



Department of Energy
Washington, DC 20585

**CONSENT TO LEGAL REPRESENTATION
DISTRICT OF COLUMBIA RULES OF PROFESSIONAL CONDUCT**

The Department of Energy (DOE) intends to retain Morgan, Lewis & Bockius, LLP (ML) to provide legal services to the DOE, Office of the General Counsel, in support of the preparation of DOE's licensing application to, and subsequent adjudication before, the Nuclear Regulatory Commission (NRC) in connection with the construction of a spent nuclear fuel and high-level waste repository at Yucca Mountain (YM) as required by the Nuclear Waste Policy Act of 1982 (NWSA), 42 U.S.C. §§ 10101-10270, as amended.

ML is a large, international law firm based, in part, in Washington, DC possessing a significant nuclear energy practice, including practice before the Nuclear Regulatory Commission located in the Washington, DC metropolitan area. In the course of negotiating a potential contract for services, ML has disclosed that some of its lawyers currently represent a number of clients which advocate positions adverse to the interest of DOE.¹ Specifically, ML currently represents 14 utilities in actions against the U.S. Government arising out of DOE's breach of the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (hereinafter referred to as "Standard Contract litigation") because DOE failed to begin acceptance by 1998 of spent nuclear fuel as required by the standard contract. The clients are: Arizona Public Service Company, Constellation Energy Group and affiliates, Dominion Resources and affiliates, Entergy and affiliates, FirstEnergy Corporation and affiliates, General Atomics Company, General Electric Company, Interstate Power & Light, Portland General Electric Company, Progress Energy and affiliates, Southern California Edison Company, and

Further, ML has disclosed additional clients on whose behalf ML advocates positions adverse to DOE. Those clients and the pending matters are fully disclosed in the letter attached hereto and incorporated by reference. See Letter from Gutierrez to Contracting Officer Representative of September 24, 2007.

The matters in which ML represents clients that are adverse to the interests of DOE, including the Standard Contract litigation, and the proposed representation do not represent the same matter for purposes of Rule 1.7(b); however, the overlap of subject matter (disposition of spent nuclear fuel) for the Standard Contract litigation requires ML undertake significant action to provide DOE with sufficient assurance that the conflict will not affect the quality of DOE's representation or the protection of DOE's interest. ML has agreed to undertake a comprehensive

¹ Conflicts arising under the District of Columbia Rules of Professional Conduct Rule 1.7(b) are imputed to a lawyer's entire law firm as set forth in D.C. Rule 1.10(a).



“Organizational Conflict of Interest Avoidance/Mitigation Plan” (mitigation plan) concerning the Standard Contract litigation to ensure that the interests of DOE in each matter are protected. That plan, if implemented by ML as described, will mitigate any adverse effect to DOE in either proceeding. It has been determined that a mitigation plan is not required for the other matters because the subject matter of those matters are unrelated to the Yucca Mountain licensing application and proceeding.

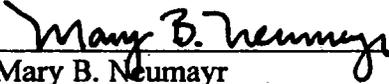
ML advises that it will rely largely upon its attorneys licensed in the District of Columbia for performance of the proposed contract. Accordingly, this consent is issued in the context of these clients identified above whose positions are adverse to DOE for purposes of the District of Columbia Rules of Professional Conduct Rule 1.7(b).

In pertinent part, D.C. Rule 1.7(b) prohibits a lawyer from representing another client with respect to a matter if: (1) that matter involves a specific party and a position to be taken by that client in that matter is adverse to a position taken by another client in the same matter even though that client is unrepresented or represented by a different lawyer; (2) such representation will be or may be adversely affected by representation of another client; or (3) representation of another client will be or may be adversely affected by such representation. D.C. Rules of Prof'l Conduct R. 1.7(b)(1)-(3). This conflict, however, can be waived after each potentially affected client is provided with full disclosure of the conflict and the potential adverse consequences of such representation and provides consent. D.C. Rules of Prof'l Conduct R. 1.7(c). Such a conflict cannot be waived if it involves representing adverse positions in the same matter.

I hereby consent on behalf of the DOE to ML's representation of DOE in the Yucca Mountain licensing and adjudication proceedings based upon ML's full disclosure, in accordance with D.C. Rule 1.7(c), of the existence and nature of the possible conflicts and adverse consequences of ML's representation of clients whose positions are adverse to DOE. Those matters are disclosed and described in detail by the ML document attached hereto. I have determined consent is appropriate in this instance in consideration of the following factors: (1) no matter described above, specifically including the Standard Contract litigation, constitutes the “same matter” as the proposed Yucca Mountain representation pursuant to Rule 1.7(b), thereby, as a matter of rule, prohibiting issuance of this consent under Rule 1.7(c); (2) the only matter involving ML's representation of adverse positions against DOE with significant overlap of subject matter (the disposition of spent nuclear fuel) with the proposed representation on Yucca Mountain is the Standard Contract litigation; (3) the ML mitigation plan establishes procedures, if implemented as described, to provide mechanisms to prevent ML personnel working on the Standard Contract litigation from gaining access to any non-public information and/or confidential information related to the licensing of the repository; (4) ML has committed it will not represent any clients, other than DOE, in the Yucca Mountain licensing and adjudication matter; (5) the pool of contractors available and highly-qualified provide the number and competency of personnel required to fulfill the proposed contract is severely limited and all such potential contractors are likely to be encumbered by the same types of representational conflicts; (6) ML is sufficiently large to possess an adequate number of professional resources competent to represent DOE before the NRC in the proposed Yucca Mountain matter; (7) ML has committed to continue to notify DOE of potential conflicts of interest and seek consent where required by the Rules; (8) the construction of the Yucca Mountain repository is mandated by

the NWPA as an essential element of the nation's future national security and energy needs; (9) this contract will provide DOE with resources necessary to expedite the application and adjudication of the Yucca Mountain matter; (10) continued delay in the construction of the repository subjects DOE to continued accumulation of potential damages due to the breach of the standard contract; and (11) this consent is limited to those matters specifically described herein and in incorporated documents and to work of the same nature and scope for existing, identified clients and is not intended to provide consent to any future representation of new clients with positions adverse to DOE as described in the ML document attached. *See Letter from Gutierrez to Contracting Officer Representative of September 24, 2007.*

This consent as described above is issued solely on behalf of and is limited to the interests of the DOE. No such consent on behalf of any other agency or instrumentality of the United States is intended. In accordance with D.C. Rule 1.7(c), the limitation as described above, and in reliance upon the faithful execution of the mitigation plan, DOE hereby consents to ML's representation of DOE based upon the full disclosure of the existence and nature of the possible conflicts involving their current clients as described herein.



Mary B. Neumayr
Deputy General Counsel for
Environment and Nuclear Programs

9/25/07

Date