Lawrence E. Kokajko  
Director  
Division of High Level Waste Repository Safety  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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**RE: DOE/NRC Technical Exchange Scheduled for 9/13/07**

Dear Mr. Kokajko:

The meeting with DOE scheduled for September 13, 2007 includes “Interactions Protocol During LA Review” as one of the topics for discussion. I thought I would take this opportunity to advance some of Nevada’s views on this important topic before the meeting.

As you know, Nevada has long been concerned about the openness and transparency of the NRC Staff’s review process. The Staff is not just any party. It is the public face of the agency in the licensing process, and it has a unique responsibility to represent the public interest by assuring that all safety and environmental issues are addressed adequately. Moreover, in practice, the Staff’s review conclusions usually carry considerable weight with the Licensing Boards. It is important that the Staff maintain its credibility by conducting its safety and environmental reviews in an open and transparent manner.

The NRC Staff has made considerable strides towards openness and transparency in the pre-licensing phase of the Yucca Mountain Project. Meetings with DOE have generally been open to the public. Recently, when Nevada complained about certain secret NRC Staff meetings with DOE, the Staff re-examined its practice and agreed that the meetings in question should be open. Now, with DOE’s ongoing efforts to file its license application by June 30, 2008, and the Staff’s ongoing efforts to prepare for an actual licensing application review and proceeding, the NRC Staff should re-double its efforts to be open and transparent in all of its dealings with DOE. With this goal in mind, Nevada proposes the following, to be effective when DOE tenders its application for docketing.
(1) All meetings between the NRC Staff and DOE (or its Yucca contractors) should be noticed in advance for a reasonable period of time and open to public attendance so that Nevada and other interested stakeholders may attend. This should include meetings on NRC or DOE premises, NRC Staff inspections and audits on DOE premises, as well as so-called “drop-in” and management meetings between high-level NRC Staff and DOE officials. For this purpose, Naval Reactor personnel are considered part of DOE. An exception should be made for meetings that cover classified or sensitive unclassified information, and other information exempt from public disclosure under FOIA, except that even these meetings should be noticed and appropriately cleared stakeholders should be allowed to attend them. Casual, unscheduled interchanges between DOE and NRC Staff, for example at meeting or lunch breaks, would not be covered by the above, but Staff participants in casual interchanges should exercise judgment to assure that substantive matters are not discussed.

(2) Interested Stakeholders in attendance at meetings subject to (1) above should also be allowed a brief period to make comments and pose questions at these meetings. NRC Staff and DOE should exercise reasonable discretion in choosing whether to respond.

(3) NRC Staff should entertain reasonable requests from Nevada and other interested stakeholders to meet with it to discuss matters relevant to its review. These meetings would be noticed and open as in (1) above.

(4) Nevada recognizes that DOE may “appeal” Staff review decisions to higher Staff management. Nevada would like to be accorded that same privilege, and “appeal” meetings with DOE (or Nevada) should also be subject to (1) above.

(5) Nevada also recognizes that current NRC practice is to exempt NRC OGC meetings with DOE from its open meeting policy. Nevada does not insist that all meetings between NRC OGC and DOE be noticed and open, as in (1) above, but NRC OGC should commit to a policy whereby any closed meetings exempt from (1) above would involve lawyers only, and substantive safety or environmental issues within the purview of the technical staff will not be discussed.

(6) Staff will take accurate notes of all telephone calls with DOE, and preserve all e-mails from DOE. Any substantive comments, representations or commitments in such telephone calls should be reduced to written correspondence or application amendments and made available to the public, subject to FOIA exemptions. Staff conference calls with DOE, intended as a substitute for meetings that would be subject to (1) above, should be scheduled in advance and interested stakeholders should be given a call-in number so that they may participate orally in a manner equivalent to (1) above.

(7) Staff should agree that it will not review any material from DOE that is not, or will not be placed promptly, on the LSN. In the case of materials not required by NRC’s regulations to be placed on the LSN, Staff should give prompt public notice describing what it has reviewed and informing stakeholders how they may review the materials.
Any DOE materials actually relied on by NRC Staff should be documented in an amendment to DOE’s application before the appropriate section of the SER is completed.

(8) Staff should decline to take any position in the hearing about DOE testimony that provides new data, designs, models, theories, or expert opinions until the application has been amended appropriately and the Staff review process has been completed in the usual manner.

Nevada believes that the unique importance of Yucca Mountain and the unusual degree of public interest in the case warrants granting Nevada’s requests. We would welcome an opportunity to discuss these with you, either at the September 13th meeting or later.

Sincerely,

[Signature]

Martin G. Malsch
Counsel for the State of Nevada

cc: Marian L Zobler, Esq.
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