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November 7, 2007

The Honorable Barbara Boxer, Chairman
United States Senate
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510-6175

Dear Chairman Boxer:

On behalf of the State of Nevada, I want to extend my profound thanks to you and the Committee for last week's hearing which examined the Yucca Mountain licensing process and the status of the Environmental Protection Agency's radiation standards for the proposed repository. I appreciate your invitation to present testimony concerning the Yucca Mountain project. The hearing was exceptionally informative and I was impressed by the level of understanding exhibited by the Committee members. Questions from the Committee revealed the members' comprehension of the complexity of the licensing issues and the grave public health and safety risks the project poses for residents of Nevada and California.

Second, I direct your attention to the reports prepared by the Nuclear Regulatory Commission and the Government Accounting Office which illustrate the problems associated with the lack of final designs for projects such as new reactors and various other DOE projects. These reports document how the lack of final designs contributes to substantial schedule and cost overruns, and raises serious health and safety concerns. During the hearing, DOE representative Edward Sproat testified that final designs are not required at this stage of the project. Aside from the obvious harm this creates for public confidence, a review of the NRC and GAO reports underscores how schedule, cost and safety are all negatively impacted by the lack of final designs. I ask you and the Committee to prohibit the NRC staff from accepting for review any DOE license application that does not contain final designs for all the proposed Yucca Mountain facilities.

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Lastly, I accept your offer of assistance to secure key Yucca Mountain documents that DOE refuses to provide to Nevada. I attach a list of these documents necessary for Nevada's review and preparation for a licensing proceeding. In addition, DOE has denied Nevada access to certain documents on the NRC License Support Network by inappropriately claiming a work product privilege. Recent decisions by both the PAPO, NRC's Pre-application Presiding Officer, and United States District Court Judge, Edward Reed, in a Freedom of Information Act case brought by Nevada concluded that DOE's documents prepared for its NRC license application cannot be shielded under the work product privilege because these documents are prepared for the licensing process rather than for litigation. We therefore ask that these documents be included in your request as well.

I thank you again for your assistance and offer my office's resources to help you in any way possible. I look forward to working with you and your staff on this matter of vital importance to the country.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

CCM/MA/lf

cc: Senator John Ensign
Senator Harry Reid
Representative Shelley Berkley
Representative Dean Heller
Representative Jon Porter
Bob Loux, Executive Director, Nevada Nuclear Projects Agency

Attachment

The following identifies specific documents which are requested:

1. DOE's most current "Vulnerability Assessment Database"
2. All documents relating to DOE's proposed Next Generation Performance Assessment
3. DOE's most current LA Risk Register
4. Final TSPA-LA to be submitted in support of License Application
5. Final FEP Analysis Model Report – or similar document – justifying exclusion or inclusion of FEPs (Features, Events and Processes) from consideration in final TSPA-LA
6. Probabilistic Volcanic Hazard Analysis – Update ("PVHA-U") updated DOE's 1996 PVHA Report
7. Final Preclosure Safety Analysis to support License Application, including DOE's analysis of "event sequences" or "scenarios," "initiating events," and "system responses"
8. Final design of surface facilities planned to be built at Yucca (as a minimum, the final design of surface facilities deemed "important to safety" by DOE)
9. DOE's final seismic analysis for its surface facilities, including its Tier 1 analysis (to be used by DOE in the LA) and Tier 2 analysis (confirming Tier 1 analysis)
10. Final report prepared for DOE, entitled "Long-Term Mechanical Behavior of Yucca Mountain Tuff and Its Variability – Final Technical Report for Task ORD-FY04-021"
11. "QARD Rev. 20" (to be relied on by DOE in License Application)
12. Final 2007 Report by Sandia regarding the reliability of DOE TDMS documentation (the draft of which report was dated March 28, 2007, and is on the LSN)
13. All documentation which DOE intends to provide and rely on in its License Application which has heretofore not been made publicly available, which is in response to Key Technical Issue ("KTI") agreements reached with NRC, but which have not been finally closed out by NRC

The following are the document designation numbers from the Licensing Support Network of documents whose content DOE has withheld from public availability on the basis of litigation work-product privilege, which documents are requested:

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| DN2002470699 | DN2002469179 |
| DN2002469727 | DN2002470786 |
| DN2002470826 | DN2002469617 |
| DN2002469449 | DN2002470202 |
| DN2002470993 | DN2002469566 |
| DN2002469895 | DN2002461378 |
| DN2002470734 | DN2002465223 |

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