

**TO BE ARGUED ON OCTOBER 3, 2003**

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

STATE OF NEVADA, *et al.*,

Petitioners,

v.

UNITED STATES DEPARTMENT  
OF ENERGY, *et al.*,

Respondents.

Case No. 01-1516  
(consolidated with  
Cases No. 02-1036,  
02-1077, 02-1179,  
and 02-1196)

STATE OF NEVADA, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

Case No. 01-1425  
(consolidated with  
Cases No. 01-1426,  
01-1258, 01-1268,  
and 01-1295)

STATE OF NEVADA, *et al.*,

Petitioners,

v.

UNITED STATES NUCLEAR  
REGULATORY COMMISSON,

Respondent.

Case No. 02-1116  
(consolidated with  
Case No. 03-1058)

STATE OF NEVADA, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

Case No. 03-1009

**SUGGESTION REGARDING ORAL ARGUMENT FORMAT AND SCHEDULE**

Petitioners State of Nevada, Clark County, Nevada, and the City of Las Vegas, Nevada (collectively, "Petitioners") respectfully submit this suggestion regarding the schedule and format for the oral arguments in the four groups of pending cases pertaining to the federal government's Yucca Mountain project ("Yucca") that are to be heard in tandem on October 3, 2003.

Petitioners understand and appreciate that the Court is the best judge of the most effective way to structure and allocate time for oral argument. Given the unique circumstances of these oral arguments, however, Petitioners respectfully submit that the parties may be able to offer guidance that will assist the Court in formulating an argument format and schedule that will maximize the benefit argument provides the Court in its consideration of the complex and interrelated issues in these cases. To that end, the parties have held discussions to determine whether they could agree on a joint proposal to the Court. While the parties were not able to do so, they have agreed to submit simultaneously their separate proposals to the Court.

For purposes of this suggestion, Petitioners will refer to the four sets of cases before the Court as the "Recommendations Case," the "EPA Case," the "NRC Case," and the "Constitutional Case," respectively. For the reasons discussed below, Petitioners believe oral argument

would be of the most benefit if the Recommendations Case were argued first, followed by the EPA Case, the NRC Case, and finally the Constitutional Case. Petitioners further believe oral argument with respect to the Recommendations Case – itself a series of consolidated cases with myriad jurisdictional challenges – would be of most assistance to the Court if that case were bifurcated so different counsel can argue those issues pertaining to jurisdiction and those related to the merits. Petitioners respectfully request that the Court allocate 60 minutes for argument of the consolidated Recommendations Case, 60 minutes for the EPA Case, and 40 minutes apiece for the NRC Case and the Constitutional Case.

### **BACKGROUND**

The Recommendations Case is a series of consolidated cases in which Petitioners seek review of (a) final regulations issued by the Department of Energy (“DOE”) that establish guidelines governing the suitability of Yucca as a potential site for a repository; (b) the Secretary of Energy’s decision, based upon DOE’s application of its guidelines, to recommend the Yucca site to the President; (c) the President’s decision, based upon the Secretary’s recommendation, to designate Yucca for development as a repository; and (d) DOE’s final environmental impact statement (“FEIS”) supporting the Secretary’s site recommendation, which the Nuclear Waste Policy Act of 1982 (“NWPA”) required DOE to prepare and consider pursuant to the requirements of the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* (“NEPA”). Petitioners also challenge DOE’s failure to take certain actions required by the NWPA. *Nevada v. DOE*, No. 01-1516 (consolidated with Nos. 02-1036, 02-1077, 02-1179, and 02-1196). Petitioners in the Recommendations Case contend that DOE’s and the President’s various actions, decisions, and failures to act violate applicable federal law, including the NWPA and NEPA.

