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January 16, 2004

Mr. Mark J. Langer, Clerk
U.S. Court of Appeals
for the D.C. Circuit
Room 5423, U.S. Courthouse
333 Constitution Ave., N.W.
Washington, D.C. 20001

RE: Response to January 15, 2004 NRC Letter, in *Nuclear Energy Institute v. EPA*, No. 01-1258 (consolidated with Nos. 01-1268, 01-1295, 01-15425, 01-1426, 01-1516, 02, 1036, 01-1077, 02-1116, 02, 1179, 02, 1196, 03, 1009, and 03-1058)

Dear Mr. Langer:

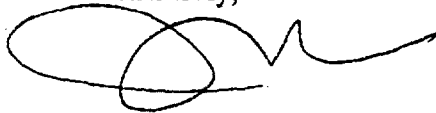
Petitioners Nevada, Las Vegas, and Clark County object to Respondent Nuclear Regulatory Commission's ("NRC's") January 15, 2004 letter to the Court, which is inappropriate and unauthorized under Fed.R.App.Pro. 28(j), particularly in view of the fact that Petitioners were deprived of the opportunity to present oral argument on their National Environmental Policy Act ("NEPA") case, and were given only three minutes to raise a single NEPA procedural issue (the subject of NRC's letter), with no rebuttal time.

NRC's letter is its second attempt to evade the Court's observation that, if Petitioners' NEPA lawsuit is rendered moot by the Joint Resolution approving the Yucca Mountain site recommendation, Petitioners' NEPA claims may nevertheless be brought at the NRC licensing phase of the Yucca project. In argument, Judge Edwards sought to ensure that NRC's Mr. Crockett was not "backing away" from the view (earlier affirmed by the Justice Department's Mr. Spritzer representing the Energy Department), that substantive NEPA challenges to the Yucca FEIS could be brought in the NRC proceeding. Under questioning by the Court, Mr. Crockett eventually agreed.

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Now, however, Mr. Crockett's letter seeks to return to his old understanding, expressed in NRC's 10 C.F.R. § 51.109, that administrative litigation of the Yucca FEIS would be confined to "new information," thus rendering the Energy Department's FEIS forever impervious to judicial review on the substantive merits. *See also* 49 Fed. Reg. 27864, 27866 (1989). Petitioners oppose this view and NRC's post-argument about-face.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a long horizontal stroke extending to the right.

Joseph R. Egan

c: Service List

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing letter was sent via First Class, U.S. Mail, this 16th day of January 2004.

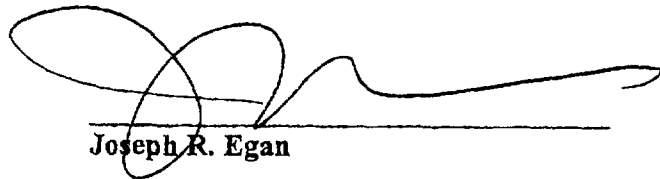
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