

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEVADA, CLARK)	
COUNTY, NEVADA, and CITY OF)	
LAS VEGAS, NEVADA)	
)	
Petitioners,)	
)	
v.)	Case No. 02-1116
)	
UNITED STATES NUCLEAR)	
REGULATORY COMMISSION,)	
)	
Respondent.)	

PRELIMINARY STATEMENT OF ISSUES TO BE RAISED

Pursuant to the order entered by the Court on April 12, 2002, Petitioners, the State of Nevada, the City of Las Vegas, Nevada and Clark County, Nevada ("Petitioners"), respectfully submit this non-binding preliminary statement of the issues raised in this action. Petitioners submit that the following issues are raised by their Petition for Review:

Whether the final rules issued by the United States Nuclear Regulatory Commission ("NRC"), titled "Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada, 10 C.F.R. Part 63," and published at 66 Fed. Reg. 55,732-55,816 (Nov. 2, 2001) (the "Rules"), are inconsistent with and contrary to applicable provisions of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. § 10101 *et seq.* (the "NWPA"). In particular, and without limiting the generality of the foregoing, the Petition for Review raises several issues concerning whether the Rules are contrary to the NWPA's mandate that deep geologic isolation be the primary means of

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long-term isolation for permanent disposal of the nation's high-level nuclear waste ("HLW") and spent nuclear fuel ("SNF"), including (but not limited to) the following:

(1) The NWPA requires the Department of Energy to "specify detailed geologic considerations that shall be *primary criteria* for the selection of sites in various geologic media." 42 U.S.C. § 10132(a) (emphasis added). The Rules ignore that mandate, and would permit the licensing of a repository at Yucca Mountain without regard to such criteria.

(2) The Rules fail to require, in connection with the licensing of a repository, a consideration of those factors that "qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable national resources, hydrology, geophysics, seismic activity . . ." similarly called for in the NWPA. *Id.*

(3) Those provisions of the Rules addressing the requirements for multiple barriers (*e.g.*, 10 C.F.R. 63.115(a)) are likewise contrary to Congress' mandate in the NWPA. Specifically, while pertinent provisions of the Rules purportedly make multiple barriers (both natural and engineered) a prerequisite for licensing, they contain no prioritization providing for the primacy of geologic barriers, and in fact facilitate their relegation to the most minor of considerations.

(4) The NWPA authorizes action by the federal government and its agencies and officers for the creation and licensing of a "repository" for permanent disposal of HLW and SNF. The NWPA further defined the term "repository" as, and limited that term to, "any system . . . that is intended to be used for, or may be used for, the *permanent deep geologic disposal* of" HLW and SNF. 42 U.S.C. § 10101(18) (emphasis added). The

Rules exceed the authority delegated by the NWPA by allowing for the licensing of a site that does not provide for “permanent deep *geologic* disposal” of HLW and SNF.

Respectfully submitted,

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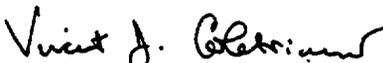
DATED: May 13, 2002

* Member, D.C. Circuit Bar

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served
this 13th day of May, 2002 by first class mail, postage prepaid on:

Annette L. Vietti-Cook Secretary of the Commission U.S. Nuclear Regulatory Commission One White Flint North 11555 Rockville Pike Room 16 H3, Mail Stop 16 C1 Rockville, MD 20852-2738	The Honorable John Ashcroft Attorney General of the United States U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001
Karen D. Cyr General Counsel U.S. Nuclear Regulatory Commission One White Flint North 11555 Rockville Pike Room 16 H3, Mail Stop 16C1 Rockville, MD 20852-2738	Roscoe C. Howard, Jr. United States Attorney U.S. Attorney's Office District of Columbia Judiciary Center 555 Fourth Street, N.W. Washington, D.C. 20530
John F. Cordes, Jr. Solicitor U.S. Nuclear Regulatory Commission Mail Stop 0-15D21 Washington, D.C. 20555-0001	Michael A. Bauser Nuclear Energy Institute, Inc. 1776 I Street, N.W., Suite 400 Washington, D.C. 20006



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STATEMENT REGARDING USE OF DEFERRED APPENDIX

Pursuant to the order entered by the Court on April 12, 2002, counsel for Petitioners respectfully advise the Court that the parties will utilize a deferred appendix under F.R.A.P. 30 (c).