The EPA Case is also a series of consolidated cases, all of which seek review of final

regulations issued by the Environmental Protection Agency (“EPA”) that establish the final radiation standards exclusively for the Yucca repository. *Nevada v. United States*, No. 01-1425; *Natural Resources Defense Council, et al. v. Whitman*, No. 01-1426; and *Nuclear Energy Institute, Inc. v. EPA*, Nos. 01-1258, 01-1268, and 01-1295. In one of these consolidated cases, Nevada challenges EPA’s regulations as facially invalid and fundamentally inconsistent with federal laws governing public health and safety, including the NWPA and the Energy Policy Act of 1992 (“EnPA”). In another of the consolidated cases, the Natural Resources Defense Council and its fellow environmental petitioners (“NRDC”) challenge EPA’s gerrymandered controlled area for measuring regulatory compliance as violative of the Administrative Procedure Act and the Safe Drinking Water Act. Though Nevada and NRDC filed independent petitions for review, they filed joint briefs in accordance with the Court’s briefing order. In yet another of the consolidated cases, the Nuclear Energy Institute, Inc. (“NEI”) filed a separate challenge to EPA’s Yucca regulation, raising a single, discrete issue regarding EPA’s authority to include in its regulation a separate groundwater protection standard.

In the NRC Case, Petitioners seek review of final regulations issued by the Nuclear Regulatory Commission (“NRC”) that would govern the licensing of a repository at Yucca. *Nevada v. NRC*, No. 02-1116 (consolidated with No. 03-1058, dealing with NRC’s denial of a rulemaking petition). Petitioners contend, among other things, that NRC’s licensing regulations violate applicable provisions of the NWPA and the Atomic Energy Act.

Finally, in the Constitutional Case, Petitioners seek review of Public Law 107-200, 116 Stat. 763 (2002) (the “Resolution”), which overrides Nevada’s veto of the President’s choice of Yucca as the repository site. *Nevada v. United States*, No. 03-1009. Petitioners contend the Resolution is inconsistent with the structure and design of the federal system of government es-

established by the Constitution in that it arbitrarily and irrationally singled out Nevada to bear the burden of disposing of the Nation's nuclear waste.

Because certain of the legal issues raised in these cases by necessity interrelate with each other and arise from the same factual, statutory, and regulatory background, Petitioners suggested the Court should consider the cases "in tandem." By orders dated November 7, 2002 and March 14, 2003, the Court adopted Petitioners' suggestion in part, and directed the Clerk to calendar the cases for argument at the same time and before the same panel.

In December 2002, Petitioners filed a suggestion regarding the order in which the Recommendations Case, the EPA Case, and the NRC Case should be argued.<sup>1</sup> By order dated February 26, 2003, the Court denied the suggestion "without prejudice to refile once these cases are assigned to a merits panel." The Court has since calendared all four sets of cases for argument on October 3, 2003, before the same panel.

#### **SUGGESTION REGARDING ORAL ARGUMENT**

Petitioners respectfully request that the Court consider the following proposal regarding the format of and schedule for oral argument:

- 1. Recommendations Case (One Hour)**
  - a. Jurisdictional Issues**
    - Petitioners (10 minutes, with option to reserve time for rebuttal)
    - Respondents/Intervenor (10 minutes)
    - Petitioners' rebuttal
  - b. Merits Issues**
    - Petitioners (20 minutes, with option to reserve time for rebuttal)
    - Respondents/Intervenor (20 minutes)
    - Petitioners' Rebuttal

---

<sup>1</sup> The Constitutional Case had not yet been filed when Petitioners filed their suggestion.

**2. EPA Case (One Hour)**

a. NRDC Petition (controlled area issue only)

- Petitioners (7 minutes, with option to reserve time for rebuttal)
- Respondents (7 minutes)
- Petitioners' rebuttal

b. Nevada Petition (all issues except controlled area)

- Petitioner (13 minutes, with option to reserve time for rebuttal)
- Respondents (13 minutes)
- Petitioners' rebuttal

c. NEI Petition (groundwater standard only)

- Petitioner (10 minutes, with option to reserve time for rebuttal)
- Respondents (10 minutes)
- Petitioner's rebuttal

**3. NRC Case (40 Minutes)**

- a. Petitioners (20 minutes, with option to reserve time for rebuttal)
- b. Respondents/Intervenors (20 minutes)
- c. Petitioners' rebuttal

**4. Constitutional Case (40 Minutes)**

- a. Petitioners (20 minutes, with option to reserve time for rebuttal)
- b. Respondents (20 minutes)
- c. Petitioners' rebuttal

