart of the State's case that the repository poses

unacceptable risks to the public health, safety, and the environment. That case is currently being held in abeyance.

The second case I have is Nevada versus the Nuclear Regulatory Commission (NRC) and that is also within the DC Circuit Court. Nevada filed a petition for judicial review of the NRC licensing rule for the proposed repository on May 8th, 2009, the NRC licensing rule incorporates the EPA radiation standard and applies it in an adjudication of the Yucca Mountain license application. Should the NRC licensing be restarted. That case is currently being held in abeyance.

Nevada versus the United States Department of Energy (DOE) that case challenges the DOE selection of the Caliente Rail Corridor and is currently being held in abeyance as well.

Lastly before I get to the ongoing NRC proceeding that we have is the United States versus the State of Nevada which is in District Court in Nevada. That case is a challenge of the United States. The US challenged Nevada State Engineer's decision determining the DOE is not entitled to permanent water rights to construct and operate the proposed repository. There is a companion case to that and the 5th judicial which is Nye County, but the Federal District court case is the one that was being actively litigated several years ago. That case is currently in abeyance as well. All these cases are subject to potential restart should anything move forward with the licensing.

The bigger update that I have, and Fred touched on this is the motions for summary disposition which is within the NRC. As part of that the Attorney General's office through its outside counsel Egan Fitzpatrick Marsh and Lawrence plans to file several motions for summary disposition with the NRC regarding the Yucca Mountain license application. If successful, these motions would give the NRC the authority to deny the Department of Energy license application and motions for summary disposition are essentially the equivalent in the litigation setting to a motion for summary judgment. In order to file these motions for summary disposition the State first filed a motion to reopen the licensing proceedings on September 20th, 2022, and that is for the sole purpose for the limited purpose of considering the State's summary disposition motion. The NRC adjudicatory hearing process has been suspended since September 30th, 2011, due to lack of appropriations funding. Over a decade now. The basis for the State's motion to reopen the adjudicatory hearing process for a limited purpose would be that the NRC has the funding to entertain Nevada's as few and straightforward motions. and two unlike any potential motions that might be filed by the DOE or any other party Nevada's motions have the possibility of concluding the licensing process altogether. If successful in its motion to reopen the licensing proceedings the State will then file three motions for summary disposition the State's motions for some reason or limited to three what we think are very straightforward legal issues that do not require any additional Discovery or fact finding assuming that one of these motions for some reasons granted the State would then move to have the DOE's license application denied. Currently we're in the process of waiting for a decision from the NRC regarding our motion to reopen the licensing proceeding for a limited purpose. As Fred stated, we don't have a timetable for when the NRC has to issue a decision on that based on our previous experience with the NRC. We think that could happen within the next few months and we hope that it will but there's

no strict timetable for that to occur, I will keep all of you apprised once we hear anything back from them. That's all the updates I have. I'm happy to take any questions.

**Senator Bryan** - Has the governor designated who his attorney is going to be at this point?

**Senior Deputy Attorney General Dan Nubel** - Chris Nelson

**Senator Bryan** - I might suggest that since you are thoroughly briefed in this matter maybe you reach out and give him the lay of the land.

**Senior Deputy Attorney General Dan Nubel** - I will certainly do that.

**Senator Bryan** - I am not sure where Governor Lombardo might stand on this. I don't recall it being in the campaign.

**Commission Workman** – Advised that he had briefly met with Governor Lombardo and had a brief conversation regarding Yucca Mountain. I would be deeply surprised if he is anything other than accord with this commission.

**Senator Bryan** – Dan I still think this would merit a lawyer-to-lawyer conversation.

**Senior Deputy Attorney General Dan Nubel** - I appreciate that advice and I will certainly do that.

**Senator Bryan** – Any other questions or comments?

**Commissioner Del Papa** – Senator, I thought I would just let you know unless someone on this call objects I'm going to be seeing Teresa Benitez Thompson who is the Attorney General's Chef of staff I thought that I would brief her as well as well.

