

June 20, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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))	
)	

BRIEF OF THE NUCLEAR ENERGY INSTITUTE OPPOSING THE STATE OF
NEVADA'S MOTION TO COMPEL PRODUCTION OF THE JULY 2004
DRAFT YUCCA MOUNTAIN LICENSE APPLICATION

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I. INTRODUCTION

On May 18, 2005, during the second case management conference, the Pre-License Application Presiding Officer Board ("PAPO Board") established a briefing schedule on whether the Department of Energy ("DEN") must make available the July 2004 draft license application for the Yucca Mountain high-level waste repository ("Draft LA")¹ via the Licensing Support Network ("LSN") upon DEN's certification pursuant to 10 CFR 2.1003.² The PAPO Board acted in response to DEN's request to resolve this discovery issue now to avoid future disputes.³

Pursuant to the briefing schedule set by the PAPO Board, on May 19, 2005, the State of Nevada ("NEV") requested from DEN a copy of the Draft LA.⁴ On May 23, 2005, DEN denied NEV's request.⁵ On June 6, 2005, NEV filed its Motion to

¹ "Draft LA" refers to the specific draft NEV requested. This brief also discusses draft versions of the LA generally, e.g., "any draft version of the LA" or "any draft LA."

² U.S. Dep't of Energy (High Level Waste Repository: Pre-Application Matters), Transcript of Second Case Management Conference (May 18, 2005) at 413-14 ("Second Case Mgmt. Conf. Tr.").

³ Department of Energy's Memorandum in Response to May 11, 2005 Memorandum and Order Regarding Second Case Management Conference (May 12, 2005) at 27. *See also* Tr. at 378.

⁴ Letter from Martin G. Malsch, Counsel for NEV, to Donald P. Irwin, Counsel for DEN, May 19, 2005.

⁵ Letter from Donald P. Irwin, Counsel for DEN, to Martin G. Malsch, Counsel for NEV (May 23, 2005) ("Irwin Letter").

Compel production of the Draft LA and a supporting brief.⁶ The Nuclear Energy Institute ("NEN") hereby files its brief in response.⁷

II. THE PAPO BOARD SHOULD REJECT NEV'S MOTION TO COMPEL

The Commission never intended any draft version of the license application ("LA") to be made available to participants during the pre-application phase of the Yucca Mountain proceeding. Therefore, the PAPO Board should reject NEV's Motion to Compel. As will be discussed in the subsequent sections, (1) Commission regulations do not require DEN to disclose any draft version of the LA; (2) NEV's protestations notwithstanding,⁸ the meaning of "documentary material" does not encompass the Draft LA; and (3) NEV's attempt to obtain the Draft LA amounts to nothing more than an end-run around the Commission's express purpose and intent in establishing a pre-application phase for the Yucca Mountain proceeding.

A. Commission Regulations Do Not Require DEN to Disclose the Draft LA

The Commission's regulations require DEN to file the LA with the NRC.⁹ The regulations do not require DEN to file any advance or draft versions of the LA. There is no reason to file any other version. The Commission has repeatedly

⁶ Nevada's Motion to Compel Production of DOE's Draft Yucca Licensing Application, or, in the Alternative, for a Declaratory Order (June 6, 2005) ("NEV Motion to Compel"); Nevada's Initial Brief in Support of Its Motion to Compel Production of DOE's Draft Yucca License Application, or, in the Alternative, for a Declaratory Order (June 6, 2005) ("NEV Supporting Brief").

⁷ Participation by a potential party in the resolution of this issue was characterized as an "amicus" filing. Second Case Mgmt. Conf. Tr. at 402 (Judge Karlin).

⁸ NEV Supporting Brief at 4-7.

⁹ 10 CFR 63.22(a).

recognized that it is the license application filed by an applicant that is at issue in NRC adjudications.¹⁰

Nor do NRC regulations require DEN to provide any other participant in the proceeding with a draft version of the LA. Rather, the regulations require DEN to make available copies of the LA and any amendments thereto in the appropriate locations near the proposed site.¹¹ In addition, the LA will be made available via the LSN when it is filed because it is a basic licensing document.¹² Therefore, NEV has moved to compel production of a document to which it is not entitled.