**Order In Which Cases Should Be Argued.** Petitioners strongly believe oral argument would be most logical and beneficial if the Recommendations Case were argued first and the Constitutional Case last. As discussed more fully in Petitioners' submissions in connection with their suggestion for in tandem consideration, all four of the above-described sets of cases raise, either directly or indirectly, the issue of whether the NWPA requires that disposal of nuclear waste at Yucca be accomplished primarily through the geologic features of the Yucca site itself, rather than through primary reliance on so-called "engineered barriers." While the briefs in all

the cases therefore discuss this "geologic isolation" issue, that issue is the central legal issue in the Recommendations Case and has been most fully developed in the briefs filed there. The record on this issue is also the most extensive in the Recommendations Case. For these reasons, as a logical matter it makes sense for this fundamental threshold legal question, which has implications for resolution of issues raised in all four sets of cases, to be developed first through oral argument in the Recommendations Case.

Allowing the Recommendations Case to be argued first is also consistent with the history and structure of the NWPA and the legal regime for selection and licensing of a repository created by that statute. In particular, the threshold question of whether the Yucca site should be developed as a repository is entrusted by the NWPA to DOE, the Secretary of Energy, and the President — *i.e.*, the Respondents in the Recommendations Case. Neither NRC nor EPA had any direct role in those Executive Branch decisions. Rather, the work of those agencies becomes most relevant when the repository project reaches the *next* discrete stage, *i.e.*, licensing. For this reason, it makes sense for the Court to hear oral argument pertaining to the lawfulness of DOE's decisions and actions on site selection before it hears oral argument concerning the lawfulness of EPA's and NRC's regulations pertaining to licensing of a repository at the selected site.

As Petitioners' briefs in the Recommendations Case make clear, DOE has played the overwhelming historical role in the formulation of federal policy regarding nuclear waste disposal in general, the enactment and implementation of the NWPA, and site selection in particular. As the briefs also make clear, DOE also played a major role in the adoption of the EPA and NRC rules which are the subject of the EPA Case and the NRC Case, respectively, and it was the recommendations made by the Secretary and President, at issue in the Recommendations Case, that led to enactment of the Resolution being challenged in the Constitutional Case. Indeed, all

of the cases are a response in part to DOE's eleventh-hour decision to change the rules governing Yucca site suitability. A proper understanding of the context in which all of the decisions and actions at issue in these cases took place therefore requires a thorough understanding of DOE's historical role and its recent about-face, which can best be developed through initial argument in the Recommendations Case.<sup>2</sup>

For related reasons, it makes the most sense for the Constitutional Case to be argued last. As the briefs in that case establish, the factual and legal context in which the Resolution was enacted are relevant to Petitioners' claim that the Resolution unconstitutionally singles out Nevada to bear the burden of disposing of the Nation's nuclear waste. Oral argument as to Petitioners' constitutional challenge to the Resolution will therefore be most helpful to the Court, and the least duplicative of arguments raised in the other cases, if it occurs after the legal and factual backdrop against which the Resolution was enacted is developed through argument in the other

---

<sup>2</sup> Based on draft proposals exchanged by the parties, Petitioners understand that Respondents intend to claim that the " 'threshold' agency action" that should dictate the order in which these cases are argued is not DOE's 17-year compliance with the geologic isolation standard of the NWPA and its eleventh-hour abandonment of that requirement, but the EPA's radiation standard promulgated in 2001 pursuant to EnPA, which Respondents contend somehow superseded all of the standards of the NWPA. As an initial matter, Respondents' suggestion that DOE was somehow legally required to conform its guidelines to the EPA and NRC regulations – which is itself one of the contested legal issues before the Court – says nothing about why it would be more efficient to argue the EPA Case or the NRC Case before the Recommendations Case. In any event, Respondents' characterization of EnPA as having required DOE to adopt its new guidelines is wrong. This is evident from the fact that, when EnPA was enacted in 1992, and again in 1994 and 1995, DOE publicly confirmed it did not believe EnPA required it to change its siting guidelines, with their focus on the ability of a site to geologically isolate radioactive waste. See Petitioners' Opening Brief in No. 01-1516 at 24-26. It was only in 1996, when DOE found the Yucca site to be geologically flawed, that it reversed its regulatory focus – occasioned by no statutory change – to one of simply meeting requirements for a construction permit by relying primarily on engineered barriers. *Id.* at 28-36. It was from that shift, and DOE's successful lobbying of the EPA and NRC to change their repository rules, that EPA's new radiation standard arose in 2001. *Id.* at 36-38. Thus, the "threshold" Respondents advance is the back, not the front, door of this case; and it is hard to see how the Court would be well served by starting at the end of the story rather than the beginning.

