November 13, 2009

BY ELECTRONIC MAIL

The Honorable Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Yucca Mountain Licensing Application Review

Dear Chairman Jaczko:

On behalf of the commercial nuclear industry, I am writing to request that the Nuclear Regulatory Commission limit the expenditure of resources on the Department of Energy's ("DOE") application seeking construction authorization for a high-level radioactive waste disposal repository at Yucca Mountain. While we support continuation of the licensing process, as discussed herein we believe there is a compelling basis for the Commission to focus agency resources solely on the technical review of DOE's applications rather than conducting adjudicatory proceedings in parallel.

As you know, the Department of Energy filed the Yucca Mountain license application in June 2008, and it is now undergoing review by the NRC Staff. Licensing proceedings are also underway. In this regard, legal issues raised by contentions are being briefed, and discovery has begun. Briefing should be complete next year; discovery – including the taking of numerous depositions – is scheduled to continue throughout most of 2010. If the adjudicatory proceedings continue as currently planned, hearings would likely begin sometime during the first part of 2011. However, because circumstances related to DOE's pursuit of the Yucca Mountain application are expected to change significantly in the very near term, the Commission should take immediate action to conserve and more immediately target its and stakeholders' resources now being expended on the licensing proceeding.

Specifically, on October 28, 2009, President Obama signed into law H.R. 3183, the "Energy and Water Development and Related Agencies Appropriations Act, 2010." That Act, which provides FY 2010 appropriations for the Department of Energy and other agencies, established the total
funding for NRC review of DOE's repository application at $29 million. This amount is significantly below the $56 million NRC requested for this purpose.

As reported in Energy Daily on November 9, 2009, DOE's FY 2011 budget request apparently states "All license defense activities will be terminated in December 2009." In view of the foregoing, the Nuclear Energy Institute respectfully requests that the Commission constrain the NRC's Yucca Mountain licensing efforts to performing technical reviews (i.e., necessary to support issuance of the Safety Evaluation Report and environmental analyses) for the remainder of this fiscal year. As such, the Commission should direct that activities related to the adjudicatory proceeding (at least temporarily) be suspended. This will avoid unnecessarily consuming stakeholder resources in the face of DOE's potential withdrawal of its license application. Further, by focusing resources exclusively on its technical review, the Commission will most efficiently serve the goal of learning as much as possible regarding radioactive waste disposal from the Yucca Mountain review process while it is ongoing. Finally, this approach may help to better define the issues to be considered in any future adjudicatory proceedings.

I would be happy to discuss this matter at your earliest convenience.

Sincerely,

Marvin S. Fertel

cc: Commissioner Dale E. Klein
    Commissioner Kristine L. Svinicki
    Mr. R. William Borchardt
    Yucca Mountain Licensing Proceeding Service List
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
U.S. DEPARTMENT OF ENERGY )
(High-Level Waste Repository )

Docket No. 63-001-HLW

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Letter to Gregory B. Jaczko from Marvin S. Fertel, dated November 13, 2009, have been served upon the following persons on this 13th day of November, 2009 by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

CAB 01
William J. Frochlich, Chair
Administrative Judge
wjf1@nrc.gov

Thomas S. Moore
Administrative Judge
tsm2@nrc.gov

Richard E. Wardwell
Administrative Judge
rew@nrc.gov

CAB 02
Michael M. Gibson, Chair
Administrative Judge
mmg3@nrc.gov

Alan S. Rosenthal
Administrative Judge
axr@nrc.gov or rsnthl@verizon.net

Nicholas G. Trikouros
Administrative Judge
ngt@nrc.gov

CAB 03
Paul S. Ryerson, Chair
Administrative Judge
psrl@nrc.gov

Michael C. Farrar
Administrative Judge
mcf@nrc.gov

Mark O. Barnett
Administrative Judge
mob1@nrc.gov or mark.barnett@nrc.gov

ASLBP (continued)

