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January 16, 2009

VIA EIE

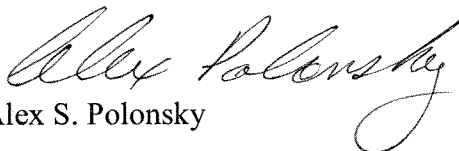
Administrative Judge Thomas S. Moore  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
Washington, DC 20555-0001

Re: Revised Case Management Order Governing Classified Information

Judge Moore:

As directed by the Board, the U.S. Department of Energy, NRC Staff, and the State of Nevada have revised the language in the attached Sixth Case Management Order, which would govern the State of Nevada's access to Classified Information in this licensing proceeding. We submit the Order for your review, approval, and entry.

Sincerely,

  
Alex S. Polonsky

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

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

_____ )	Docket No. PAPO-00
In the Matter of )	
U.S. DEPARTMENT OF ENERGY )	ASLBP No. 04-829-01-PAPO
(High-Level Waste Repository: )	
Pre-Application Matters) _____ )	January ____, 2009

SIXTH CASE MANAGEMENT ORDER  
(Regarding State of Nevada's Access to Classified Information)

In order to allow Representatives of the State of Nevada to access Classified Information that the U.S. Department of Energy ("DOE") has submitted to the U.S. Nuclear Regulatory Commission ("NRC") as part of, or in support of, its application for construction authorization for a Spent Nuclear Fuel and High-Level Waste Geologic Repository,<sup>1</sup> and in order to protect the national security, the NRC Staff and the DOE have requested a Protective Order that would supplement, but in no way supersede, 10 C.F.R. Part 2, Subpart I, or any other regulation or

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<sup>1</sup> To date, such documents are limited to the "Naval Nuclear Propulsion Program Technical Support Document" ("TSD") and twelve supporting references (*i.e.*, Background Evaluation and Analysis Reports ("BEARs")). This Order, however, covers any Classified Information that DOE submits to the NRC in connection with its application as well as documents derived from that Classified Information by any Party.

statute.<sup>2</sup> The State of Nevada concurs in that request. This Case Management Order grants that request with terms agreed to by the NRC Staff, DOE and the State of Nevada.

## I. DEFINITIONS

For purposes of this Sixth Case Management Order, and its accompanying appendices, the following definitions shall apply:

- (A) “Classified Information” refers to any information that qualifies as National Security Information, as defined by Executive Order 12958, as amended, or Restricted Data (“RD”), as defined in 42 U.S.C. 2014(y) and 2162 and 10 C.F.R. Part 1045, which has not been declassified by the U.S. Federal Government (“Government”). This includes classified Naval Nuclear Propulsion Information or any other information deemed classified in accordance with law and regulations.
- (B) “Classified Information protection requirements” refers to the controls or systems that must be in place to possess Classified Information and prevent its unauthorized dissemination, as presented in this Sixth Case Management Order and the attached Protective Order (Appendix A).
- (C) “Document” refers to any written or graphic matter, or other means of preserving thought or expression, that contains “documentary material” as that term is defined in 10 C.F.R. § 2.1001, including, but not limited to, writings, correspondence, contracts, memoranda, handwritten notes, applications, notebooks, books, studies, surveys, graphs, charts, calculations, analyses, drawings, reports, computer printouts or matter stored on computer or on computer disk, tape recordings, photographs, microfilm, microfiche, transcripts, diary entries, and desk calendar entries, whether originals or copies, however produced or reproduced. It also includes any tangible objects, including, but not limited to, mockups, models, devices, or any other object that could be inspected.
- (D) “DOE” means the U.S. Department of Energy, which includes the Naval Nuclear Propulsion Program.

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<sup>2</sup> The DOE filed a partially unopposed Protective Order regarding the handling of Classified Information with the Commission on May 30, 2008. In CLI-08-21, the Commission, among other things, referred the Protective Order to this PAPO Board for resolution. This Board held a conference call with the parties on October 8, 2008, and pursuant to that call and our Order of October 9, 2008, this Board required DOE to submit a draft Case Management Order, Protective Order, and Non-Disclosure Agreement by November 5, 2008. This Board held a conference on December 2, 2008, to discuss those draft submittals, and at the end of that conference directed that the Case Management Order, Protective Order, and Non-Disclosure Agreement be limited to the State of Nevada.