cases, and in particular the Recommendations Case. Moreover, Petitioners believe it would be most efficient if the issues raised in the other three cases -- which primarily involve similar types of statutory and administrative law questions -- are argued before the Court turns to the qualitatively different constitutional issues raised in the Constitutional Case.<sup>3</sup>

Finally, another reason Petitioners believe the Recommendations Case should go first is because its resolution may prove persuasive as to various aspects of the succeeding cases. For example, the 10,000-year regulatory cutoff in both EPA's and NRC's Yucca rules, which Petitioners have challenged in the EPA and NRC cases, are subject to vastly different interpretations depending on whether geologic isolation is otherwise required at the Yucca site. To economize on the Court's time, therefore, it makes the most sense for these various derivative issues to be considered after the Court has heard argument on the primary geologic isolation issue in the Recommendations Case.

**Allocation of Time.** Under the NWPA, the key statute at issue in the cases, Nevada holds a unique and special position as the affected State and the repository host. The allegations

---

<sup>3</sup> Respondents will apparently propose that argument in the Constitutional Case be subsumed within the argument on the jurisdictional issues raised in the Recommendations Case, on the theory that Petitioners' constitutional claim serves as a "defense" of sorts to Respondents' allegation that enactment of the Resolution mooted Petitioners' claims in the Recommendations Case. Respondents' proposal ignores both that the Recommendations Case and the Constitutional Case are separate cases that have *not* been consolidated, and that Petitioners' constitutional challenge to the Resolution does not depend on whether the Resolution is construed as having rendered moot Petitioners' arguments in the Recommendations Case. *See* Petitioners' Opening Brief in No. 03-1009 at 26 n.10. In short, the issues raised in the Constitutional Case are in no sense inextricably intertwined with the jurisdictional issues raised in the Recommendations Case. Moreover, there is no overlap between the nature of the legal issues raised by Petitioners' constitutional challenge to the Resolution (which primarily involve questions regarding the allocation of power between the federal and State governments) and the jurisdictional issues raised by Respondents in the Recommendations Case. Finally, Respondents' suggestion that the parties can adequately address not only Respondents' mootness, standing, ripeness, sovereign immunity, and other jurisdictional arguments in the Recommendations Case, but also the legal issues raised in the Constitutional Case, in only 20 minutes of combined argument per side is unrealistic.

made by Nevada in the collective cases are exceptionally grave, amounting to a legal, factual, and scientific indictment of the Yucca repository program. In addition, the Court's decisions in these cases will have broad ramifications to the health and safety of Nevadans for millennia. These considerations argue for an argument format that provides sufficient time for the numerous issues raised in these cases to be fully and fairly aired.

Because of the number of issues raised in the Recommendations Case, Petitioners believe the Court should allot it a minimum of one hour of argument time. That case involves challenges to four different actions (DOE's adoption of new site selection guidelines for Yucca, the Secretary of Energy's site recommendation to the President, the President's site designation, and DOE's FEIS), as well as challenges to the Secretary's failure to take actions required under the NWPA. These challenges raise issues regarding Respondents' compliance with multiple statutes, including the NWPA, NEPA, and EnPA, as well as their compliance with regulations implementing NEPA. Moreover, Respondents have raised a host of jurisdictional issues, invoking the doctrines (among others) of mootness, standing, ripeness, and sovereign immunity. Given the multiple important issues raised in this case, Petitioners suggest oral argument would be of most assistance if the Court allocates to it at least one hour of argument time.<sup>4</sup> For similar reasons, Petitioners also submit it would be most efficient for the Court to bifurcate the argument in the Recommendations Case, with the Court first hearing argument as to jurisdictional issues and then hearing argument as to the merits.