B. The Draft LA Is Not Required To Be Made Electronically Available

NEV erroneously claims that the Draft LA is documentary material and must be made available on the LSN upon DEN's certification.¹³ To the contrary, NEV's request is not within the scope of the Commission's regulations, not provided for in regulatory guidance, and not contemplated by the Commission's intent.

1. The Draft LA is not a circulated draft of a report or study

Since January 29, 1999, the Commission's definition of documentary material has consisted of three categories of information: (1) information upon which a participant intends to rely and/or cite in support of its position in the proceeding;

¹⁰ *Baltimore Gas & Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 and 2) CLI-98-25, 48 NRC 325, 350 (1998) ("it is the license application, not the NRC staff review, that is at issue in our adjudications"); *Curators of the University of Missouri*, CLI-95-8, 41 NRC 386, 396 (1995) ("in adjudications, the issue for decision is not whether the Staff performed well, but whether the license application raises health and safety concerns"); *Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 153 (1993) ("the focus of a hearing is on whether the application satisfies the NRC's regulatory requirements").

¹¹ 10 CFR 63.22(d).

¹² 10 CFR 2.1003(b).

¹³ NEV Supporting Brief at 4-7.

(2) information that is known to, and in the possession of, or developed by the participant, but does not support that information or its position; and (3) all reports and studies prepared by or on behalf of the participant (including "circulated drafts") relevant both to the LA and the issues set forth in Regulatory Guide 3.69, whether or not the reports or studies will be relied upon and/or cited by a party.¹⁴

The Commission has generally referred to documentary material as that information supporting, i.e., underlying, the LA.¹⁵ Thus, the Commission's basic understanding of documentary material does not include the Draft LA. While the LA will cite to and rely on many underlying technical documents, it will not cite to or rely on the Draft LA or any other version of the LA.¹⁶ Thus, the Draft LA is not information supporting or underlying the LA, and, thus, not documentary material.

¹⁴ *Final rule, Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository*, 63 Fed. Reg. 71,729, 71,733 (Dec. 30, 1998). January 29, 1999 was the effective date of this Final Rule. *Id.* at 71,729.

¹⁵ *Notice of Proposed Rulemaking, Rule on the Submission & Management of Records & Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste*, 53 Fed. Reg. 44,411, 44,412 (Nov. 3, 1988) ("[t]he LSS would contain the information supporting the DOE license application, as well as potentially relevant documents generated by NRC and other parties..."); *Proposed rule, Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository*, 62 Fed. Reg. 60,789, 60,789 (Nov. 13, 1997) (discussing how the LSS would "mak[e] the information and data supporting a DOE application available simultaneously in a centralized database to all interested parties before the application is submitted...."); *Final rule, Licensing Proceedings for the Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Design Standards for Participating Websites*, 66 Fed. Reg. 29,453, 29,459 (May 31, 2001) ("the Commission is also aware that the development of the DOE license application and supporting materials is an ongoing process...that requires that some effort be expended before it is finally known whether an application will be received. The Commission believes that providing for a six-month period of DOE documentary material availability before DOE submits (tenders) the [LA] reflects an appropriate amount of pre-license application review time...."); *Final rule, Licensing Proceeding for a High-Level Radioactive Waste Geologic Repository; Licensing Support Network, Submissions to the Electronic Docket*, 69 Fed. Reg. 32,836, 32,841 (June 14, 2004) (discussing the potential for large documents to be submitted electronically, including "DOE License Application and supporting materials.").

¹⁶ See Irwin Letter at 2.

More specifically, the Draft LA does not fall under any of the three categories of documentary material described above. DEN has stated that "LA drafts do not constitute documentary material" because the LA, or drafts thereof, do not constitute "underlying 'information' that [DEN] intends to cite or rely on in support of its positions or that does not support those positions."¹⁷ NEV offers nothing more than argument of counsel that the Draft LA "would likely" be used by a litigant opposing DEN's position.¹⁸ "[A]rguments of counsel are not evidence and may not be accepted as such,"¹⁹ and, thus, the PAPO Board should reject NEV's unsupported assertion.

