

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

)	
STATE OF NEVADA, et al.,)	
)	
Petitioners,)	
)	
v.)	No. 02-1116
)	
U.S. NUCLEAR REGULATORY)	
COMMISSION and THE UNITED)	
STATES OF AMERICA,)	
)	
Respondents.)	
)	
STATE OF NEVADA,)	
)	
Petitioner,)	
)	
v.)	No. 03-1058
)	
U.S. NUCLEAR REGULATORY)	
COMMISSION and THE UNITED)	
STATES OF AMERICA,)	
)	
Respondents.)	
)	

**MOTION TO CONSOLIDATE CASES,
TO ISSUE REVISED BRIEFING SCHEDULE,
AND TO SET WORD LIMITS**

The State of Nevada requests that the two above-captioned cases be consolidated, and that the Court issue a revised briefing schedule with new word

Template 06C002

ERTDS 06C01

limits, as described below, that would accommodate both cases. Counsel for all other parties have consented to this request. We ask that this Court grant this motion for the following reasons.

1. The above-captioned cases are very closely related. In No. 02-1116, filed on April 11, 2002, three petitioners (including Nevada) challenged a U.S. Nuclear Regulatory Commission (NRC) rule (Part 63) establishing licensing standards for the proposed Yucca Mountain repository. *See* 10 C.F.R. Part 63. In No. 03-1058, filed on March 4, 2003, the lead petitioner in the earlier case, the State of Nevada, challenges an NRC decision rejecting Nevada's request to modify Part 63. *See* 68 Fed. Reg. 9023 (Feb. 27, 2003). Nevada does not plan to raise any issues in 03-1058 that have not also been raised in its opening brief in 02-1116. Moreover, other than a revised jurisdictional statement, an added description of NRC's final action in denying the Nevada request to modify Part 63, and an elimination of certain issues which were raised in 02-1116, but which Nevada will not raise in 03-1058, Nevada's opening brief in an unconsolidated 03-1058 would be virtually identical to its opening brief in 02-1116. It is in the interest of all parties, and this Court, that the two Part 63-related lawsuits be considered together. *See Handbook of Practice and Internal Procedures, D.C. Circuit, Part V. A.* ("cases involving essentially the same parties or the same, similar, or related issues, may be consolidated").

2. By order dated November 7, 2002, this Court granted the petitioners' suggestion that No. 02-1116 be considered in tandem with several related cases, No. 01-1258, *et al.*, and No. 01-1516, *et al.*, involving the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (DOE). The Court accordingly postponed oral argument in this case from its original date, May 5, 2003 (*see* order of October 9, 2002); until a yet-to-be-determined date in September 2003. It would be consistent with this Court's "in tandem" determination to consolidate Nevada's latest lawsuit against the NRC with its earlier one, so that the new suit, too, could be heard in September.

3. Consolidating the cases calls for slightly revising the current briefing schedule. Under the current schedule, as modified by an order of this Court dated February 26, 2003, petitioners have already filed their opening brief, and NRC's answering brief is due on March 19, 2003. Intervenor's brief and a reply brief are due several weeks later. Final briefs in this deferred appendix case would be filed on May 21, 2003. If the cases are consolidated, however, it would be sensible to avoid extra rounds of briefs by simply establishing a new, revised schedule and new word limits for the briefs. Small word-limit adjustments are necessary to allow sufficient space to afford parties the opportunity to raise and respond to any special issues that possibly may arise in a petition for review of NRC's refusal to amend Part 63 that would not arise in a petition for review of Part 63.

4. In the interest of efficiency, we suggest that petitioner Nevada file a new brief, supplementing its already-filed brief in No. 02-1116, on March 24, 2003. The supplemental Nevada brief would be limited to a mere 2,000 words. The remainder of the briefs would follow, according to the schedule set out below, and lead to the filing of the parties' final briefs on June 6, 2003.

5. This schedule will not disrupt this Court's announced plan to hear oral argument in the various Yucca Mountain cases in September. The Court would have all briefs in hand approximately three months prior to argument.

