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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 22, 2001

CHAIRMAN

Ms. Judy Treichel, Executive Director
Nevada Nuclear Waste Task Force
Alamo Plaza
4550 West Oakey Boulevard, Suite 111
Las Vegas, Nevada 89102

Dear Ms. Treichel:

I am responding to your letter of October 27, 2000, concerning the resolution of issues related to the potential repository at Yucca Mountain, Nevada. Although the Nuclear Regulatory Commission (NRC) staff is available to discuss your concerns in detail, I will address several of the points you raised: NRC's relationship with the Department of Energy (DOE) during prelicensing, NRC's issue resolution process including the use of terms such as "closed" or "closed-pending," and the status of the NRC's proposed site-specific rule for Yucca Mountain (10 CFR Part 63).

In your letter, you suggest that NRC is more inclined to work with the DOE than groups representing the public. I can assure you that this is not the case. The NRC values public participation in our regulatory process and we know that we must ensure that issues raised by all parties get fair and meaningful treatment. Nonetheless, under guiding statutes, DOE plays a unique role in the high-level waste program as a potential licensee. In the Nuclear Waste Policy Act of 1982, as amended (NWPA), Congress directed DOE to be involved with the NRC in prelicensing consultation on site characterization activities. Further, the NWPA limits the amount of time the NRC will have to evaluate a potential license application. Consequently, the purpose of this prelicensing consultation process is to allow the complex technical issues present at a potential geologic repository site to be addressed early so that potential health and safety issues are identified and receive the attention they deserve. Because DOE is the potential licensee and NRC technical staff would be the initial reviewer, detailed consultation with the NRC staff is necessary. The NRC staff strives to conduct its interactions with DOE in an open and objective manner.

You also express concern about NRC's issue resolution process, including in particular the terms that are used to document the status of technical concerns during prelicensing. In order to document the efforts in prelicensing consultation, the NRC staff maintains a list of Key Technical Issues and denotes their status. The fact that some technical issues are characterized as "closed" or "open" is a matter of NRC technical staff's bookkeeping at this stage of the process. Notwithstanding any such characterization, all issues will remain subject to further consideration during licensing if a license application for Yucca Mountain is received. However, we believe that you have identified a valid concern regarding our use of the term "closed-pending." To those not intimately familiar with the prelicensing program, the term might

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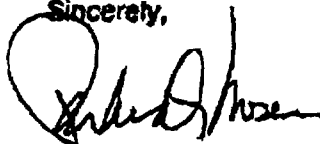
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be understood to imply that more progress was made in closing an open issue than actually has occurred. Consequently, I have directed the staff to find more opportunities, within the context of its precertification issue consideration, to convey the notion clearly and more routinely that the term "closed pending" is merely a bookkeeping term. The term means that DOE has agreed to provide information that, in the NRC staff's view, should close the issue, but, at the same time, this characterization does not imply that the staff has prejudged the outcome of the review of that information.

Finally, you note that the NRC has not yet responded to comments on its proposed site-specific rule for Yucca Mountain. The Commission currently has under consideration the staff's draft final rule and the response to all public comments. In the course of Commission action on the staff's proposal, all comments will be addressed. Of course, as you know, Part 63 will have to be conformed with the final Yucca Mountain standard when promulgated by the Environmental Protection Agency.

If you have any further questions or comments, please contact me.

Sincerely,



Richard A. Meserve

cc: See attached list

NEVADA NUCLEAR WASTE TASK FORCE, INCORPORATED

Alamo Plaza
4550 W. Oakley Blvd.
Suite 111
Las Vegas, NV 89102
702-246-1127
FAX 702-246-1128
800-227-9809

October 27, 2000

Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Meserve:

We met several months ago when you came to Nevada to meet with people who actively work on Yucca Mountain issues. At the time of our meeting you seemed surprised at the levels of skepticism and distrust that we had for the Nuclear Regulatory Commission. I am writing to explain a situation that is currently occurring that directly leads to our belief that the Commission is much more inclined to work with the Department of Energy than it is to representing the public.

Beginning this August, groups of DOE and NRC people have been meeting to discuss Key Technical Issues (KTI). Each meeting deals with a separate KTI and DOE attempts to convince the NRC that the issue being discussed can be considered "resolved or closed." As soon as this process began public interest groups and the State of Nevada objected to the NRC characterizing issues as "resolved or closed" before any licensing process. At the beginning of each meeting a disclaimer is read explaining that those terms only mean that there are no further questions at this time. If that were true, a more accurate term would be "currently acceptable."

The most glaring example of the extraordinary willingness on the part of the NRC to yield to DOE is the frequent determination that an issue is "closed-pending." At each meeting there is also a reading of NRC/DOE's definition of this term. Clearly, when this term is used, the issue is open. It seems to have been designed to make those at the table feel comfortable. It would be as accurate to say "open-pending" but there is no reason to do so - the matter is open. Although it is obvious that DOE and NRC are playing a word game, I am not writing to argue about semantics. I see a DOE/NRC cooperative effort. It was carried to its most ridiculous extreme at the meeting on criticality held October 23 and 24 when there was no data presented by the DOE and no analysis of how the issue of criticality had been examined and dealt with at Yucca Mountain. Instead DOE told NRC that the answers to all of their inquiries could be found in Topical Report, Rev. 01 which is about to be released. With no data or calculations to be reviewed by the NRC representatives, there could not be a determination of "closed pending" that complied

with the definition that was given. Both a representative of the State of Nevada and I commented to those at the table that under those circumstances, none of the issues could be "closed" or considered "closed-pending." But, at the end of the meeting, NRC determined that all of the issues were "closed-pending." When I discussed this with Jim Anderson at the meeting, he said that if the Topical Report did not answer all questions, then they would reopen the issues and hold another meeting. That is unacceptable. The issues should be open until all questions have been satisfactorily answered, and then the item can be considered "okay for now." There should not have been a meeting that took two days of all participants' time and travel expense when DOE and NRC were clearly not prepared for it. If NRC is not working cooperatively and exclusively with the Department, why are they willing to ignore comments from concerned observers and hand DOE the result that they wanted but had not earned?

Finally, during these meetings the NRC and DOE both spoke of meeting compliance with 10CFR part 63. The Nevada Nuclear Waste Task Force worked hard on, and participated in, public meetings and hearings on this proposed rule. In addition, we assisted many people who called for help in preparing written comments and who testified at the hearings. You received thoughtful, valuable comment from Nevadans, almost all of whom opposed portions of, or all of the proposed part 63. You have never responded to those comments. But, meanwhile we see the NRC and DOE cooperatively using that rule as it was drafted, to determine that Key Technical Issues at Yucca Mountain are "closed" or "closed-pending."

These are two very clear reasons why the people of Nevada do not trust the NRC and why we are increasingly skeptical regarding any licensing procedure. John Greeves and Bill Reamer repeatedly tell us that NRC wants to interact with the public here and they want the public to get to know the NRC. The examples that I have cited to you in this letter are showing the citizens of Nevada, much more clearly than informal public gatherings, just how the NRC works.

Sincerely,



Judy Treichel
Executive Director

cc: Senator Harry Reid
Senator Richard H. Bryan
Representative Jim Gibbons
Representative Shelley Berkley