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Gregory Friedman
Inspector General
U.S. Department of Energy
Washington D.C. 20585

Dear Mr. Friedman:

Recently disclosed Department of Energy (DOE) documents reveal that the Department is offering exceptionally large bonuses—in the many tens of millions of dollars—to the technical contractor preparing DOE's license application to the Nuclear Regulatory Commission if they can get the NRC to accept it by the end of the year. These bonuses to DOE's experts are not at all like the usual ones to encourage contractor performance; they raise serious ethical questions because the NRC's role in this case is much like that of a court. Nevada asks that you investigate whether these bonuses conform to the Department ethics regulations and the law.

It is a normally illegal, and always unethical, to pay experts testifying in court a bonus on the basis of whether the judge accepts their testimony. Courts expect to hear an expert's honest conclusions unvarnished by the temptation to share in the outcome. That is why bonus payments are regarded as an improper inducement. Yet that is in effect what the Department is doing.

In context the granting of these bonuses looks even worse. It is well known that the Department is politically heavily committed to filing an application by December 2004. The contractor is also known to be far behind in its efforts and has been turning in safety analyses of the proposed repository that the NRC has criticized for incompleteness and inferior quality. These analyses would form the bulk of the Department's application to the NRC. Now it turns out that they will get an \$11 million bonus if they complete a draft license application by July 26, 2004. They will get another \$15 million if they

produce a license application by November 30 that is ready to submit to the NRC. The contractor will get another \$22 million if the NRC accepts the application. There are possibilities for further bonuses down the line in the NRC proceeding.

The bulk of the Yucca Mountain application is an elaborate computer model of the long-term future operation of the repository put together by the Department's contractors. The result—that determines whether the proposed design is safe—depends in many ways on the professional judgment of safety experts working for DOE's contractor. Does it serve the public to provide further inducements for these experts to adjust their work and conclusions so that DOE can meet its politically determined schedule?

DOE has yet to file its formal application. Perhaps because DOE is another federal agency, or for other reasons, the NRC has been helping for at least a couple of years. By any measure DOE is way behind in developing the technical material it promised to deliver and its quality assurance system for checking its work has been abysmal. The two agencies are now busily negotiating, to a large extent out of the public eye on the minimal level of compliance with former NRC-DOE agreements on key technical issues that NRC will require for license application submission.

In reality, of course, it is DOE's contractor that is negotiating with NRC. In effect the DOE is offering its contractor an immense bonus for first making sure its own staff experts are on board with the prospective application, and then successfully convincing the NRC safety staff, which is already under tremendous political pressure, to ease up.

The situation is even worse than that. Normally at this stage of a license review the NRC commissioners, as judges in the case, would be barred from communicating *secretly*, out of public sight, about the case with the Energy Department. In this case, that is, *ex parte*. But the NRC commissioners have been relying on a legal technicality to get around this prohibition. This, of course, is a sham. NRC has been reviewing a draft application for years. But a consequence of it is to make the DOE bonus situation much more serious. It is not too much of a stretch to say that DOE is giving bonuses in the tens of millions to its contractors for successfully negotiating *ex parte* with the NRC judges.

Your attention to this matter would be greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Robert Loux
Executive Director

cc: Governor Guinn
Attorney General Sandoval
Nevada Congressional Delegation