Nor is the Draft LA required to be produced under the third category of documentary material. NEV grossly distorts the definition of documentary material in asserting, without any support, that the Draft LA is a circulated draft report or study. NEN does not have any first hand knowledge of the Draft LA to determine whether or not it was a "circulated draft" as defined in 10 CFR 2.1001. However, NEN disputes NEV's characterization of the Draft LA as a report or study. An application, by definition, is a petition or a request.²⁰ The LA is DEN's petition and/or request to the NRC for a license to construct a geologic high-level waste repository. The LA will rely on information developed in numerous technical reports or studies to demonstrate that the Commission should grant the request for

¹⁷ *Id.*

¹⁸ NEV Supporting Brief at 4.

¹⁹ *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Unit No. 2), ALAB-420, 6 NRC 8, 14 n.18 (1977).

²⁰ Merriam-Webster's Collegiate Dictionary 60 (11th ed. 2003).

a license,²¹ but it is not itself a report or study. Thus, the Draft LA is *not* a draft of a report or study, circulated or otherwise.

Neither the Commission's basic understanding of documentary material, nor its specific definition thereof, encompasses the Draft LA. Consequently, the Draft LA need not be produced on the LSN upon DEN's certification.

2. Commission and NRC Staff guidance do not require the Draft LA to be made electronically available

The Commission's guidance on documents that must be made electronically available via the LSN before the LA is filed does not include the Draft LA. When promulgating 10 CFR Part 2 Subpart J in 1989, the Commission expressed its intent as to what *general* categories of documents should be made electronically available.²² Those categories are: (1) technical reports and analyses; (2) QA/QC records; (3) external correspondence; (4) internal memoranda; (5) meeting minutes; (6) drafts submitted for decision beyond the first level of management; (7) congressional questions and answers; and (8) regulatory documents related to HLW site selection and licensing.²³

Under the eighth category, or "regulatory documents," the Commission listed several *specific* documents, including (1) "[d]raft and final environmental assessments"; (2) site characterization plans; (3) issue resolution reports;

²¹ See Irwin Letter at 2.

²² *Final rulemaking, Submission & Management of Records & Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste*, 54 Fed. Reg. 14,925, 14,940 (Apr. 14, 1989).

²³ *Id.*

(4) environmental impact statement; and (5) the "License Application (LA), LA data base, and related references."²⁴

Commission regulations, e.g., 10 CFR Part 51, do not require draft environmental assessments to be made publicly available.²⁵ Commission regulations also do not require any draft LA to be made available.²⁶ However, the Commission's LSN guidance specifies that draft environmental assessments should be made electronically available, but does not impose the same obligation for any draft version of the LA. The fact that the Commission's LSN guidance specifically required the draft environmental assessment be made available and not any draft LA indicates the Commission's intent as to which regulatory document drafts should be made electronically available.

Further, the Commission's LSN guidance specifies that draft environmental assessments are to be made available on the LSN despite that guidance's inclusion of a general "Drafts" document category of material to be made available. Thus, the Commission believed that certain draft regulatory documents should be made available, but not others. Indeed, to read the Commission's guidance otherwise would disregard the elementary principle that "a specific provision governs even if a general provision, standing alone, might otherwise include the same subject."²⁷

²⁴ *Id.* (emphasis added).

²⁵ See *International Uranium (USA) Corp.* (White Mesa Uranium Mill), LBP-02-11, 55 NRC 301, 304 n.2 (2002) (comparing 10 CFR 51.26, 51.28(a)(5), 51.74(a)(6) with 10 CFR 51.30, 51.31).

²⁶ See discussion *supra* Section II.A.

²⁷ *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425, 431 (1974), *rev'd on other grounds*, CLI-74-40, 8 AEC 809 (1974). See also *id.* at n.9 (quoting *Clifford F. MacEvoy Co. v. United States*, 322 U.S. 102, 107 (1944) ("However inclusive

Contrary to NEV's misinterpretation,²⁸ the NRC Staff's guidance as to what material should be made electronically available does not include the Draft LA. Pursuant to the Commission's instruction,²⁹ the NRC Staff published Regulatory Guide 3.69, which contains the topical guidelines for the material to be made electronically available.³⁰ Under the general category "other documents" in the Regulatory Guide's Appendix A, the NRC Staff listed specific regulatory documents that must be made available via the LSN. Consistent with the Commission's prior guidance, Appendix A includes "[d]raft and final environmental evaluations or assessments," but does not name a draft version of the LA.³¹ Appendix A also includes "[d]raft, supplemental, and final environmental impact statements" ("EIS"),³² despite the fact that draft EIS's already are required to be made publicly available,³³ and despite the existence of the general "Drafts" category in Appendix A. Again, the significance of requiring specific draft "other documents" despite the existence of a general "Drafts" document category should not be overlooked.³⁴ Otherwise, inclusion of certain draft regulatory documents would be unnecessary and redundant.

may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment.").