**Senator Bryan** – I think that's fine. Any other comments or questions on the AG's report? Fred, do we have anybody from the affected units and local governments and tribal representatives or anybody who has indicated a desire to participate in our meeting?

**Director Dilger** – No Senator, but Phil Klevorick has joined us.

### **Comments from Affected Units of Local Government and Tribal Representatives**

**Phil Klevorick** -Thanked the commission for the support to continue to go to the WIEB/WGA the and the Waste Management conference. Not sure if anyone is aware, but to a couple years ago president had created a directive out of the White House regarding the importance of secured critical minerals for the country in our needs and I made a suggestion that was going to hopefully get sent up to Congress as being a potential storage facility for critical minerals being used at Yucca Mountain because I would hate to have this opportunity inside a secure facility to secure our future needs for either the DOD or DOE's needs. I think that there could be a real solid discussion around alternative uses. I know we had a GAO discussion about 8 to 10 years ago. I

do believe one of the things that we could look at is doing is an alternative use and taking the final pressures off it as a spent nuclear storage facility and using it as a critical mineral repository.

**Senator Bryan** – The only concern I have is that is the kind of the language that is used by those who would be advocating reprocessing and I know that is not the agenda you have or what we intend to accomplish , but I think we need to be sensitive in terms of what we open the door to and you're obviously very knowledgeable in that .We all need to be on the same page and I think we are. Any other questions or comments for Phil?

**Director Dilger** – That’s an intriguing idea and I am going to follow up with Phil about that.

**Senator Bryan** – Any questions or comments?

**Commissioner Mackedon** – In our last meeting there was discussion about the DOE and the placement of the plutonium pits at the former test site and a promise on their behalf to begin removing plutonium pits. I am just wondering if they have begun that process or if there is a dialog on how this is going to be accomplished and when?

**Director Dilger** – It is gone. I don’t know where it has gone but it is gone.

**Senator Bryan** – Do we have any concerns in terms of the budget?

**Director Dilger** – I don’t have any concerns right now. We revert money back every year to the State budget.

**Senator Bryan** – My only admonition would be sometimes in the bureaucracy that we have that doing the right thing funding money that you do not need comes back to haunt you.

**Director Dilger** – Our current budget request is flat.

**Commissioner DelPapa** – I agree with the Senator, I don’t think we can be too cautious.

**Senator Bryan** – Any other comments? No one from the effect units or local government?

**Director Dilger** - No Senator just public comment.

### **Comments from the public**

**Judy Triechel** – In conjunction with what Fred had said about New Mexico. I got a text message from Marla Painter saying there are several counties in New Mexico that are in the process of passing resolutions to oppose the Holtec site and the legislature is also considering the issue. I don't know if they would come up with some that was close to what Nevada did or not. Also, I've had quite a bit of dealing with Ian Zabarte of the Western Shoshone. A new film has been made and Ian and his aunt are in there as well as Keith Rogers who played a big part in the

making of the film. It's called Downwind and it will be coming out soon. I can get information about the film if all of you would like to have that. I'm not sure if you can see it online or if it's going to be in a theater or how it's going to work.

**Senator Bryan** – Have you seen the film? I think we want to take a look. We may want to include that if we can do it legally as part of our website if it is a powerful argument for us.

### **Schedule next Commission on Nuclear Projects' meeting**

**Senator Bryan** – Do we need to choose a date for our next meeting.

**Director Dilger** – I would like to suggest a meeting in June of this year. The reason is that we'll have a very clear idea about what the setup will be in Congress.

**Senator Bryan** – I suggest we poll the Commissioner offline, so they get a chance to check their calendars.

### **Adjournment**

Chairman Bryan called for the adjournment of the meeting. Commissioner DeIPapa moved to adjourn, and it was seconded by Commissioner Miller. All were in favor.