CAB 04
Thomas S. Moore, Chair
Administrative Judge
tsm2@nrc.gov

Paul S. Ryerson
Administrative Judge
psrl@nrc.gov

Richard E. Wardwell
Administrative Judge
rew@nrc.gov

Anthony C. Eitreim, Esq., Chief Counsel
ace1@nrc.gov

Daniel J. Graser, LSN Administrator
dig2@nrc.gov

Zachary Kahn, Law Clerk
zxl1@nrc.gov

Erica LaPlante, Law Clerk
eal1@nrc.gov

Matthew Rotman, Law Clerk
matthew_rotman@nrc.gov

Joseph Deucher
jhd@nrc.gov

Andrew Welkie
axw5@nrc.gov

Jack Whetstine
jgw@nrc.gov

Patricia Harich
patricia.harich@nrc.gov

Sara Culler
sara.culler@nrc.gov
Counsel for State of Nevada
Egan, Fitzpatrick & Malsch, PLLC
1750 K Street, NW, Suite 350
Washington, DC 20006
Martin G. Malsch, Esq.
malsch@nuclearlawyer.com
Susan Montesi
smontesi@nuclearlawyer.com

Counsel for State of Nevada
Egan, Fitzpatrick & Malsch, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Laurie Borski, Paralegal
lborski@nuclearlawyer.com
Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com

Nevada Agency for Nuclear Projects
Nuclear Waste Project Office
1761 East College Parkway, Suite 118
Carson City, NV 89706
Steve Frishman, Tech. Policy Coordinator
steve.frishman@gmail.com
Susan Lynch, Administrator of Technical Prgms
szceee@nuc.state.nv.us

Bureau of Government Affairs
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
Marta Adams, Chief Deputy Attorney General
madams@ag.nv.gov

Counsel for Lincoln County, Nevada
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
baileys@lcturbonet.com
Eric Hinckley, Law Clerk
erichinckley@yahoo.com
Bret Whipple, Esq.
bretwhipple@nomademail.com

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403
Gregory Barlow, Esq.
leda@lcturbonet.com

Lincoln County Nuclear Oversight Program
P.O. Box 1068
Caliente, NV 89008
Connie Simkins, Coordinator
jeciaec@co.lincoln.nv.us

For Lincoln County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
bigbof@aol.com

Counsel for Nye County, Nevada
Ackerman Senterfitt
801 Pennsylvania Avenue, NW, #600
Washington, DC 20004
Robert Andersen, Esq.
robert.andersen@akovrman.com

Counsel for Nye County, Nevada
530 Farrington Court
Las Vegas, NV 89123
Jeffrey VanNiel, Esq.
nbrjdvn@gmail.com
Nye County Regulatory/Licensing Advisor
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy, Esq.
mrmurphy@chamberseable.com

Nye County Nuclear Waste Repository Project
Office (NWRPO)
1210 E. Basin Road, #6
Pahrump, NV 89060
Sherry Dudley, Admin. Technical Coordinator
sdudley@co.nye.nv.us
Zoie Choate, Secretary
zchoate@co.nye.nv.us

Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155
Phil Klevorick, Sr. Mgmt Analyst
klevorick@co.clark.nv.us
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdnv.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
8330 W. Sahara Avenue, #290
Las Vegas, NV 89117
Bryce Loveland, Esq.
bloVELand@jsslaw.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
1700 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20006-4725
Elene Belte, Legal Secretary
ebelete@jsslaw.com
Alan I. Robbins, Esq.
arobbins@jsslaw.com
Debra D. Roby, Esq.
droby@jsslaw.com

Eureka County, Nevada
Office of the District Attorney
701 S. Main Street, Box 190
Eureka, NV 89316-0190
Theodore Beutel, District Attorney
thebeutel.ecda@eurekanv.org

Counsel for Eureka County, Nevada
Harmon, Curran, Speilberg & Eisenberg, LLP
1726 M. Street N.W., Suite 600
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com
Matthew Fraser, Law Clerk
mfraser@harmoncurran.com

Eureka County Public Works
PO Box 714
Eureka, NV 89316
Ronald Damele, Director
rdamele@eurekanv.org

Nuclear Waste Advisory for Eureka
County, Nevada
1983 Maison Way
Carson City, NV 89703
Abigail Johnson, Consultant
eurekanre@gmail.com

For Eureka County, Nevada
NWOP Consulting, Inc.
1705 Wildcat Lane
Ogden, UT 84403
Loreen Pitchford, Consultant
lpitchford@comcast.net
Counsel for Churchill, Esmeralda, Lander, and Mineral Counties, Nevada
Armstrong Teasdale, LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
Jennifer A. Gores, Esq.
jgores@armstrongteasdale.com
Robert F. List, Esq.
rlist@armstrongteasdale.com

Esmeralda County Repository Oversight Program-Yucca Mountain Project
PO Box 490
Goldfield, NV 89013
Edwin Mueller, Director
muellered@msn.com