Petitioners also believe the Court should allocate one hour of argument time to the EPA Case. That case involves three sets of petitioners, represented by different counsel, who are rais-

---

<sup>4</sup> In part because of the large number of issues raised in the Recommendations Case, the Court allowed the parties to file briefs substantially exceeding the normally applicable word limits. See Order dated September 20, 2002.

ing different substantive challenges to EPA's regulation. Nevada and the NRDC challenge the rule as not sufficiently protective of the environment and public health. The other petitioner – NEI, representing the nuclear energy industry – challenges one aspect of the rule as too stringent.

Though Nevada and NRDC filed separate petitions, they submitted joint briefs in accordance with the Court's briefing order, and their claims thus overlap. Petitioner Nevada respectfully proposes to share argument time with NRDC, dividing the issues so as to avoid any overlap at oral argument. Nevada believes NRDC is best situated to argue the joint challengers' claim that EPA improperly gerrymandered the "controlled area" for determining regulatory compliance, since this claim is in part a continuation of NRDC's successful 1987 challenge in the First Circuit to earlier versions of EPA's regulations governing the controlled area and groundwater standards for high-level radioactive waste disposal. *See NRDC v. EPA*, 824 F.2d 1258 (1<sup>st</sup> Cir. 1987). The briefs submitted in the EPA Case underscore the centrality of that earlier action. Having NRDC go first would afford NRDC the opportunity to place the EPA challenge in its proper historical context. Petitioners would follow with exposition of other challenges to the EPA regulation, which address matters of profound long-term importance to Nevada. Since Petitioners must address a greater number of issues, Petitioners request the Court to allocate them proportionately more argument time than NRDC or NEI. Petitioners have consulted with NRDC on this suggestion and have received NRDC's concurrence. Since NEI challenges only a single discrete element of the EPA regulations – its separate groundwater standard – it makes sense for this issue to be presented separately, and preferably after the court has heard argument on the broader challenges to the EPA regulations and their historical context by NRDC and Petitioners.<sup>5</sup>

---

<sup>5</sup> Respondents' argument that NEI should be allowed to present argument first in the EPA Case is apparently premised solely on Respondents' suggestion that the EPA Case be argued first, as Respondents believe allowing NEI to argue first in the first case argued will then allow the Court

As compared to the Recommendations Case and the EPA Case, the NRC Case and the Constitutional Case present fewer issues and parties. For that reason, Petitioners propose that the Court allocate less time for argument of these two cases — *i.e.*, 40 minutes apiece. However, because of the importance and complexity of the issues raised in the NRC Case and Constitutional Case, Petitioners suggest 40 minutes is the minimum time within which each of these cases can be argued in a manner that will effectively aid the Court's deliberations. This is especially true with respect to the Constitutional Case, which presents important issues, some of first impression, regarding the limitations on the power of the federal government to single out a particular State and to force it alone to shoulder a burden for the benefit of all the other States.

Finally, Petitioners note NEI has been granted status as an intervenor on the side of Respondents in the NRC Case and with respect to certain components of the Recommendations Case.<sup>6</sup> Petitioners take no position with respect to any division of time between Respondents and NEI in its capacity as an intervenor in these cases, so long as (1) the total argument time allocated to Respondents and NEI does not exceed the total time allocated to Petitioners in each case; and (2) NEI is allocated argument time solely with respect to issues relating to its status as an intervenor (as opposed to issues relating to its status as an *amicus*). *Cf.* Circuit Rule 34(d),(e).

**Supplementation of Record.** Before briefing began in the Recommendations Case, Pe-

---

to hear Nevada's arguments in the other cases "in succession." Leaving aside whether Respondents' sole rationale regarding the order of argument in the EPA Case makes sense on its own terms, it becomes irrelevant should the Court agree with Petitioners that the EPA Case should not be argued first.

