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March 15, 2007

The Honorable Dale Klein, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Chairman Klein:


About four years ago, on April 3, 2003, the State of Nevada filed a petition with the Commission asking it to “establish procedures necessary for a fair and credible Yucca Mountain licensing hearing.” This petition included a request that the Commission apply its existing rules to prohibit private, off-the-record contacts between the Commissioners and interested parties, and specifically the Department of Energy, concerning the licensing of Yucca Mountain. The reason for this request was simple: the prohibitions (now found in the Commission’s Rules of Practice at 10 C.F.R. §§ 2.347 and 2.348), which were intended both to preserve the Commission’s impartiality and to assure fundamental fairness and transparency in the licensing hearing, were supposed to come into effect *as soon as there was knowledge that a notice of hearing on Yucca Mountain will be issued*, and for Yucca Mountain this was already a known fact, at least if any credence at all was given to the Department of Energy’s plans and schedules. The Commission at the time denied Nevada’s request on the grounds that a hearing was not yet a certainty.

With the passage of time and, specifically, DOE’s unequivocal announcements that it will file a license application no later than June 2008 and that it may accomplish its LSN certification by as early as October 1, 2007, the prospect of a hearing is now inescapable. The State of Nevada therefore asks the Commission to take a fresh look at this issue. We also ask you to reconsider the related issue raised in Nevada’s petition about private communications between the Commission and its Yucca Mountain review staff.

I would add that DOE most emphatically reaffirmed its schedule in a PAPO hearing on March 5 of this year, where it suggested that even this schedule could be accelerated by as much as three months. It violates the public interest in a fair hearing to allow private communications between the ultimate judges—the Commissioners—and interested parties about Yucca Mountain. To continue the present practice is to call into question the Commission's impartiality and the fundamental fairness of the licensing and hearing process. Legitimate communication needs with the Staff – for example, about rulemaking, budgetary planning, legislation, litigation, and status of DOE and NRC Staff programs – are already accommodated for by carefully drafted and well understood exceptions to the prohibitions.

The State of Nevada respectfully asks you to promptly reconsider establishing rules and procedures to ensure fairness in the proceeding, as outlined in our original April 2003 petition. In Nevada's view, the time for such action is now.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", written in a cursive style.

Robert R. Loux  
Executive Director

RRL/cs

cc: Nevada Congressional Delegation  
Marta Adams, Deputy Attorney General