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August 3, 2004

Ms. Karen Cyr, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington DC 20555

RE: NRC Staff's Role in the Yucca Mountain Licensing Proceeding

Dear Ms. Cyr:

Any small hope the State of Nevada had that the Nuclear Regulatory Commission's (NRC) staff would be an independent evaluator of the Department of Energy's (DOE) license application in the Yucca Mountain licensing proceeding vanished last week when NRC Staff Attorney Mitzi A. Young, in an Atomic Safety and Licensing Board hearing July 27, confessed to the Hearing Board (the Board) that staff was making a "hard sell" for the Energy Department's litigation position in the very first matter to reach NRC on the Yucca Mountain docket. That matter was Nevada's challenge to the legal validity and completeness of DOE's initial certification of compliance with NRC's Licensing Support Network ("LSN") regulations in 10 C.F.R. Part 2, Subpart J.

Though staff stated in oral argument and in its pleadings that it was not taking a position on the substantive dispute between DOE and Nevada, staff's pleadings and Ms. Young's oral argument strongly indicated otherwise. In the face of overwhelming evidence to the contrary, Ms. Young advocated to the Board that Nevada had not met its burden to show that DOE had failed to comply with the regulations. Moreover, staff adopted DOE's litigation position that, notwithstanding 15 years of development by NRC of the LSN, DOE did not even need to make its Yucca Mountain documents available on the LSN to satisfy NRC's LSN regulations. This position, articulated by Ms. Young in oral argument, contradicted her own statements made only several days earlier on an official transcript that was read into the record by Hearing Judge Thomas A. Moore, Chair of the Board.

When the Board asked Ms. Young how she could profess that staff was remaining neutral while she was standing before the Board advocating DOE's position -- a position the Board thought was wrong under the law -- she answered, "I know it's a hard sell."

The Nuclear Regulatory Commission staff's role is to independently evaluate DOE's license application and related issues and perform its evaluations in accordance with NRC's regulations. It should be advocating only for compliance with the law by the applicant. It should not be taking positions on whether a challenger has satisfied its burden to prove otherwise. And more important, it should not be making a "hard sell" for any applicant's position.

We respectfully request that you investigate whether NRC staff has been instructed or lobbied by the Commission or by Executive Management to advocate for the Yucca Mountain applicant, or to take other measures or positions that would compromise the separation of functions requirements in NRC's regulations or undermine staff's legally defined and traditional neutral role in a license proceeding.

Sincerely,

Robert R. Loux  
Executive Director

cc: Hubert Bell, Inspector General  
Louis Reyes, Executive Director for Operations