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June 2, 2004

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DOCKETED
USNRC

Nils J. Diaz
Chairman, U.S. Nuclear Regulatory Commission
One White Flint North
Rockville, MD 20852-2738

June 2, 2004 (12:26PM)

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Dear Chairman and Members of the Commission:

Appointment of Pre-Application Presiding Officer

Pursuant to 10 C.F.R. § 2.1010, the State of Nevada hereby requests the Commission to appoint a Pre-Application Presiding Officer immediately. The State's reasons are as follows.

The Department of Energy ("DOE") plans to submit the initial certification required by 10 C.F.R. § 2.1009(b) later this month (June 2004). Yet, as a May 2004 report from DOE's Office of Inspector General ("OIG") establishes,¹ as of a few months ago over six million possibly relevant DOE documents had not been processed for possible inclusion in the Licensing Support Network ("LSN"). OIG estimated that three to eight and one half million DOE documents are within the scope of the LSN. On April 30, 2004, in responding to the OIG (Appendix 2 to the OIG Report), DOE estimated that three to four million documents would need to be incorporated into the LSN database.² To Nevada's knowledge, no documents have been delivered to the NRC. Whether the correct figure is three million, four million, or eight and

¹ "Report on Management Controls Over the Licensing Support Network for the Yucca Mountain Repository," OAS-M-04-04.

one half million, it remains that DOE clearly is struggling to meet its artificial June deadline. Also, Nevada believes the NRC may require up to one year to index the very large number of documents that will be provided by DOE. DOE will have a strong incentive to limit the number of documents to be certified in order to meet the artificial June deadline, expedite NRC's indexing, and avoid delays in subsequent party certifications and filing of contentions.

In light of the above, Nevada anticipates that, when DOE certifies later this month, there will be immediate and serious questions about whether the certification is in compliance with NRC's rules, notwithstanding the serious civil and criminal penalties that would be associated with a false certification. The immediate appointment of a Pre-Application Presiding Officer will assure that such a tribunal is available and functioning in late June when the certification is submitted so that there will be no unnecessary delays in resolving controversies about the certification.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a long horizontal line extending to the right.

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