²⁸ NEV Supporting Brief at 5.

²⁹ 54 Fed. Reg. at 14,930.

³⁰ Regulatory Guide 3.69, Revision 1, *Topical Guidelines for the Licensing Support Network* (June 2004), NRC ADAMS Accession No. ML041770135.

³¹ *Id.* at 3.69-7.

³² *Id.*

³³ 10 CFR 51.74.

³⁴ See *supra* note 27 and accompanying text.

C. NEV's Motion to Compel Production of the Draft LA Seeks to Undermine the Adjudicatory Process Established for Conducting the High-Level Waste Repository Proceeding

NEV has been clear in asserting its reason for requesting the Draft LA:

Mr. Fitzpatrick: And the reason is because the team of experts you've heard about – I mean, this Draft LA has taken years to produce and the component parts, and the TSPA and all that are mega-sized. And so, the later that they are delayed – I mean it's obviously going to be fairly close to the final product, and so the later that they're delayed in beginning their analyses, the less prepared they can be to form intelligent contentions and so on. So that's why we asked for the Draft LA in the first place, and to postpone it until after certification just draws you closer – invades the six month province unduly.³⁵

Thus, NEV seeks a copy of the Draft LA *now* so that it may enjoy an additional six months to review a "fairly close to the final product"³⁶ version of the LA in order to prepare its contentions. However, NEV's demand contradicts the Commission's intent in promulgating the Subpart J procedures for the high-level waste repository proceeding. As discussed in Section C.1. below, the pre-application discovery phase does not contemplate access to the Draft LA. As discussed in Section C.2. below, the Commission has repeatedly expressed its belief that the pre-application access to the information underlying the LA will be sufficient for participants to prepare their positions in the proceeding. Therefore, the PAPO Board should reject NEV's Motion to Compel.

³⁵ Second Case Mgmt. Conf. Tr. at 380. *See also* NEV Supporting Brief at 6.

³⁶ Second Case Mgmt. Conf. Tr. at 380.

1. The pre-application discovery phase does not contemplate access to the Draft LA

DEN must make available on the LSN all documentary material in its possession at least six months prior to the submittal of its LA.³⁷ The Commission's intent in establishing this pre-LA requirement has been long established, reiterated several times, and is abundantly clear:

The LSS is intended to provide for the entry of, and access to, potentially relevant licensing information as early as practicable *before* DOE submits the license application for the repository to the Commission. The LSS would contain the documentary material generated by DOE, NRC and other parties to the licensing proceeding, which are relevant to the licensing of the repository.³⁸

Further, DEN must certify to the NRC that it has made such information available. That certification will "assure that relevant documents are in the LSS as soon as possible, so as to allow for early, *pre-license application* discovery."³⁹ As previously discussed, the relevant licensing information referred to by the Commission is that documentary material supporting or underlying the LA.⁴⁰ The pre-application phase will provide access to information underlying or supporting the LA before DEN submits the LA. The LA will not cite to or rely on the Draft LA.⁴¹ Therefore, the Commission never intended participants to have access to the Draft LA in the pre-application phase.

³⁷ 10 CFR 2.1003.

³⁸ 54 Fed. Reg. at 14,926 (emphasis added). *See also* 53 Fed. Reg. at 44,412.

³⁹ 54 Fed. Reg. at 14,927.

⁴⁰ *Supra* note 15.

⁴¹ Irwin Letter, *supra* note 5 at 2.

