

September 12, 2007

Catherine Cortez Masto  
Attorney General  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

Dear Ms. Masto:

This is in response to your letter of July 18, 2007 expressing concern about the status of five petitions for rulemaking filed by the State of Nevada, four of which remain under U.S. Nuclear Regulatory Commission (NRC) consideration. The status of these petitions is as follows:

- 1) PRM-73-10, filed June 22, 1999. This petition requests that NRC amend its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The petition was noticed for public comment on September 13, 1999 and the public comment period expired on January 28, 2000. As I am sure you are aware, the Commission has extensively reviewed its safeguards regulations since the events of September 11, 2001 and has imposed needed changes through Orders, including Orders relating to the transportation of spent nuclear fuel. The Commission is currently in the process of revising its regulations to reflect the changes that have been accomplished through Orders and to consider any additional changes. The NRC Staff intends to resolve PRM-73-10 in the context of a planned transportation security rulemaking to begin in FY '08.
- 2) PRM-51-8, filed March 1, 2005. This petition requested that NRC amend its 1990 Waste Confidence decision. The NRC published its denial of this petition on August 17, 2005 (70 FR 48329) and the United States Court of Appeals for the District of Columbia Circuit dismissed the State's petition for review of the Commission's decision on September 22, 2006 for lack of standing.
- 3) PRM-51-9, filed April 8, 2005. This petition requests that NRC amend its regulations governing a determination whether it is practicable to adopt the Department of Energy's Final Environmental Impact Statement in the licensing proceeding for a potential Yucca Mountain, Nevada (YM) geologic repository in order to conform this regulation to the decision of the United States Court of Appeals for the District of Columbia Circuit in *NEI v. EPA*, 373 F.3d 1251 (D.C. Cir. 2004). This petition was noticed for public comment on August 12, 2005 (70 FR 47148) and the comment period closed on October 26, 2005. Resolution of this petition is anticipated within the next few months.
- 4) PRM-63-2, filed December 22, 2006. This petition requests that NRC amend its regulations for the proposed YM geologic repository to specify the limits of permissible spent fuel storage at the YM site. Resolution of this petition is anticipated within the next few months.
- 5) PRM-2-14, filed June 19, 2007. This petition requests that NRC amend its rules of

practice in hearings by specifying the issues to be heard in a "mandatory hearing" on DOE's anticipated license application for a YM geologic repository. This petition was noticed for public comment on August 29, 2007 and the comment period closes on November 13, 2007.

Your letter also expresses concern with "what appears to be discriminatory treatment by NRC in noticing (or not noticing) Nevada's petitions for public comment." I assure you that a decision not to publish a rulemaking petition for public comment has nothing to do with who the petitioner is; rather, the nature of the request may suggest that public comment would not be helpful to a decision on whether to conduct a rulemaking or may lead to public confusion; e.g., where the Commission has already considered the issues presented in the petition and no new information is presented; where it is clear that the expenditure of resources for a rulemaking would not be justified by the minimal benefits of a rule; or where the requested rulemaking is based on speculation or a misunderstanding of what the current rule requires. For example, PRM-51-8 was denied, in part, because the petition "fundamentally misconstrue[d] the [Waste Confidence] decision reached in 1990." See also PRM-35-16, American College of Nuclear Physicians and the Society of Nuclear Medicine, denied April 20, 2001 (66 FR 20214); PRM-8-1, Nuclear Energy Institute, denied October 30, 2002 (67 FR 66074); PRM-50-81, Eric Epstein, denied March 5, 2007 (72 FR 9708); PRM -50-86, Sherwood Martinelli, denied July 18, 2007 (72 FR 39354).

Sincerely,

**/RA/**

Karen D. Cyr  
General Counsel

cc: United States Senator Harry Reid  
United States Senator John Ensign  
United States Representative Shelley Berkley  
United States Representative Jon Porter  
United States Representative Dean Heller  
Robert Loux, Executive Director, Agency for Nuclear Projects

- 5) PRM-2-14, filed June 19, 2007. This petition requests that NRC amend its rules of practice in hearings by specifying the issues to be heard in a “mandatory hearing” on DOE’s anticipated license application for a YM geologic repository. This petition was noticed for public comment on August 29, 2007 and the comment period closes on November 13, 2007.

Your letter also expresses concern with “what appears to be discriminatory treatment by NRC in noticing (or not noticing) Nevada’s petitions for public comment.” I assure you that a decision not to publish a rulemaking petition for public comment has nothing to do with who the petitioner is; rather, the nature of the request may suggest that public comment would not be helpful to a decision on whether to conduct a rulemaking or may lead to public confusion; e.g., where the Commission has already considered the issues presented in the petition and no new information is presented; where it is clear that the expenditure of resources for a rulemaking would not be justified by the minimal benefits of a rule; or where the requested rulemaking is based on speculation or a misunderstanding of what the current rule requires. For example, PRM-51-8 was denied, in part, because the petition “fundamentally misconstrue[d] the [Waste Confidence] decision reached in 1990.” See also PRM-35-16, American College of Nuclear Physicians and the Society of Nuclear Medicine, denied April 20, 2001 (66 FR 20214); PRM-8-1, Nuclear Energy Institute, denied October 30, 2002 (67 FR 66074); PRM-50-81, Eric Epstein, denied March 5, 2007 (72 FR 9708); PRM -50-86, Sherwood Martinelli, denied July 18, 2007 (72 FR 39354).

Sincerely,

Karen D. Cyr  
General Counsel

cc: United States Senator Harry Reid  
United States Senator John Ensign  
United States Representative Shelley Berkley  
United States Representative Jon Porter  
United States Representative Dean Heller  
Robert Loux, Executive Director, Agency for Nuclear Projects

Document Name: G:\GC\Cyr\Ltr to Catherine Cortez Masto.doc

Office:	OGC	OGC	OGC	
Name:	NJensen	FCameron	JGray	KCyr
Date:	9/ 10 /07	9/ 10 /07	9/ 10 /07	9/ 11 /07

Distribution:

K. Cyr

S. Burns

J. Gray

J. Moore

J. Goldberg

T. Rothschild

F. Cameron

J. Cordes

M. Itzkowitz

B. Jones

K. Winsberg

OGC r/f

OGC Library File Zyfind