<sup>6</sup> NEI was allowed to intervene with respect to Petitioners' challenge to DOE's site selection guidelines (No. 01-1516), but was denied intervention with respect to Petitioners' challenges to DOE's FEIS and the Secretary's compliance with NEPA (No. 02-1179). With respect to this latter challenge, NEI was granted permission to participate solely as *amicus curiae*. Order dated Sept. 6, 2002.

tioners filed motions seeking the supplementation of the certified administrative records in that case with a number of categories of records. By order dated September 6, 2002, the Court dismissed Petitioners' motion as moot to the extent it involved categories of records the Court determined were *already in* the administrative record, and otherwise deferred resolution of the motions with respect to other documents "pending oral argument." By order dated September 20, 2002, the Court clarified its September 6 order and ordered that "to the extent petitioners' motions . . . sought the inclusion of documents that were already in the certified indices of these consolidated cases, the motions are dismissed as moot. The motions are deferred pending oral argument insofar as the motions sought the inclusion of documents that were not already included in the certified indices." In light of the Court's decision in the Recommendations Case to defer this issue "pending oral argument," Petitioners and Respondents in the NRC Case agreed it was appropriate to defer, pending oral argument in that case, a similar issue regarding the contents of the record, and the parties filed a joint motion to that effect, which this Court granted on February 26, 2003.

In keeping with the Court's decision to defer the record issue "pending oral argument," Petitioners prepared and filed, in both the Recommendations Case and the NRC Case, two sets of appendices: (1) a Joint Appendix, containing those records cited in the parties' briefs that were included in Respondents' certified record indices or that the parties agreed were otherwise properly before the Court; and (2) a Supplemental Appendix, containing other records, cited in the parties' briefs, that Petitioners believe either should properly have been included in the administrative records or are otherwise appropriate for the Court to consider.<sup>7</sup>

---

<sup>7</sup> In the Constitutional Case, this Court granted Petitioners' motion to adopt, for purposes of that case, the appendices filed in the Recommendations Case. Thus, the parties' briefs in the Consti-

Petitioners believe the facts and the applicable law support the Court's consideration of each of the documents now in the Supplemental Appendices in the Recommendations Case, NRC Case, and Constitutional Case. Petitioners will be prepared to defend at oral argument the consideration of any document not already admitted by the Court on these legal and factual grounds. However, if the Court wishes any additional briefing prior to oral argument as to the specific documents now actually included in the three Supplemental Appendices, Petitioners would be pleased to provide it (past briefing on the record, filed before the merits briefs were prepared, addressed only general categories of documents).

---

tutional Case cite to materials included in the Joint Appendix and Supplemental Appendix filed in the Recommendations Case.

Respectfully submitted,

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

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

Antonio Rossmann\*  
Special Deputy Attorney General  
Roger B. Moore  
Special Deputy Attorney General  
ROSSMANN AND MOORE, LLP  
380 Hayes Street  
San Francisco, CA 94102  
(415) 861-1401 TEL  
(415) 861-1822 FAX

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

Charles J. Cooper\*  
Robert J. Cynkar\*  
Vincent J. Colatriano\*  
COOPER & KIRK, PLLC  
1500 K Street, N.W., Suite 200  
Washington, DC 20001  
(202) 220-9660 TEL  
(202) 220-9601 FAX

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

*Joseph R. Egan / by Vincent J. Colatriano*  
Joseph R. Egan\*  
Counsel for Petitioners

DATED: July 23, 2003

\* Member, D.C. Circuit Bar

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served this

23rd day of July, 2003 by First Class mail on:

Ronald M. Spritzer, Esq.  
John A. Bryson, Esq.  
ENRD -- Appellate Section  
U.S. Department of Justice  
P.O. Box 23795  
(L'Enfant Plaza Station)  
Washington, D.C. 20026-3795

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

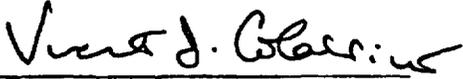
James Bradford Ramsay  
Sharla M. Barklind  
National Association of Regulatory  
Utility Commissioners  
1101 Vermont Avenue, Suite 200  
Washington, D.C. 20005

G. Scott Williams  
Michele L. Walter  
Environmental Defense Section  
United States Department of Justice  
P.O. Box 23986  
Washington, DC 20026

Jean V. MacHarg  
John C. Martin  
Susan M. Mathiascheck  
Patton Boggs, LLP  
2250 M Street, NW  
Washington, DC 20037

Geoffrey H. Fettus  
Natural Resources Defense Council  
1200 New York Avenue, N.W.  
Suite 400  
Washington, D.C. 20005

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

  
Vincent J. Colatrisano