OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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ACTION OFFICE: OGC/ED/OIP

AUTHOR: REP Edward Markey

AFFILIATION: CONG

ADDRESSEE: Chairman Klein

SUBJECT: Concerns ongoing dispute between the Northwest IInterstate Compact on LLWR and EnergySolutions, Inc., related to EnergySolutions attempt to import foreign llrw for disposal in Utah

ACTION: Signature of Chairman

DISTRIBUTION: EDO, OIP, RF, OCA to Ack

LETTER DATE: 03/10/2009

ACKNOWLEDGED No

SPECIAL HANDLING: OGC...should coordinate response with EDO and OIP

NOTES: Commission Correspondence

FILE LOCATION: ADAMS

DATE DUE: 03/25/2009 **DATE SIGNED:**

Congress of the United States
Washington, DC 20515

March 10, 2009

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

Dear Chairman Klein:

We write concerning the ongoing dispute between the Northwest Interstate Compact on Low-Level Radioactive Waste Management and EnergySolutions, Inc., related to EnergySolutions' attempts to import foreign low-level radioactive waste for disposal in Utah despite the objections of the Northwest Interstate Compact, which regulates the disposal facility. I believe this case has far-reaching implications for this country's waste disposal policies.

As you know, the Northwest Compact voted to prohibit EnergySolutions from importing foreign low-level waste for disposal at its site in Clive, Utah. EnergySolutions has sought a court intervention, asking the U.S. District Court in Salt Lake City to find that the Northwest Compact does not have authority over the Clive facility.

Mr. Markey chaired the House Energy and Commerce Committee Subcommittee on Energy Conservation and Power during consideration of the Low-Level Radioactive Waste Policy Amendments Act of 1985 and the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act. These bills, which became Public law 99-240, established interstate compacts as the competent authorities to regulate the disposal of low-level radioactive waste at sites located in compact states.

We are deeply concerned by the possible national policy implications of a ruling in favor of EnergySolutions in this case. If the Northwest Compact were to be found to not have proper authority to regulate the Clive facility, a dangerous regulatory vacuum could be created not only in the Northwest Compact states but across the country. We have worked hard over decades to create and maintain a robust national system of nuclear regulation and oversight, between the Congress, the Commission, the agreement states, and the Compacts. Competent authority to differentiate between foreign-generated and domestic waste must exist within this system.

In light of the serious national policy implications of this case, please provide answers to the following questions:

1. Is it the view of the Commission that the Northwest Compact has authority over the Clive facility and may determine which wastes can be disposed of there? Please explain the

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authorities and responsibilities over the Clive facility of the Northwest Compact, the state of Utah, and the Commission.

2. Does the Commission have any statutory authority to differentiate between foreign-generated and domestic low-level waste? If so, what, and what is the Commission doing to assert its authority in this case?

3. If the court decides in favor of EnergySolutions that the Northwest Compact does not have authority to regulate the Clive facility, could the NRC prevent the importation of foreign commercial nuclear waste to the Clive facility?

4. If the court decides in favor of EnergySolutions, what would prevent any corporation from importing foreign low-level waste for disposal in the United States, in a Compact state or otherwise?

5. It is my understanding that EnergySolutions also seeks to dispose of depleted uranium at the Clive facility. I further understand that the Utah state license under which EnergySolutions operates specifies that the facility shall not be allowed to dispose of any radioactive waste greater than Class A, as defined in 10 CFR 61.55. Does depleted uranium pose health or safety risks different in any way from wastes commonly classified as Class A? Over time, would depleted uranium pose health or safety risks different in any way from wastes commonly classified as Class A?

We look forward to your prompt response to these questions. If you have any questions regarding this inquiry, please contact Will Huntington of Mr. Markey's staff, Mark Libell of Mr. Gordon's staff, or Neeta Bidwai of Mr. Matheson's staff.

Sincerely,

Edward J. Markey

Bart Gordon

Jim Matheson