

December 19, 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))

**JOINT PROPOSED THIRD CASE MANAGEMENT ORDER
FOR SENSITIVE UNCLASSIFIED INFORMATION**

As directed by the Pre-License Application Presiding Officer (PAPO) Board at the Case Management Conference on October 19, 2005, and as modified by the PAPO Board's Order dated November 15, 2005, the Nuclear Regulatory Commission Staff (NRC Staff), Department of Energy (DOE), and State of Nevada (State) file the attached draft of a joint proposed Third Case Management Order for Sensitive Unclassified Information. The draft Third Case Management Order covers four categories of information: (1) Safeguards Information (SGI); (2) Unclassified Controlled Nuclear Information (UCNI); (3) Official Use Only Information (OUO information); and (4) Naval Nuclear Propulsion Information (NNPI). It also contains Protective Orders for the various types of sensitive unclassified information, a Non-Disclosure Affidavit, and a format for a sensitive unclassified information log. There are no disagreements among the NRC Staff, State and DOE regarding the proposed order.

Beginning November 7, 2005, the NRC Staff, State, and DOE exchanged drafts of the attached documents and held six conference calls addressing the terms of those draft documents. On November 22, 2005, the NRC Staff and DOE posted these documents on their websites for public review and comment. The State posted these documents on its website on November 29,

2005. On November 22, DOE (on behalf of all three parties) also filed a notice with the PAPO Board, and served that notice to all persons on the EIE service list, informing interested persons that the documents were publicly available and that a public teleconference would be held on December 14 to discuss the documents. In addition, the notice contained contact information for interested persons so they could submit their comments to the NRC Staff, State, and DOE prior to the public teleconference, and provided information for the December 14 call. The NRC Staff and DOE also posted information about the call on their websites with the documents.

As a result of posting the draft Third Case Management Order, the parties received only one substantive comment, which was from a DOE contractor. Also, only two entities expressed interest in possibly participating in the conference and only one of those entities, Nuclear Energy Institute (NEI), actually participated in the public call along with the NRC Staff, State, and DOE.

The NRC Staff, State, and DOE, along with NEI, held the public teleconference regarding the attached documents on December 14, 2005. The NRC Staff, State, and DOE discussed and agreed to accept the one comment that had been received and have otherwise reached agreement on all provisions in the attached documents.

The NRC Staff, State, and DOE prepared this proposed Third Case Management Order specifically to preserve two important legal issues for later resolution, if necessary. Both issues were raised earlier with the PAPO Board but NRC Staff, State, and DOE now agree there is no need to resolve them at this time. The first concerns the legal authority of the Commission (and its adjudicatory officers) to order disclosure of particular categories of sensitive unclassified information over the objections of the originator. This issue pertains primarily to UCNI, OOU information, and NNPI originated by DOE. The second issue relates to the application of a “need to know” standard during the pre-license application phase. The parties believe that any

further delineation of “need to know” should await consideration of future requesters and documents. The NRC Staff, State, and DOE are hopeful that cooperation among them in granting access and the relatively small number of documents likely to be at issue will avoid the need to raise and resolve the legal authority and “need to know” issues. As the PAPO Board will note, other issues raised previously were resolved. For example, the proposed Order provides that a legal counsel who has access to technical expertise need not independently demonstrate technical competence and also specifies a process regarding access to documents for non-United States citizens.

Pursuant to the request of the PAPO Board, the NRC Staff will provide a courtesy WordPerfect version of the attached documents to the PAPO Board.

The NRC Staff, State, and DOE respectfully request that the PAPO Board adopt and enter the accompanying Case Management Order.

Respectfully submitted,

Original Signed by W. Jeffery Edwards

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Pre-Application Matter))

JOINT PROPOSED THIRD CASE MANAGEMENT ORDER FOR
SENSITIVE UNCLASSIFIED INFORMATION
CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing JOINT PROPOSED THIRD CASE MANAGEMENT ORDER FOR SENSITIVE UNCLASSIFIED INFORMATION in the above captioned proceeding have been served on the following persons this 19th day of December, 2005 by Electronic Information Exchange.

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