- (E) “DOE Personnel” refers to all personnel employed by, under contract to, or assigned to the U.S. Department of Energy who are involved in this proceeding, including any stenographic reporters and videographers.
- (F) “Naval Nuclear Propulsion Information” (“NNPI”) is defined in NAVSEAINST 5511.32C and includes “all information, classified or unclassified, concerning the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of Naval nuclear powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities.” The disclosure of this information is restricted by Federal Statutes, regulations, and directives, including NAVSEAINST 5511.32C.
- (G) “NRC” refers to the U.S. Nuclear Regulatory Commission.
- (H) “NRC Personnel” refers to all personnel employed by, under contract to, or assigned to the U.S. Nuclear Regulatory Commission who are involved in this proceeding, including any stenographic reporters and videographers.
- (I) “Party” or “Parties” refers to the DOE, the NRC Staff, and the State of Nevada.
- (J) “Proceeding Security Officer” or “PSO” refers to the person or persons designated by the NRC, in a separate order, to assist the presiding officer and Parties with security procedures, classification, and safeguards to be observed pursuant to 10 C.F.R. § 2.904.
- (K) “Receiver” means any Representative of Nevada to whom access has been granted to a document that contains Classified Information pursuant to this Sixth Case Management Order.
- (L) “Representative(s)” refers to a Party’s officers and employees, counsel, independent contractors, expert witnesses, and consultants, and all employees of the foregoing, furnishing services related to the Party’s involvement in this proceeding.
- (M) “Requester” is any Representative of Nevada seeking access to a document that contains Classified Information pursuant to this Sixth Case Management Order.

## II. GENERAL REQUIREMENTS

### A. Scope.

The requirements of this Sixth Case Management Order shall apply to the Parties and their Representatives.<sup>3</sup> In addition to the requirements contained herein, the general requirements set forth in the Revised Second Case Management Order (dated July 6, 2007) in Parts II.C (“Appearance Practice and Representation”), II.D (“Signature”), II.G (“No Subject Matter Waiver”), II.K (“Good Faith Consultation”), II.N (“Filings and Service via the NRC’s Adjudicatory EIE System”), II.O (“Captions for Filings”), and the Other Matters set forth in Parts VII.C. (“Subsequent Case Management Orders”), and VII.D. (“Controlling Issues”) are also applicable.

In accordance with CLI-08-21, this Sixth Case Management Order does not address “disputed questions [related to] the NRC’s authority to (1) review and/or overturn another federal agency’s classification determinations made on information associated with the Yucca Mountain construction authorization application; and (2) direct DOE to disclose Classified Information to Nevada representatives (holding an appropriate security clearance) over DOE’s objection as the originating agency. These issues are appropriately considered in the context of a live controversy.” *See U.S. Department of Energy (High Level Waste Repository) (Memorandum and Order) slip op. at 5 (Sept. 8, 2008) (emphasis in original).*

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<sup>3</sup> The provisions of this Sixth Case Management Order do not apply to NRC staff, counsel, consultants, and contractors with respect to Classified Information that the NRC is entitled to receive apart from its role as a litigant in this proceeding (*e.g.*, information available to, or required to be submitted to, the NRC by statute, regulation, or license condition or information submitted to the NRC in support of a requested licensing action). Such information is subject to internal NRC requirements governing the treatment of Classified Information. *See* NRC Management Directive 12.2, “Classified Information Security Program.” The provisions of this Sixth Case Management Order do apply to NRC staff, counsel, consultants, and contractors with respect to Classified Information that NRC would not be entitled to receive except by virtue of an Order in this proceeding. The provisions of this Sixth Case Management Order also do not apply to DOE staff, counsel, consultants, and contractors with respect to Classified Information in this proceeding because such information is otherwise subject to protection pursuant to internal DOE Orders. *See* DOE Manual 470.4-4, “Information Security”; DOE Order 475.2, “Identifying Classified Information”.

