

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

July 22, 2004

**BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD**

In the Matter of	)	
	)	Docket No. PAPO-00
U.S. DEPARTMENT OF ENERGY	)	
	)	ASLBP No. 04-829-01-PAPO
(High-Level Waste Repository:	)	
Pre-Application Matters)	)	

**ANSWER OF PUBLIC CITIZEN, NEVADA NUCLEAR WASTE TASK FORCE, AND  
NUCLEAR INFORMATION AND RESOURCE SERVICE IN SUPPORT OF THE  
STATE OF NEVADA’S MOTION TO STRIKE THE DEPARTMENT OF ENERGY’S  
LSN CERTIFICATION**

Pursuant to the Atomic Safety and Licensing Board’s July 14, 2004 order, Public Citizen, the Nevada Nuclear Waste Task Force (“Task Force”), and the Nuclear Information and Resource Service (“NIRS”) hereby respond in support of Nevada’s (“NEV”) motion to strike the Department of Energy’s (“DEN”) certification of the Licensing Support Network (“LSN”).

**INTEREST OF ANSWERING PARTIES**

Public Citizen is a non-profit consumer advocacy organization with 158,000 members nationwide. It appears before Congress, administrative agencies, and the courts on a wide range of issues. Paramount among Public Citizen’s concerns is governmental transparency and accountability and consumer health and safety. Public Citizen has long advocated for laws and regulations that will keep nuclear waste securely isolated from people and the environment. In this regard, it has been particularly concerned about the proposed high-level waste repository at Yucca Mountain, Nevada. Through both advocacy before Congress and involvement in regulatory processes and litigation, Public Citizen has been actively involved in issues related to

the proposed repository. For example, Public Citizen was party to the consolidated case, *Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, No. 01-1258 (D.C. Cir. July 9, 2004), in which the court of appeals ruled that the Environmental Protection Agency (EPA) set its 10,000-year compliance period for groundwater radiation standards at the site in violation of federal law. In addition, Public Citizen provides the public with information and engages the public in the scientific, economic, and policy issues surrounding the proposed repository. Finally, Public Citizen intends to participate in any future Yucca Mountain licensing proceedings. Thus, Public Citizen has a deep and longstanding interest in the accessibility and openness of information regarding the Yucca Mountain Project.

The Task Force was formed in 1987 when Nevada was singled out as the sole site to be studied for a high-level nuclear waste repository. It began by providing public information within the state and since then has become a national contact point for information exchange on nuclear waste issues. The Task Force provides a public presence and voice in government agency and other scientific meetings and exchanges, and makes technical information available to individuals and organizations. It has been the organization representing public interest/advocacy groups on an advisory review panel of the Licensing Support Network (LSNARP). The Task Force was also a party to *Nuclear Energy Institute, Inc. v. Environmental Protection Agency*.

NIRS is an information and networking center for citizens and environmental organizations concerned about nuclear power, radioactive waste, radiation, and sustainable energy issues. NIRS has thousands of members across the United States. NIRS has been engaged in the Yucca Mountain Project for well over a decade, actively advocating on behalf of our members across the country to protect public health and the environment from the perils of

highly radioactive nuclear waste before all three branches of the federal government. For example, NIRS has participated in nearly all the public comment periods of the Department of Energy, Environmental Protection Agency, and the Nuclear Regulatory Commission regarding the Yucca Mountain Project. NIRS was also a party to *Nuclear Energy Institute, Inc. v. Environmental Protection Agency*.

As organizations that work on issues related to Yucca Mountain, it is critical that we have access to all information related to the Yucca Mountain Project. Because we have very limited resources, it is essential that the publicly available information related to the Yucca Mountain license application is complete and appropriately indexed on the NRC's LSN site ([www.lsnnet.gov](http://www.lsnnet.gov)). Yet, the DEN's LSN Document Collection site (<http://search.lsnnext.us/search/docsearch>) is virtually unusable and the NRC LSN site ([www.lsnnet.gov](http://www.lsnnet.gov)) is incomplete.

## **ARGUMENT**

### **DEN's Documentary Material Is Not Completely Available to the Public.**

On June 30, 2004, DEN certified to the NRC that all of DEN's documents relating to the Yucca Mountain license application are publicly available on DEN's LSN Document Collection site.

