



NUCLEAR ENERGY INSTITUTE

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## ORAL ARGUMENT SCHEDULED FOR JANUARY 14, 2004

January 8, 2004

### VIA FEDERAL EXPRESS

Mark J. Langer, Clerk  
United States Court of Appeals  
for the District of Columbia Circuit  
Room 5423, U.S. Courthouse  
333 Constitution Avenue, N.W.  
Washington, DC 20001

Re: Nuclear Energy Institute, Inc. v. Environmental Protection Agency, et al. No. 01-1258  
(Consolidated with No. 01-1268, 01-1295, 01-1425, 01-1426, 01-1516, 02-1036, 02-1077,  
02-1116, 02-1179, 02-1196, 03-1009, and 03-1058)

Dear Mr. Langer:

The Nuclear Energy Institute, Inc. ("NEI") hereby responds to the letter from petitioners Nevada, et al. ("Nevada"), headed "New Decision on Nuclear Waste Transport to Yucca Mountain" and dated January 2, 2004 ("Letter"). The Letter forwards two Federal Register notices. The first provides notice of the Department of Energy's ("DOE's") preferred rail corridor in Nevada for shipment of spent nuclear fuel and radioactive waste to Yucca Mountain if the Nuclear Regulatory Commission licenses the site for a repository. The second notice, issued by the Bureau of Land Management, segregates corridor land from surface entry and mining for up to 2 years while studies and analysis are conducted.

Contrary to Nevada's assertions, DOE has selected neither "the primary mode of transport for shipments to Yucca (mostly rail)," nor "the specific corridor within Nevada (the 'Caliente corridor')." As clearly stated in the first page of the first notice:

The Department is now announcing the Caliente rail corridor as its preferred corridor in which to construct a rail line in Nevada, and Carlin as a secondary preference. *If the Department adopts the mostly rail mode* in Nevada, DOE will issue a Record of Decision selecting a rail corridor no sooner than 30 days after publication of this preference announcement. *If the Department selects a rail corridor*, DOE will issue a Notice of Intent in the Federal Register to initiate the preparation of a rail alignment EIS under the National Environmental Policy Act (NEPA) to consider alternative alignments within the selected corridor for construction of a rail line.

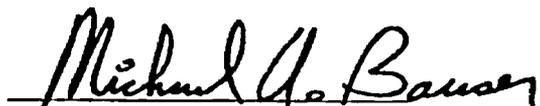
68 Fed. Reg. 74,951 (emphasis added).



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Further, again contrary to Nevada's assertions, the notices do not "affirm . . . that DOE unlawfully segmented the project's transportation component out of its Final Environmental Impact Statement ('FEIS') for Yucca . . ." As addressed on pages 26-28 of NEI's Brief in Nevada, et al. v. DOE, et al. (No. 01-1516 and consolidated cases), the process now being implemented was fully described in the FEIS. Far from segmenting out transportation impacts, DOE comprehensively evaluated all pertinent activities.

Respectfully submitted,



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Enclosure

cc (w/enclosure): Service List

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