Additional expressions of the Commission's intent abound. In discussing the proposed revised definition of "documentary material," the Commission stated the purpose of the LSN: to "provide pre-application access to a more focused set of the materials most important to the licensing proceeding."⁴² In promulgating the final rule, the Commission repeated the purpose of the pre-application phase: to provide access to DEN and NRC documentary material "sufficiently in advance of the filing of the license application."⁴³

Furthermore, when redefining what constituted the pre-application phase of the proceeding, the Commission stated that it "believe[d] that providing for a six-month period of DOE documentary material availability before DOE submits (tenders) the license application reflects an appropriate amount of *pre-license application review time*...."⁴⁴ In this rulemaking, NEV itself recommended that DEN's certification of the availability of its documentary material "be tied to some fixed period of time *before* the license application."⁴⁵ The Commission yet again expressed its intent in 2004 when stating that a major purpose of the LSN was to provide access to documentary material before DEN files its application.⁴⁶

The Commission had a specific reason for providing for pre-application discovery of documentary material. The period of time available to conduct the adjudicatory proceeding is limited to three (or four) years by the Nuclear Waste

⁴² 62 Fed. Reg. at 60,793.

⁴³ 63 Fed. Reg. at 71,734.

⁴⁴ 66 Fed. Reg. at 29,459 (emphasis added).

⁴⁵ *Id.* at 29,458 (emphasis added).

⁴⁶ 69 Fed. Reg. at 32,837, 32,843.

Policy Act of 1982 ("NWPA").⁴⁷ The Commission has stated that this statutory limitation begins upon the docketing of the LA.⁴⁸ Because of this limitation, and in anticipation that the proceeding would involve a substantial number of documents covering complex issues, the Commission provided for the creation of the LSS (now the LSN) and the early access to documentary material underlying the LA.⁴⁹

Had the Commission intended other participants to have access to a "fairly close to final product" version of the LA before DEN submitted the LA, then the Commission would have required DEN to submit a draft version of the LA. It did not. Indeed, it makes no sense for the Commission to have repeatedly touted the special, *pre-application* discovery in this proceeding if what the Commission really meant was for DEN to submit a nearly final version of the LA before it submits the LA. Such a requirement would completely eviscerate the meaning of "pre-application" discovery. Moreover, any requirement to submit a "fairly close to final product" version of the LA six months in advance of the LA, without including those additional six months as part of the three or four years allowed to conduct the proceeding, would subvert the time limitations set forth in the NWPA.

Thus, NEV's Motion to Compel production of the "fairly close to the final product"⁵⁰ Draft LA is entirely inconsistent with the Commission's intent and

⁴⁷ 42 USC 10134(d).

⁴⁸ 66 Fed. Reg. at 29,453 n.1.

⁴⁹ *Id.* at 29,454.

⁵⁰ Second Case Mgmt. Conf. Tr. at 380.

statutory mandate. Consequently, the PAPO Board should reject NEV's Motion to Compel.

2. The Commission believes its regulations provide sufficient time for participants to prepare for the Yucca Mountain proceeding

The NRC's regulations provide that the LA will become publicly available upon its filing by DEN.⁵¹ The NRC Staff will then conduct a three-month long license application acceptance review.⁵² Assuming the LA is acceptable, the LA will then be docketed, which will prompt the publication in the Federal Register of a Notice of Hearing.⁵³ Petitions for intervention with contentions must be filed no later than thirty days after publication of the Notice of Hearing.⁵⁴ This process evidences the Commission's belief as to what amount of time is sufficient to prepare contentions.

The Commission has repeatedly stated that its pre-LA process provides sufficient time for participants to prepare their positions for the proceeding. For example, when promulgating revisions to 10 CFR Part 2 Subpart J in 2001, the Commission stated that it

anticipated that the HLW proceeding would involve a substantial number of documents created by well-informed parties regarding numerous, complex issues....

⁵¹ 10 CFR 2.101(f)(2).

⁵² U.S. Dep't of Energy (High Level Waste Repository: Pre-Application Matters), Transcript of First Case Management Conference (May 4, 2005) at 191 (Mr. Smith).

⁵³ 10 CFR 2.101(f)(8).

⁵⁴ 10 CFR 2.309(b)(2); 10 CFR Part 2 Appendix D. The thirty day period for contentions to be filed after the Notice of Hearing is published has been intended by the Commission since 1989, 54 Fed. Reg. 14,939, and was codified in Appendix D to Part 2 in 2004. *Final Rule, Changes to the Adjudicatory Process*, 69 Fed. Reg. 2,182, 2,275 (Jan. 14, 2004).