6. Counsel for all parties consent to the revised briefing schedule and the word limits proposed below. It attends to their schedules and provides enough time for them to complete their briefs.

Petitioners' Opening Brief (13,916 words)	Already Filed
Petitioner Nevada's Supplemental Brief (2,000 words)	Monday, March 24, 2003
Respondents' Answering Brief (16,000 words)	Wednesday, April 9, 2003
Intervenor for Respondents' Brief (10,500 words)	Friday, April 25 2003
Petitioners' Reply Brief (9,000 words)	Friday, May 9, 2003
Deferred Appendix	Friday, May 23, 2003
Final Briefs	Friday, June 6, 2003

In addition, the NRC will file an index of the administrative record in No. 03-1058 promptly, and in any event no later than March 20, 2003.

For the foregoing reasons, we ask that the court grant this motion to consolidate the two cases, to revise the briefing schedule, and to set new word limits.

Respectfully submitted,

Brian Sandoval, Attorney General.
Marta A. Adams,* Sr. Deputy Attorney General
STATE OF NEVADA
100 North Carson Street
Carson City, NV 89701
(775) 684-1237 TEL
(775) 684-1108 FAX

Elizabeth A. Vibert, Deputy District Attorney
CLARK COUNTY, NEVADA
500 South Grand Central Parkway
Las Vegas, NV 89106
(702) 455-4761 TEL
(702) 382-5178 FAX

Bradford R. Jerbic, City Attorney
William P. Henry, Senior Litigation Counsel
CITY OF LAS VEGAS, NEVADA
400 Stewart Avenue
Las Vegas, NV 89101
(702) 229-6590 TEL
(702) 386-1749 FAX

Joseph R. Egan,*
Special Deputy Attorney General
Charles J. Fitzpatrick*
Martin G. Malsch*
Howard K. Shapar*
EGAN & ASSOCIATES, P.L.L.C.
7918 Jones Branch Drive, Suite 600
McLean, VA 22102
(703) 918-4942 TEL
(703) 918-4943 FAX

Charles J. Cooper*
Robert J. Cynkar*
Vincent J. Colatristano*
COOPER & KIRK, PLLC
1500 K Street, N.W., Suite 200
Washington, D.C. 20001
(202) 220-9600 TEL
(202) 220-9601 FAX

William H. Briggs, Jr.*
ROSS, DIXON & BELL, L.L.P.
2001 K Street, N.W.
Washington, D.C. 20006-1040
(202) 662-2063 TEL
(202) 662-2190 FAX

Antonio Rossman
Special Deputy Attorney General
Roger B. Moore
Special Deputy Attorney General
LAW OFFICE OF ANTONIO ROSSMANN
380 Hayes Street
San Francisco, CA 94102
(415) 861-1401 TEL
(415) 861-1822 FAX

Joseph R. Egan / by Vincent J. Colatristano
Joseph R. Egan*
Counsel of Record

Attorneys for Petitioner the State of Nevada

DATED: March 10, 2003

* Member, D.C. Circuit Bar

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO CONSOLIDATE CASES, TO ISSUE REVISED BRIEFING SCHEDULE, AND TO SET WORD LIMITS was served this 10th day of March, 2003, by certified mail on:

Ms. Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738
(301) 415-7000 –Tel

John F. Cordes, Jr., Solicitor
E. Leo Slaggie, Deputy Solicitor
Steven F. Crockett, Senior Attorney
Office of the General Counsel
Mail Stop: 015 B18
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

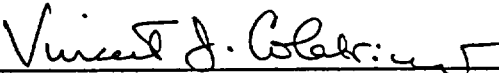
Karen D. Cyr, Esq.
General Counsel
Office of the General Counsel
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738
(301) 415-1743 – Tel

John Bryson
Ronald M. Spritzer
Attorneys, Appellate Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 23795
Washington, D.C. 20530

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

Michael A. Bauser
Associate General Counsel
Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, D.C. 20006

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



Vincent J. Colatrisano