B. Reporting Unauthorized Access or Disclosure.

If Nevada or its Representatives have knowledge that any person has obtained unauthorized access to Classified Information in this proceeding, or that a document containing Classified Information has been lost or misplaced, Nevada shall provide immediate written notice to the PSO and the DOE about the unauthorized access. This notice is in addition to any other reporting obligations that each individual has who holds a security clearance. If DOE has knowledge that any person has obtained unauthorized access to Classified Information in this proceeding, then it may seek appropriate relief from the Board, or other Atomic Safety and Licensing Board, and/or elsewhere to protect the Classified Information from further unauthorized dissemination.

C. Withdrawal of Classified Information Protection.

If the DOE withdraws its claim that a document that it has submitted to the NRC requires Classified Information protection, then DOE shall as soon thereafter as practicable add the document to its LSN document collection in full or redacted text or header-only format as appropriate. Nevada and the NRC Staff likewise must make available on the LSN as soon thereafter as practicable, and in full or redacted text or header-only format as appropriate, all derivative documents based on such document that were created by its Representatives and that qualify as documentary material.

D. Accounting Records.

Nevada does not intend to establish its own secure facility in which its Representatives could possess Classified Information. Rather, Nevada intends to use an NRC or DOE secure facility to review Classified Information covered by this Protective Order, and to generate any classified contentions based upon that information. Because all Classified Information will

remain at the NRC's or DOE's secure facility (except for classified filings, discussed below), there is no need for Nevada to account for its records that contain Classified Information.

E. Inadvertent Public Release.

Any unauthorized access or public release of Classified Information, regardless of when such unauthorized access or release occurs, does not relieve Parties from complying with this Case Management Order or the attached Protective Order. Information formerly designated as Classified Information that is properly disclosed in the public record of this proceeding is no longer subject to this Sixth Case Management Order.

### **III. REDACTION OF CLASSIFIED INFORMATION**

Once Nevada has reviewed documents containing Classified Information covered by this Protective Order, Nevada may ask DOE to redact small portions of these documents (*i.e.*, approximately 10 pages) in order to allow Nevada to submit one or more contentions that do not include or reference Classified Information. DOE has agreed to initiate a redaction review of such small portions within two weeks from receiving Nevada's request.

### **IV. PROCESS FOR REQUESTS FOR ACCESS TO CLASSIFIED INFORMATION**

A. Access Requests.

Nevada's Representatives can request access to the documents that DOE has submitted to the NRC that contain Classified Information by submitting in writing to the PSO:

1. the names of its Representatives for whom access is requested,
2. for each such Representative, information to demonstrate a need to know which:
  - i. demonstrates technical or legal competency necessary to evaluate the Classified Information to which he/she seeks access;
  - ii. states that he or she will use the Classified Information solely for the purpose of participating in any Commission proceeding concerning DOE's application

for construction authorization for a Spent Nuclear Fuel and High-Level Waste Geologic Repository at Yucca Mountain or any appeal to a federal court from such proceeding; and

iii. identifies the specific documents and the particular subject of inquiry for which the Classified Information is sought.

3. the social security number (or any other information required by the PSO) to confirm that the Representatives have the appropriate security clearance;

4. the citizenship of the Representative (including dual citizenships);

5. for each such Representative, a signed and notarized Non-Disclosure Agreement (Appendix B to this Sixth Case Management Order).

B. Access Determination.

The PSO will verify that Nevada has submitted the required information and Non-Disclosure Agreement, that Nevada's named Representatives' security clearances are active, and that each named Representative is a U.S. Citizen.<sup>4</sup> If the security clearances are active, and the Representatives are U.S. Citizens, the PSO will forward the documents described above in Section IV.A., to the DOE's Facility Security Officer no later than five (5) calendar days after receipt of Nevada's request.