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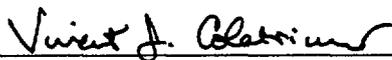
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**PROVISIONAL CERTIFICATE AS TO
PARTIES, RULINGS, AND RELATED CASES**

Pursuant to Circuit Rules 15(c)(3) and 28(a)(1) and the order entered by the Court on April 12, 2002, counsel for Petitioners respectfully certifies as follows:

(a) Parties and Amici: As this action involves the direct review of an agency rulemaking, there were no proceedings before the district court. The parties, intervenors, and *amici* before this Court are as follows:

- Parties:
 - (1) State of Nevada, Petitioner
 - (2) Clark County, Nevada, Petitioner
 - (3) City of Las Vegas, Nevada, Petitioner
 - (4) United States Nuclear Regulatory Commission (“NRC”), Respondent
- Intervenors: The Nuclear Energy Institute, Inc.
- Amici: None

Because Petitioners are not corporations, associations, joint ventures, partnerships, syndicates, or other similar entities, Circuit Rule 26.1 does not require the filing of

a disclosure statement.

(b) Rulings Under Review: Petitioners seek review of the final rules issued by NRC, titled "Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada, 10 C.F.R. Part 63," published at 66 Fed. Reg. 55,732-55,816 (Nov. 2, 2001).

(c) Related Cases: The matter under review was not previously before this Court or any other court. While Petitioners do not believe that there are any cases pending before the Court that constitute "related cases" within the meaning of the Court's rules, Petitioners note that pending before the Court are two groups of cases, involving different respondents, that, like this case, generally concern issues relating to the proposed nuclear waste repository at Yucca Mountain, Nevada:

- *Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, No. 01-1258 (consolidated with Nos. 01-1268, 01-1295, 01-1425, and 01-1426);
- *State of Nevada v. Department of Energy*, No. 01-1516 (consolidated with Nos. 02-1036 and 02-1077).

Respectfully submitted,

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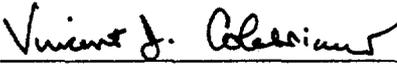
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Vincent J. Colatrisano
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United States Court of Appeals

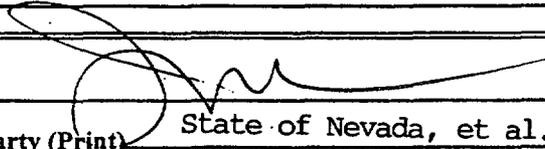
District of Columbia Circuit

DOCKETING STATEMENT

Administrative Agency Review Proceedings

(To be completed by appellant/petitioner)

1. CASE NO. 02-1116 2. DATE DOCKETED April 12, 2002
3. CASE NAME State of Nevada v. U.S. Nuclear Regulatory Commission
(lead parties only)
4. TYPE OF CASE: Review Appeal Enforcement Complaint Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? YES _____ NO
- If YES, cite statute: _____
6. CASE INFORMATION: U.S. Nuclear Regulatory Commission
- a. Identify agency whose order is to be reviewed: _____
- b. Give agency docket or order number(s): RIN 3150-AG04
- c. Give date(s) of order(s): November 2, 2001
- d. Has a request for rehearing or reconsideration been filed at the agency? YES _____ NO
If so, when was it filed? _____ By whom? _____
Has the agency acted? YES _____ NO _____ If so, when? _____
- e. Are any other cases involving the same underlying agency order pending in this Court or in any other Court?
YES _____ NO If YES, identify case name(s), docket number(s), and court(s): _____
- f. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve substantially the same issues as the instant case presents?
YES _____ NO * If YES, give case name(s) and number(s) of these cases and identify court/agency:
*See Provisional Certificate as to Parties, Rulings & Related Cases
- g. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? YES _____ NO If so, provide the name of the program and the dates of participation. _____

Signature  Date May 13, 2002

Name of Party (Print) State of Nevada, et al.

Name of Counsel for Appellant/Petitioner (Print) Joseph R. Egan Firm Egan & Associates, PLLC

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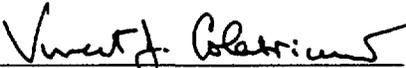
ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 10 days by letter, with copies to all other parties, specifically referring to the challenged statement. An original and three copies of such letter should be submitted.

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