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CORRESPONDENCE CONTROL TICKET

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AUTHOR: Harry Reid
AFFILIATION: SEN
ADDRESSEE: CHRM Nils Diaz
SUBJECT: Concerns Petition for Rulemaking filed by the State of Nevada, asking the NRC to modify certain hearing procedures in the NRC's prospective licensing proceeding for a Yucca Mountain repository

ACTION: Signature of Chairman
DISTRIBUTION: Chairman, Commissioners, OCAA, ASLBP, EDO, OCA, OPA, OCA to Ack

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DATE DUE: 05/08/2003 **DATE SIGNED:**

Secy 017

EDS Secy 06

Congress of the United States

Washington, DC 20515

2794

April 17, 2003

The Honorable Nils J. Diaz, Chairman
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Dear Chairman Diaz:

We are writing to express our strong support for the Petition for Rulemaking, recently filed by the State of Nevada, asking the Nuclear Regulatory Commission (NRC) to modify certain hearing procedures in the NRC's prospective licensing proceeding for a Yucca Mountain repository. The changes requested by the State are essential to ensure the fair and unbiased consideration of the Department of Energy (DOE)'s prospective application, and to instill public confidence in the Commission's proceeding.

We strongly support the State of Nevada's request that all hearing board members for this proceeding be selected from outside the Commission. As you know, this will be an extremely complex proceeding, with much national attention on an unprecedented and highly controversial project. We believe that the Commission should make every effort to ensure that the ultimate decision on the license application is beyond any claim of bias, and is scientifically competent. This can only be accomplished by granting the State's petition - i.e., selecting board members who are independent of the Commission and who possess impeccable credentials in the key scientific disciplines essential to understanding the issues.

The role of the staff in the proceeding is of major concern. As long as the Commission staff is permitted to function as a party-advocate in the proceeding, arguing on behalf and in support of the applicant, there can be no confidence that the Commission is independent and unbiased in considering the DOE application. It is especially inappropriate for the NRC staff to advocate on behalf of another federal agency in such a proceeding and for the government's technical and legal resources to be arrayed against interveners. Rather, the role of the NRC staff should be to listen and provide independent advice on the issues raised in the proceeding. We urge your support for removing the NRC staff as a party to the actual proceeding because of the potential effect on credibility and objectivity.

As you may know, a number of documents have come to light that have given rise to the same concerns outlined in the State's petition. For example, the State of Nevada filed a Freedom of Information Act (FOIA) inquiry seeking documents pertaining to the joint NRC-DOE request

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CHAIRMAN REC'D
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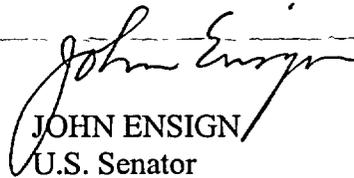
for an opinion from the Government Ethics Office concerning the role of former DOE employees in a Yucca Mountain licensing proceeding. DOE explained the denial by asserting that both agencies share a common client, the United States, and therefore the information is privileged.

Public confidence in whatever decision the Commission makes in the Yucca Mountain proceeding is critical, not only for Nevadans but for the nation and for the Commission. Granting the State of Nevada's request will go a long way towards assuring that such a proceeding will be fair and impartial. We strongly urge your support for Nevada's petition.

Sincerely,



HARRY REID
U.S. Senator



JOHN ENSIGN
U.S. Senator

SHELLEY BERKLEY,
U.S. Representative



JIM GIBBONS
U.S. Representative



JON PORTER
U.S. Representative