

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING 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))	NEV-01 April 7, 2005

**STATE OF NEVADA COMMENTS
ON DRAFT CASE MANAGEMENT ORDER**

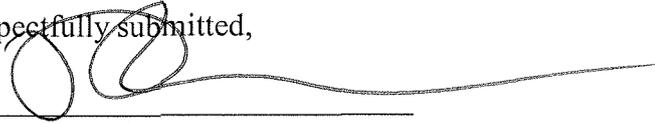
Today DOE submitted a draft case management order specifying requirements for privilege designations in the pre-license application phase of the Yucca Mountain geologic repository licensing proceeding and for challenges to those privilege designations. As the highlighted text indicates, the discussions among potential parties and participants, particularly the discussions that have taken place among the State of Nevada, the NRC Staff, and DOE, have been extremely productive and have resulted in agreement on a broad range of issues. As explained briefly below, Nevada has only two disagreements with the draft order. These disagreements affect only small parts of the text in the draft order but they are extremely important in terms of both the efficient conduct of the proceeding and effectuating the Commission's intent in providing for an effective electronic tool for early discovery of documentary materials. Nevada has discussed these two matters with DOE, and the two parties have been unable to reach agreement on them. Nevada will submit further jurisdiction for its position on April 25, 2005 in the form of a memorandum of law.

The first disagreement applies to sections II. E. 3. and III. H. 4. These provisions provide for production of entire categories of non-privileged, redacted versions of otherwise

privileged documents (for example, documentary material containing the segregated factual material in pre-decisional documents). Production is required within seven business days of a request (see section II. E.). However, the initial seven-day production may be in the form of paper copies; production of the redacted material on the LSN will be in a “reasonable time” after both the request and the LSN certification. Since many thousands of pages of DOE documentary materials will be required to be produced in redacted form, the effect of this is that many thousands of pages of DOE documentary materials will not be electronically available on the LSN until some considerable period (perhaps even months) after the LSN certification. Nevada believes this is contrary to the regulations, and proposes that a new section II. E. 4. be added to the order as follows: “Notwithstanding paragraph 3. above and paragraph III. H. 4., if Commission document discovery rules for formal adjudications or the Freedom of Information Act would require a participant to redact privileged documentary material and produce redacted versions, the participant shall make the redacted versions electronically available on the LSN (i) at the time of initial certification, (ii) whenever additional materials are made available pursuant to 10 C.F.R. § 2.1003(e), and (iii) at the time of updated certification (submittal of the license application).” The highlighted text in sections II. E. 3. and III. H. 4) could remain but would be understood to apply to circumstances where, for some reason, redacted documentary material was not placed on the LSN and a participant believed it should have been.

The second disagreement applies to section III. I. 2. f. Nevada believes this provision, dealing with attorney work product, suggests the use of a privilege that does not exist. Nevada suggests that it be deleted.

Respectfully submitted,



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April 7, 2005

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing STATE OF NEVADA COMMENTS ON DRAFT CASE MANAGEMENT ORDER has been served upon the following persons by electronic mail.

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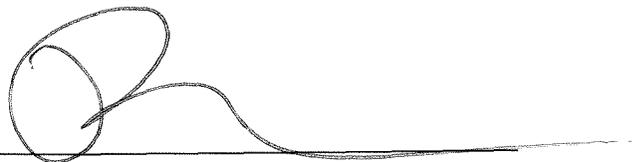
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A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a long, horizontal flourish that tapers to the right.

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