

February 11, 2008

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

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

**ANSWER OF THE NUCLEAR ENERGY INSTITUTE OPPOSING
“THE STATE OF NEVADA’S MOTION FOR LEAVE TO FILE
A LIMITED REPLY”**

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), the Nuclear Energy Institute (“NEI”) hereby files its opposition to the State of Nevada’s (“Nevada’s” or “the state’s”) February 4, 2008 Motion for Leave to file a limited reply.¹ As explained below, the motion fails to demonstrate good cause for the requested relief. Accordingly, it is without merit and should be denied.

¹ 10 C.F.R. § 2.323(c) provides that “a party may file an answer in support of or in opposition to the motion.” Although not technically a “party,” NEI has participated as a “potential party” in the instant proceeding since its inception and, in particular, on January 28, 2008, filed a brief pursuant to 10 C.F.R. § 1015(b) opposing the instant appeal. NEI will seek party status in the Yucca Mountain licensing proceeding at the time called for in the Commission’s regulations.

II. DISCUSSION

Nevada bases its motion on two grounds. The first is the purported need to reply to an argument raised in the Department of Energy’s (“DOE’s”) brief in opposition to the state’s appeal² that “attempts to rewrite the basic standards by which the Commission is to approach its analysis in a way that is legally incorrect and inconsistent.”³ The state, however, identifies no new information – either factual or legal – that would justify its filing of an unauthorized reply.

The second ground identified by the state is that, in its brief opposing the instant appeal, “DOE selects snippets from a number of statements out of context to suggest entirely incorrectly that it is possible for Nevada (and other opponents of the plan to turn Yucca Mountain into a nuclear waste repository) to frame focused and meaningful contentions based upon the Licensing Support Network (‘LSN’)”⁴

Again, however, the state identifies no new information previously unavailable to it which would justify the filing of a reply. Further, the Commission

2 “The Department of Energy’s Brief on Appeal in Opposition to the State of Nevada’s Notice of Appeal from the PAPO Board’s January 4, 2008 and December 12, 2007 Orders” (Jan. 25, 2008).

3 Motion, p. 1.

4 *Id.*

is perfectly capable of reading the material cited by DOE and determining, for itself, if there are distortions or mischaracterizations.

Finally, in the last sentence of its motion the state invokes “fairness” in seeking “the opportunity to file the reply and Supplemental Declaration of Mike Thorne” (Footnote omitted.) Fairness, however, is a two-way street. The regulations do not provide for the filing of a reply. If a reply is allowed without good cause, then the other participants are prejudiced by, e.g., the burden of having to prepare and file additional pleadings which would not otherwise be necessary. Further, the regulations are structured to avoid unnecessarily protracted proceedings and delay, consistent with the three-year licensing limitation (extendable to four years) of the Nuclear Waste Policy Act.⁵ Everyone has an interest in ensuring both that there is a reasonable opportunity to be heard, and that decisions are reached within a reasonable period of time. The regulations have been crafted to be fair to all participants. That balance should not be disturbed.

⁵ See 42 U.S.C. § 10134(d).

III. CONCLUSION

For the foregoing reasons, Nevada's motion should be denied. However, if granted, NEI requests that it be provided an opportunity to respond to the state's reply.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Answer of the Nuclear Energy Institute Opposing 'The State of Nevada's Motion for Leave to File a Limited Reply'" has been served via the Nuclear Regulatory Commission's Electronic Information Exchange (EIE) upon those on the Service List maintained by the EIE for the above-captioned proceeding.

Respectfully submitted,



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