The purpose of the LSN is to make "documentary material [related to the proceeding for a license application] *available* electronically to parties, potential parties, and interested governmental participants" 10 CFR 2.1001 (emphasis added). Despite DEN's certification, all of the information related to the Yucca Mountain licensing application was *not* available to the public on June 30, 2004, nor is it all available as of July 20, 2004. This situation was documented

in Nevada's motion to strike DEN's certification, which was filed on July 12, 2004, and continues to be a problem.

Until July 15, 2004, no DOE documents were available on the NRC's LSN site. The following notice was posted at the top of the NRC's LSN home page as late as July 14:

The DOE document collection currently is unavailable pending the resolution of issues regarding the disclosure of recently identified privacy protected information. Please check back later.

Although at least some DEN documents are now indexed and available on the NRC's LSN site, these documents represent only a small fraction of the total documents that ought to be publicly available. According to a June 30, 2004 DEN press release, 5.6 million pages were posted on DEN's LSN Document Collection web site. However, as recently as February 2004, DEN estimated that the number of pages to be posted was approximately 30 million.<sup>1</sup> Furthermore, the NRC has received only a portion of the millions of documents that DEN has said it would provide to the NRC for indexing on the LSN site.

Of the documents submitted, DEN is demanding that NRC remove many from public access because, according to DEN, these documents contain protected privacy information. It is impossible for the public to review comprehensively the documents when only some of them are available, and those that are available today may not be tomorrow, in light of DEN's request to remove documents from the website based on untested privacy concerns. In our view, these privacy concerns, if any, ought to be addressed on a document-by-document basis as provided by section 14.5 of LSN Guideline 14. Under 10 C.F.R. 2.1007, LSN must include "[a] system to

---

<sup>1</sup> John Arthur, Deputy Director of DOE's Office of Repository Development. Summary of the U.S. Nuclear Regulatory Commission/U.S. Department of Energy Quarterly Management Meeting in Rockville, Maryland on February 19, 2004, at 3. Available on the Agencywide Documents Access and Management System (ADAMS), <http://www.nrc.gov/reading-rm/adams.html>.

provide electronic access...at the NRC web site" to assure that the NRC LSN Administrator has control over the complete collection of relevant documentary material.

DEN's LSN Document Collection site is not an adequate substitute for the NRC LSN site, because it is incomplete and unusable for the public. The documents posted on the DEN website are not indexed, making it extraordinarily difficult, and for all practical purposes impossible, to navigate the database. Moreover, some of the documents are referenced without a link to the actual document provided. Other documents are entitled "No title," or use a single word (such as "Cask") or a meaningless phrase (such as "TABLE ONE"), which gives the public no indication of their relevance. Furthermore, some text documents are posted in an unreadable format; for example, the text versions of tables are simply lists of data without appropriate columns, while some text documents include gobbledygook and thus are impossible to understand.<sup>2</sup> Finally, the advanced search feature does not include any explanation of the possible search categories.

On July 1, 2004, DEN posted the following notice on its LSN Document Collection site, after certifying that the documents were publicly available through the site:

We are experiencing a software problem affecting a subset of the documents. When you select the "View Header Content" or the "View OCR Content" icon you may receive the error message "The page can not be found" or "Forbidden". This problem will be resolved as soon as possible.

Later the same afternoon, the DEN LSN Document Collection site was taken down. The following notice was posted on the home page on July 2:

---

<sup>2</sup> For example, under "WRAPPING" OF PACKAGES (CASKS) IN 85-46 (C) (Accession Number MOL.19970905.0010), the text version of the document includes such sentences as "In such cases, the shipper's documentea package infftlf rvni iIA t lrifti wriiilil iirril t rr rrlilriu i wluii hnn I tin whipm prrg woura maintain its closure Integr^aLy during the normal conditions of transport." <http://lsnext.lsnext.us/documents/dev002/re1002/MOL199709050010/MOL199709050010.htm>

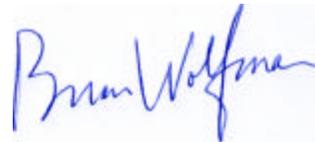
The DOE LSN site is temporarily down for maintenance. We will be back up as soon as possible. The estimated time [that] it will be available is to be announced.