[T]he Commission believed that early provision of these documents in an easily searchable form would allow for a thorough, comprehensive technical review of the license application by all parties and potential parties to the HLW licensing proceeding, resulting in better focused contentions in the proceeding.⁵⁵

As discussed in the previous sections, the documents referred to by the Commission are those documents underlying the LA.⁵⁶ Thus, the process provided by the Commission allows participants to access the technical material underlying the LA before the LA is submitted. The pre-application access will allow participants more time to understand the LA's underlying technical material, which will result in better-focused contentions once the application is filed. The Commission believed that the pre-application access it provided is sufficient for this purpose.

NEV's argument that it needs the Draft LA to prepare its contentions contradicts the Commission's express belief that its procedures provide sufficient time to prepare for the proceeding. The Commission could have explicitly required the availability of an almost final copy of the LA for parties to prepare contentions. It did not. The Commission could have extended the length of time after the Notice

⁵⁵ 66 Fed. Reg. at 29,453-54. *See also* 69 Fed. Reg. at 32,843 ("The Commission also notes that the history of the LSN and its predecessor, the Licensing Support System, makes it apparent it was the Commission's expectation that the LSN, among other things, would provide potential participants with the opportunity to frame focused and meaningful contentions and to avoid the delay potentially associated with document discovery, by requiring parties and potential parties to the proceeding to make all their Subpart J-defined documentary material available through the LSN prior to the submission of the DOE application. These objectives are still operational."); 66 Fed. Reg. at 29,459 ("The Commission believes that providing for a six-month period of DOE documentary material availability before DOE submits (tenders) the license application reflects an appropriate amount of pre-license application review time for participants to prepare for the licensing proceeding.").

⁵⁶ *Supra* note 15.

of Hearing is published in the Federal Register for contentions to be filed. It did not.

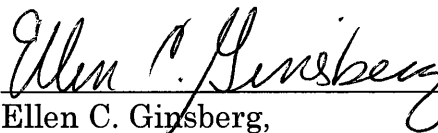
NEV's Motion to Compel is, in effect, nothing more than an attempt to reset the schedule established by the Commission in this proceeding by tacking on an additional six months for NEV to review the "fairly close to the final product" version of the LA. Indeed, the Commission would not have repeatedly stated its belief that its procedures provide sufficient time *before the LA is filed* for participants to prepare their positions if what the Commission really meant was for participants to have a nearly final version of the LA six months before the final LA to prepare positions. Thus, NEV's basis for demanding the Draft LA is contrary to the Commission's intent, and the PAPO Board should, consequently, reject NEV's Motion to Compel.

III. CONCLUSION

For the reasons set forth above, the PAPO Board should reject NEV's Motion to Compel. DEN is under no regulatory obligation to make draft versions of the LA available. Neither the Commission's nor the NRC Staff's guidance requires that a draft version of the LA be made electronically available on the LSN. To require DEN to produce the Draft LA would contradict the Commission's clear intent in providing for a pre-application phase of discovery and contradict the Commission's

belief that the pre-application discovery period provided is sufficient for participants to prepare their positions before they obtain the LA.

Respectfully submitted,

A handwritten signature in black ink, reading "Ellen C. Ginsberg". The signature is written in a cursive style with a horizontal line underneath the name.

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Dated: June 20, 2005

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

June 20, 2005

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

Before Administrative Judges:
Thomas S. Moore, Chairman
Alex S. Karlin
Alan S. Rosenthal

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))	
)	

**CERTIFICATE OF SERVICE FOR BRIEF OF THE NUCLEAR ENERGY
INSTITUTE OPPOSING THE STATE OF NEVADA'S MOTION TO COMPEL
PRODUCTION OF THE JULY 2004
DRAFT YUCCA MOUNTAIN LICENSE APPLICATION**

I hereby certify that copies of the "Brief of the Nuclear Energy Institute Opposing the State of Nevada's Motion to Compel Production of the July 2004 Draft Yucca Mountain License Application" have been served upon the following persons by Electronic Information Exchange and/or electronic mail as denoted by an asterisk(*).

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DRAFT YUCCA MOUNTAIN LICENSE APPLICATION

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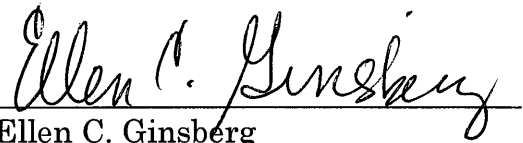
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