August 17, 2004

The Honorable Pete V. Domenici, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington DC 20510

Dear Chairman Domenici:

I want to bring to your attention a little-noticed unilateral action by the Department of Energy (DOE) in relation to the upcoming Yucca Mountain licensing proceeding that undercuts the possibility for a sound evaluation of DOE’s application by the Nuclear Regulatory Commission (NRC). I refer to a July 23 DOE letter to the NRC informing the agency that DOE will no longer respond to NRC questions on “Key Technical Issues (KTI).” By DOE/NRC agreements, these issues were to be resolved before DOE submitted its Yucca Mountain license application.

The objective of these pre-licensing agreements was to ensure a complete and competent application that NRC could reasonably review in the limited time allowed by law. That is a goal everyone who approaches the matter in good faith should agree with, regardless of his or her position on the repository. Yet NRC, on whose independent expert review so much depends has so far given no sign that it will enforce its agreement with DOE. I write to you because I don’t believe it will do so without some expression of Congressional concern.

The prospect of an independent and competent NRC review of the Yucca Mountain license application has been central to Congressional decisions in this area. In your Committee’s May 23, 2002 hearing on the Congressional Resolution on Yucca Mountain, Energy Secretary Spencer Abraham urged adoption of the Resolution on the grounds that it didn’t involve any Congressional prejudgment on the suitability of the site. The scientific basis for the President's recommendation, he said, will be subject “to objective testing in the only official context it can be—an NRC licensing proceeding.”
The NRC commissioners, including present NRC Chairman Nils Diaz, testified on the same day that they will hold DOE’s feet to the fire. They described the agreements they had reached on outstanding issues regarding additional information that will be needed for a licensing review and the work that DOE will have to complete to develop “the information necessary for an application that NRC can accept for review.” Secretary Abraham did not argue at the time with this description of DOE’s commitments to the NRC and in answering a question from Senator Landrieu he himself referred to “the 293 [KTI] agreements, or work that must be done prior to finishing the license application preparation process.”

But once past the Congressional Resolution, DOE repeatedly postponed and rescheduled agreed KTI compliance dates. Many KTI responses have only recently been delivered to NRC and many others have yet to be delivered. Most of DOE’s past KTI submissions prompted NRC requests for additional information. Now DOE tells NRC they have done as much as they are going to do. The July 23 letter from Mr. Joseph Ziegler, Director of DOE’s Office for dealing with NRC on Yucca Mountain, informs NRC that “DOE does not intend to provide direct responses to any additional KTI agreement [questions] received after the date of this letter.” The latest DOE action and the lack of NRC response throw doubt on the assumptions about the efficacy of the NRC licensing process that underlay the Congressional Resolution on Yucca Mountain.

The Nuclear Regulatory Commission Commissioner Merrifield put his finger on part of the problem. DOE, he said, has a “strong reluctance to be subject to external regulation.” The other part, Nevada would add, is that NRC has evidenced a strong reluctance to impose discipline on the licensing process when faced with a large and powerful federal agency that is used to getting its way.

I urge your attention to the issue. It is hard to exaggerate its importance for a scientifically sound and fair licensing process. By shortcutting necessary and agreed-upon pre-licensing steps DOE and NRC are pressing a greater burden on the NRC staff safety reviewers who will have a limited time under the law to review DOE’s application. Nevada is deeply concerned because the practical effect of this pressure will be to bias the process strongly in favor of approval. We will not, however, be the only ones adversely affected. I can tell you that if DOE obtains an NRC Yucca Mountain license in this fashion it will have no credibility in the public arena and, I might add, the result will be no boon to nuclear power.

Sincerely,

Robert R. Loux
Executive Director

RRL:njc

cc: Jeff Bingaman
    Senator Ensign
    Senator Reid