The site was not back up again until July 6. Clearly, the LSN Document Collection site did not meet the standards established in 10 C.F.R. 2, Subpart J, which requires that the documents be “available.”

### **CONCLUSION**

The purpose of posting all of the relevant Yucca Mountain documents online is to allow the public to review the documentary materials and participate effectively in the Yucca Mountain licensing proceedings. This purpose cannot be achieved unless the LSN is fully functional and complete. In view of our experience with DEN’s LSN Document Collection site and NRC’s LSN site, Public Citizen, the Task Force, and NIRS support the NEV’s motion to strike DEN’s certification of the Licensing Support Network.

Respectfully submitted,



Brian Wolfman  
Public Citizen Litigation Group  
1600 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20009  
(202) 588-1000

Attorney for Answering Parties

July 22, 2004

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

July 22, 2004

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER

_____	)	
In the Matter of	)	Docket No. PAPO-00
	)	
U.S. DEPARTMENT OF ENERGY	)	ASLBP No. 04-829-01-PAPO
	)	
(High-Level Waste Repository:	)	
Pre-Application Matters)	)	
_____	)	

**NOTICE OF APPEARANCE OF BRIAN WOLFMAN**

Brian Wolfman, being an attorney at law in good standing admitted to practice in Arkansas and the District of Columbia hereby enters his appearance on behalf of Public Citizen, the Nevada Nuclear Waste Task Force, and the Nuclear Information and Resource Service, in any proceeding related to the above-captioned matter.

Respectfully submitted,



Brian Wolfman  
Public Citizen Litigation Group  
1600 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20009  
(202) 588-1000

July 22, 2004



Trip Rothschild, Esq.  
Janice E. Moore, Esq.  
Office of the General Counsel  
Mail Stop - 0-1 5 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
E-mail: [tbr@nrc.gov](mailto:tbr@nrc.gov); [jem@nrc.gov](mailto:jem@nrc.gov)

George Hellstrom  
U.S. Department Of Energy  
Yucca Mountain Site Characterization  
Office  
Chief Counsel's Office  
P.O. Box 30307  
North Las Vegas, NV 89036-0307  
E-mail: [george.hellstrom@ymp.gov](mailto:george.hellstrom@ymp.gov)

Marta Adams  
State of Nevada  
100 N. Carson Street  
Carson City, NV 89710  
E-mail: [madams@govmail.state.nv.us](mailto:madams@govmail.state.nv.us)

Malachy Murphy  
Nye County Regulatory and Licensing  
Advisor  
181 50 Cottonwood Rd. #265  
Sunriver, OR 97707  
E-mail: [mrmurphy@cmc.net](mailto:mrmurphy@cmc.net)

Steven P. Kraft  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, DC 20006-3708  
E-mail: [spk@nei.org](mailto:spk@nei.org)

Joseph R. Egan, Esq.  
Charles J. Fitzpatrick, Esq.  
Martin G. Malsch, Esq.  
Robert J. Cynkar, Esq.  
Egan Fitzpatrick, Malsch & Cynkar,  
PLLC  
7918 Jones Branch Dr., Suite 600  
McLean, VA 22102  
E-mail: [eganpc@aol.com](mailto:eganpc@aol.com);  
[cfitzpatrick@nuclearlawyer.com](mailto:cfitzpatrick@nuclearlawyer.com);  
[mmalsch@nuclearlawyer.com](mailto:mmalsch@nuclearlawyer.com);  
[rcynkar@nuclearlawyer.com](mailto:rcynkar@nuclearlawyer.com)

Steve Frishman  
Technical/Policy Coordinator  
Nuclear Waste Project Office  
1802 North Carson, Suite 252  
Capitol Complex  
Carson City, NV 89701  
E-mail: [ssteve@nuc.state.nv.us](mailto:ssteve@nuc.state.nv.us)

William H. Briggs  
Ross, Dixon & Bell  
2001 K Street N.W.  
Washington D.C. 20006-1040  
E-mail: [wbriggs@rdbl.com](mailto:wbriggs@rdbl.com)

Les Bradshaw  
Nye County Department of Natural  
Resources  
and Federal Facilities  
1210 E. Basin Road, Suite 6  
Pahrump, NV 89048  
E-mail: [clittle@co.nye.nv.us](mailto:clittle@co.nye.nv.us)

