

May 26, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

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

NOTICE OF WITHDRAWAL OF NEVADA'S MOTION
FOR AN ORDER TO SHOW CAUSE

After reviewing NRC Staff's May 26, 2005 response to Nevada's May 16, 2005 Motion for an Order to Show Why NRC Staff Should Not be Sanctioned for False Certification of LSN Compliance, Nevada hereby respectfully withdraws its motion.

DISCUSSION

Staff is correct that Nevada did not comply with the consultation requirement of 10 C.F.R. § 2.323(b).¹ Nevada regrets its error. The reason for this requirement is perhaps best illustrated by Staff's response. Nevada would never have imagined, without

¹ Nevada does not believe that any person on the service list failed to receive a copy of its motion, as the EIE has resoundingly demonstrated its efficiency and effectiveness. Staff points out that a Board ruling last June required service both by EIE and email. Nevada understood this requirement as both necessary and desirable during the initial phases of the proceeding when participants did not always know how to use the EIE correctly and when the EIE was still working out its kinks. Nevertheless, Staff is correct that this requirement appears still to be applicable. Nevada would be appreciative of clarification from the Board as to whether this requirement is still necessary or desirable, given that service by email is redundant and may be a less secure form of communication than the EIE.

consultation with Staff, that Staff “has not, at this time, identified *any* documentary material for which it is claiming privilege.” Resp. at 2 (emphasis added). In a consultation with Staff today, Staff confirmed that this statement does not mean that Staff identified privileged documents and waived the privilege by posting them on the LSN, but that it was unable to identify *any* privileged documents that it considered to be documentary material. Based on this representation,² which Staff would surely have made in consultation, Nevada withdraws its motion. However, if and when new information is discovered that contradicts Staff’s representation, Nevada reserves its right to renew its motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joseph R. Egan', with a long horizontal flourish extending to the right.

Joseph R. Egan
Counsel for the State of Nevada

May 26, 2005

² For this surprising representation to be true, it must mean that among all of the existing electronic and written files concerning over a decade of activity related to Yucca by NRC Staff, the Commission and its Legal Assistants, and the Office of General Counsel, there is no privileged “documentary material” as defined in NRC’s regulations that *could even be found* (i.e., no legal memoranda; no communications between attorneys and staff, or between attorneys and Commissioners; no deliberative process documents, no internal memoranda, no e-mails, no proprietary information, and no employee concerns records that “a party or potential party intends to rely on and/or cite in support of its position,” or that is “relevant to but does not support” that information or that party’s position, as itemized in dozens of specific topical areas identified in Reg. Guide 3.69.) See 10 C.F.R. § 2.1001; Reg Guide 3.69 (topics as “Demonstration of Compliance with Postclosure Health and Environmental Standards” and with “Individual Protection Standard;” “Potential Actions and Decisions Regarding the Proposed Repository;” “National Effort to Manage Spent Nuclear Fuel and High-Level Radioactive Waste;” “Environmental Impact Analysis Process;” “Repository Safety After Permanent Closure;” “NRC preliminary comments on the sufficiency of DOE information for inclusion in a license application,” etc.)

**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:)	NEV-01
Pre-Application Matters))	May 26, 2005

CERTIFICATE OF SERVICE

I certify that copies of the foregoing NOTICE OF WITHDRAWAL OF NEVADA'S MOTION FOR AN ORDER TO SHOW CAUSE has been served upon the following persons by electronic mail:

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