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FINAL REPLY:

Martin G. Malsch
Egan, Fitzpatrick & Malsch, PLLC

TO:

Chairman Klein

FOR SIGNATURE OF :

** GRN **

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January 2009 Presentation of NRC Position on
Yucca Mountain at NEA Tokyo Forum
(EDATS: SECY-2009-0098)

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Cyr/Burns
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Charles J. Fitzpatrick
John W. Lawrence

February 27, 2009

The Honorable Dale E. Klein
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: January 2009 Presentation of NRC Position on Yucca Mountain at NEA Tokyo Forum

Dear Chairman Klein:

As you know, I serve as legal counsel for the State of Nevada in the Yucca Mountain licensing proceeding currently pending before three Commission adjudicatory tribunals. Several weeks ago, I received a copy of an NRC presentation entitled "NRC's Position On Optimization For A Potential Geologic Repository," by Dr. Brittain Hill of the NRC Staff, prepared for delivery to the NEA Radioactive Waste Management Committee Regulators' Forum workshop that was held 20-22 January 2009 in Tokyo, Japan. In that presentation, Dr. Hill addresses several aspects of the Commission's regulations applicable to Yucca Mountain. For example, Dr. Hill informed his international audience that the NRC requirement for multiple barriers could be satisfied with two barriers, one natural and one engineered, that the NRC's dose standard for the 10,000 to 1,000,000 years performance assessment is 1 mSv/year (100 millirem per year), and that "NRC believes that the current regulatory framework for the potential geologic repository at Yucca Mountain, Nevada, U.S.A., provides sufficient and optimized protection for public health and safety, and the environment."

The presentation apparently did not include any disclaimer that the speaker could not represent the views of the Commission, but only the views of its staff. It is very likely that many in the audience believed Dr. Hill was in fact representing the U.S. Governmental body called the Nuclear Regulatory Commission. This is unfortunate. When the presentation was given, the Commission had not decided whether a 1 mSv/year standard for the 10,000 to 1,000,000 years performance assessment would be sufficiently protective of health and the environment. Also,

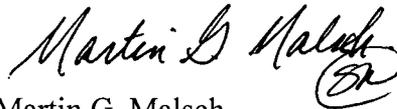
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the Commission has not decided whether, for Yucca Mountain, the statutory requirement for multiple barriers could be satisfied with two barriers, one natural and one engineered, as this is the subject of safety contentions filed by Nevada in the licensing proceeding. Dr. Hill is accustomed to speaking before U.S. audiences who would not ordinarily assume he was speaking for the Commission, and it undoubtedly never occurred to him that his presentation would mislead.

It is not the purpose of this letter to argue the merits of the Commission's licensing framework in 10 C.F.R. Part 63, EPA's Yucca Mountain regulation in 40 C.F.R. Part 197, or any of the contentions Nevada put forth in the licensing proceeding. However, I submit that future international audiences will be better served if the Commission instructs its representatives speaking on controversial issues like these to make it very clear whether they represent the Commission or its staff.

Sincerely,



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Counsel for the State of Nevada

cc:

Commissioner Gregory B. Jaczko

Commissioner Peter B. Lyons

Commissioner Kristine L. Svinicki

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