Alan Kall  
155 North Taylor Street, Suite 182  
Fallon, NV 89406  
E-mail:  
[comptroller@churchillcounty.org](mailto:comptroller@churchillcounty.org)

W. John Arthur, III  
Deputy Director  
U.S. Department of Energy  
Office of Civilian Radioactive Waste  
Management  
Office of Repository Development  
1551 Hillshire Drive  
Las Vegas, NV 89134-6321  
E-mail: [john\\_arthur@notes.ymp.gov](mailto:john_arthur@notes.ymp.gov)

Irene Navis  
Clark County Nuclear Waste Division  
500 S. Grand Central Parkway  
Las Vegas, NV 89155  
E-mail: [iln@co.clark.nv.us](mailto:iln@co.clark.nv.us)

Rod McCullum  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, DC 20006-3708  
E-mail: [rxm@nei.org](mailto:rxm@nei.org)

Robert I. Holden, Director  
Nuclear Waste Program  
National Congress of American Indians  
1301 Connecticut Ave. NW – 2<sup>nd</sup> floor  
Washington, DC 20036  
E-mail: [robert\\_holden@ncai.org](mailto:robert_holden@ncai.org)

Engelbrecht von Tiesenhausen  
Clark County Nuclear Waste Division  
500 S. Grand Central Parkway  
Las Vegas, NV 89155  
Management E-mail: [evt@co.clark.nv.us](mailto:evt@co.clark.nv.us)

Donald P. Irwin, Esq.  
Hunton & Williams LLP  
951 East Byrd Street  
Richmond, VA 23219  
E-mail: [dirwin@hunton.com](mailto:dirwin@hunton.com)

Abby Johnson  
617 Terrace St.  
Carson City, NV 89703  
E-mail: [abbyj@gbis.com](mailto:abbyj@gbis.com)

Mike Simom, Director  
(Heidi Williams, Adm. Assist.)  
White Pine County Nuclear Waste  
Project Office  
959 Campton Street  
Ely, NV 89301  
E-mail: [wpnucwstl@mwpower.net](mailto:wpnucwstl@mwpower.net)

Harry Leake  
Mark Van Der Puy  
U.S. Department of Energy  
Office of Civilian Radioactive Waste  
Management  
Office of Information Management  
Mail Stop 523  
P.O. Box 30307  
North Las Vegas, NV 89036-0307  
E-mail: [harry\\_leake@ymp.gov](mailto:harry_leake@ymp.gov);  
[mark\\_vanderpuy@ymp.gov](mailto:mark_vanderpuy@ymp.gov)

Linda Mathias  
Administrator  
Office of Nuclear Projects  
Mineral County Board of County  
Commissioners  
P.O. Box 1600  
Hawthorne, NV 89415  
E-mail: [mineral@oem.hawthorne.nv.us](mailto:mineral@oem.hawthorne.nv.us)

Ray Clark  
E-mail: [clark.ray@epa.gov](mailto:clark.ray@epa.gov)

Loreen Pitchford  
LSN Coordinator (Contractor)  
E-mail: [gb4@charter.net](mailto:gb4@charter.net)

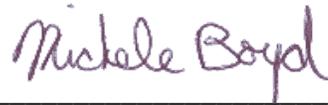
Laurel Marshall  
E-mail: [ecmarshall@eurekanv.org](mailto:ecmarshall@eurekanv.org)

Victoria Reich  
E-mail: [reich@nwtrb.gov](mailto:reich@nwtrb.gov)

Judy Treichel, Executive Director  
Nevada Nuclear Waste Task Force  
Alamo Plaza  
4550 W. Oakley Blvd., Suite 111  
Las Vegas, NV 89102  
Email: [judynwt@aol.com](mailto:judynwt@aol.com)

Kevin Kamps  
Nuclear Information and Resource Service  
1424 16<sup>th</sup> Street, Suite 404  
Washington, DC 20036  
Email: [kevin@nirs.org](mailto:kevin@nirs.org)

Michele Boyd  
Public Citizen  
215 Pennsylvania Ave, SE  
Washington, DC 20003  
Email: [mboyd@citizen.org](mailto:mboyd@citizen.org)

A handwritten signature in purple ink that reads "Michele Boyd". The signature is written in a cursive, flowing style.

---

Michele Boyd, Public Citizen

July 22, 2004