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SECY06

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December 13, 2006

The Honorable Dale Klein
Chairman
US Nuclear Regulatory Commission
Washington DC 20555

Re: Improper NRC licensing procedures in the Yucca Mountain case

Dear Chairman Klein:

On a number of occasions the State of Nevada has drawn the Commission's attention to the impropriety of its licensing activities in the Yucca Mountain case. Anyone who has followed the project during the past several years understands that the NRC staff is already reviewing the individual components of the Energy Department's application for a waste repository. Such a review, and DOE's assurances that it will soon submit a formal application, should trigger application of formal procedures, including prohibitions on *ex parte* communications between the Commission and the staff conducting the reviews. Such a prohibition would help to protect the independence of the staff reviewers and thereby help to protect the interests of the public. The Commission appears to have chosen to evade this requirement.

The Commission has argued that it does not yet have to invoke formal procedures because the ongoing review is part of a *pre*-licensing process designed to ensure that DOE will submit a complete application and that the NRC staff is not making any final judgments about the adequacy of DOE's submissions. In Nevada's view, however, this is inaccurate.

For example, an NRC staff presentation at the November 13 Advisory Committee on Nuclear Waste meeting makes it clear what the *staff* thinks it is doing. The subject is the

review of DOE's seismic analysis. Mr. Naranaja of your staff is speaking (page 12 of the transcript), and I have highlighted the key sentence:

> MR. NATARAJA: . . .
> 17 So DOE and NRC discussed this issue
> 18 several times, and DOE decided that they would attack
> 19 this particular topic by writing a topical report.
> 20 And as you know, that when a licensee writes a topical
> 21 report the staff can review the topical report in
> 22 advance and write a safety evaluation, and that safety
> 23 evaluation can be -- can become a part of the
> 24 licensing review later on.
> 25 In other words, we won't be going into the
>
> page 12
> 1 details of the review during licensing, since we will
> 2 have completed that during pre-licensing. But we will
> 3 reference the topical report in the license
> 4 application. In other words, DOE will reference the
> 5 topical report, and NRC will take the SER that is
> 6 written and make it part of the overall SER that will
> 7 be written for the license application.

In other words, the argument that nothing substantive is being decided by the NRC staff at this time is clearly erroneous. Nor can it be argued that this sort of exchange is nothing but the common process of dealing with issues through topical reports. Such reports are done for generic issues. Here, we are talking about a specific license. These are matters that should obviously be handled in the course of a regular and formal review.

If you are going to conduct that review now, it behooves you to begin formal procedures now as well, so as to provide the protections for the parties that are required by the Administrative Procedure Act.

Sincerely,

Robert R. Loux
Executive Director

cc: Nevada Congressional Delegation