Via Electronic Mail Only

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

Dear Chairman Jaczko:

Late Friday afternoon, November 13, 2009, the Nuclear Energy Institute (NEI), one of the intervening parties to the highly contested adjudicatory proceeding on the U.S. Department of Energy’s (DOE’s) license application for a construction authorization for the proposed Yucca Mountain high-level waste repository, wrote to you and the other Commissioners requesting that the adjudicatory proceeding required for DOE’s application be suspended. NEI’s request, which would deny other intervening parties to this first-of-a-kind proceeding their right under Section 114(d) of the Nuclear Waste Policy Act, Section 189 of the Atomic Energy Act, and 10 C.F.R. § 2.310(f) to a full, fair, and timely on-the-record hearing, is a thinly disguised motion since it seeks to abrogate the entire regulatory scheme for the licensing proceeding. As such, it suffers from numerous defects that should preclude the Commission from giving it any consideration. Among other things, NEI’s request:

- was filed before the wrong tribunal, which is the presiding Construction Authorization Board (CAB);

- was filed without certification of prior consultation with the other parties, as required by 10 C.F.R. § 2.323(b) (and in fact, no consultation was conducted);

- relies on gross supposition about DOE’s plans (i.e., a partial leak of an alleged DOE draft document), without any supporting affidavit or authoritative information from DOE;

- mischaracterizes NRC Staff resources and includes no supporting affidavit or authoritative information about alleged Staff resources constraints;
ignores a prior DOE formal representation filed before the CAB, several public statements by DOE Secretary Chu, and recent Congressional funding appropriations language regarding the conduct of the Yucca Mountain licensing proceeding in FY 2010;

• usurps CAB’s authority to manage and control the Yucca Mountain licensing proceeding, including its published schedule for activities during FY 2010; and

• pretends to offer an approach to define issues for a future adjudicatory proceeding, again ignoring the regulatory scheme under which the CAB and the Commission have already defined the issues for this hearing after reviewing well over 12,000 pages of filings by the parties.

Indeed, if acted upon, NEI’s proposal would be an appalling denial of due process of law and would permit DOE and NRC Staff to proceed to resolve technical issues related to Yucca Mountain without any meaningful participation by any adverse party on any of their admitted safety and environmental contentions (which number in excess of 300). NEI is represented in the proceeding by experienced legal counsel, and therefore, it should know better.

It would be unimaginable that the Commission would decide to ignore its CAB and its rules and give NEI favored treatment by proceeding to consider the merits of NEI’s request. Due process and the Commission’s rules require that the State of Nevada and the other parties to the Yucca Mountain proceeding be advised whenever a motion has been filed, so that they may prepare and file formal answers in accordance with 10 C.F.R. § 2.323(c).

Sincerely,

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cc Commissioner Dale E. Klein
Commissioner Kristine L. Svinicki
Mr. R. William Borchardt
Yucca Mountain Licensing Proceeding Service List
CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada's Correspondence to the Honorable Gregory B. Jaczko, Chairman, U.S. Nuclear Regulatory Commission, has been served upon the following persons by the Electronic Information Exchange:

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