Mineral County Nuclear Projects Office
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Director
yuccainfo@mineralcountynv.org

For City of Caliente, Lincoln County, and White Pine County, Nevada
P.O. Box 126
Caliente, NV 89008
Jason Pitts, LSN Administrator
jayson@idtservices.com

White Pine County, Nevada
Office of the District Attorney
801 Clark Street, #3
Ely, NV 89301
Richard Sears, District Attorney
rwsears@wpcda.org

White Pine County Nuclear Waste Project Office
959 Campton Street
Ely, NV 89301
Mike Simon, Director
wpnucwst1@mwpower.net

For White Pine County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
bigboff@aol.com

Counsel for Caliente Hot Springs Resort LLC
John H. Huston, Attorney at Law
6772 Running Colors Avenue
Las Vegas, NV 89131
John H. Huston, Esq.
johnnhuston@gmail.com

Counsel for Inyo County, California
Berger, Silverman & Gephart
233 E. Carrillo Street, Suite B
Santa Barbara, CA 93101
Michael Berger, Esq.
mberger@bsglaw.net
Robert Hanna, Esq.
rhanna@bsglaw.net

Inyo County Yucca Mountain Repository Assessment Office
P. O. Box 367
Independence, CA 93526-0367
Alisa M. Lembke, Project Analyst
alembke@inyocounty.us

Counsel for Inyo County, California
Greg James, Attorney at Law
710 Autumn Leaves Circle
Bishop, CA 93514
E-Mail: gjames@earthlink.net
California Department of Justice
Office of the Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
Susan Durbin, Deputy Attorney General
susan.durbin@doj.ca.gov
Michele Mercado, Analyst
michele.mercado@doj.ca.gov

California Department of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Brian Hembacher, Deputy Attorney General
brian.hembacher@doj.ca.gov

Counsel for Nuclear Energy Institute
Office of the General Counsel
1776 I Street, NW Suite 400
Washington, DC 20006-3708
Michael A. Bauser, Deputy General Counsel
mab@nei.org
Anne W. Cottingham, Esq.
anne@nei.org
Ellen C. Ginsberg, General Counsel
ecg@nei.org

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Kevin W. Bell, Senior Staff Counsel
kwbell@energy.ca.gov

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Jay E. Silberg, Esq.
jay.silberg@pillsburylaw.com
Timothy J.V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Maria D. Webb, Senior Energy Legal Analyst
maria.webb@pillsburylaw.com

Counsel for Native Community Action Council
Alexander, Berkey, Williams & Weathers LLP
2030 Addison Street, Suite 410
Berkeley, CA 94704
Curtis G. Berkey, Esq.
berkey@abwwlaw.com
Rovianne A. Leigh, Esq.
leigh@abwwlaw.com
Scott W. Williams, Esq.
swilliams@abwwlaw.com

Native Community Action Council
P.O. Box 140
Baker, NV 89311
Ian Zabarte, Member of Board of Directors
mrizabarte@gmail.com
For Joint Timbisha Shoshone Tribal Group
3560 Savoy Boulevard
Pahrump, NV 89061
Joe Kennedy, Executive Director
joe kennedy08@live.com
Tameka Vazquez, Bookkeeper
purpose_driven12@yahoo.com

Counsel for Joint Timbisha Shoshone Tribal Group
Fredericks, Peebles, & Morgan LLP
1001 Second St.
Sacramento, CA 95814
Felicia M. Brooks, Data Administrator
tbrooks@ndlaw.com
Ross D. Colburn, Law Clerk
rcolburn@ndlaw.com
Sally Eredia, Legal Secretary
seredia@ndnlaw.com
Darcie L. Houck, Esq.
dhouck@ndnlaw.com
Brian Niegemann, Office Manager
bniegemann@ndnlaw.com
John M. Peebles, Esq.
jpbeebses@ndnlaw.com
Robert Rhoan, Esq.
rrhoan@ndnlaw.com

Counsel for Joint Timbisha Shoshone Tribal Group
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P. O. Box 2719
Madison, WI 53701-2719
Julie Dobie, Legal Secretary
jdobie@gklaw.com
Steven A. Heinzen, Esq.
sheinzen@gklaw.com
Douglas M. Poland, Esq.
dpoland@gklaw.com
Hannah L. Renfro, Esq.
hrenfro@gklaw.com
Jacqueline Schwartz, Paralegal
jschwartz@gklaw.com

[electronically signed]
Michael A. Bauser