DOE will have ten calendar days after receipt of the documents to make a need to know determination for each Representative, and to communicate the results of that determination to the PSO, who shall communicate it to the named Nevada Representatives. If access is granted, the PSO will then assist the Parties in arranging for the named Nevada Representatives to access the Classified Information at a DOE or NRC Secure Facility, which shall include forwarding a

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<sup>4</sup> All of the classified information that DOE has submitted to the NRC to date is Restricted Data, for which U.S. Citizenship is, with one very limited exception that the Parties agree is not applicable here, a prerequisite for access.



Request for Visit or Access Approval (attach/reference appropriate VAL form) to the NRC or DOE facility where the Parties agree Nevada's Representatives will have access.

C. Process for Resolving Disputes Concerning Classified Information.

The Board is mindful of the Commission's ruling in CLI-08-21 that any Board Order issued at this time regarding how to resolve disputes over classified information must not "*substantively decide . . . the NRC's authority to (1) review and/or overturn another federal agency's classification determinations made on information associated with the Yucca Mountain construction authorization application; and (2) direct DOE to disclose classified information to Nevada representatives (holding an appropriate security clearance) over DOE's objection as the originating agency*" because "[t]hese issues are appropriately considered in the context of a live controversy." (Emphasis in original). The Board believes the procedures outlined below provide a procedural framework without substantively deciding the issue.

1. If a Nevada Representative has been denied access to Classified Information, or Nevada believes that a decision on whether to grant access has been unreasonably delayed or that information claimed to be classified is not properly classified, Nevada may file a motion consistent with 10 C.F.R. § 2.323 and, where applicable, 2.705(h), and 2.709(d). The motion shall address whether the Board has authority to resolve the issues in question.

2. Before filing its motion, Nevada must in good faith confer with the DOE. The certification by the Requester in the motion shall specify the results of the discussion of these issues.

3. Within seven business days after such written motion has been filed, only the DOE may file a response to the motion, along with any supporting affidavits or other accompanying evidence. Submission of supporting affidavits or other accompanying evidence

that contain Classified Information must be submitted in camera to the Board. The response to the motion may also address whether the Board has authority to resolve the issues in question.

4. The Requester shall have no right of reply, except as permitted by the Board pursuant to 10 C.F.R. § 2.323(c).

## **V. INFORMATION PROTECTION REQUIREMENTS**

1. Upon receiving access to Classified Information, Receivers must prevent the unauthorized dissemination of the information. A Receiver must treat notes, memoranda, work product, etc. that are based—even in part—upon Classified Information as Classified Information until an authorized derivative classifier certifies otherwise. Specific protection requirements for Classified Information are set forth in the Protective Order (Appendix A).

2. Instructions for how to submit filings (*e.g.*, contentions) that contain Classified Information (“classified filings”) are as follows.

a. Because Nevada will not have its own Secure Facility, it must contact the PSO to arrange to prepare or review any classified filing at an NRC or DOE Secure Facility.

b. Classified filings shall be filed with the PSO in lieu of the Board, and served only on the NRC and DOE because they are the only Parties that have Secure Facilities. An unclassified statement of the classified filing should, if practicable, be submitted with the Classified Information in accordance with 10 C.F.R. § 2.910.

c. The Party submitting the classified filing also must simultaneously file through the EIE an unclassified notice which will notify the other Parties of the classified filing. The EIE notice must provide an unclassified general description (*e.g.*, Petition, Motion to Dismiss, Answer, or transcript) and general scope (*e.g.*, “challenging TSD Section [X.X.X]”) of

the classified filing. The EIE notice shall not include on the Certificate of Service any classified mailing addresses.

d. All classified filings submitted to the PSO and served on the DOE and NRC shall be placed in two sealed envelopes or other containers, by the Party submitting the document. The inner envelope or container shall be marked front and back indicating that it contains Restricted Data. The form attached as Appendix C to this Sixth Case Management Order shall be attached to the outside of the inner envelope or container and shall contain:

- (i) The words "Classified Information";
- (ii) The caption of this proceeding;
- (iii) The name of the Party on whose behalf the document is being filed, and the name(s) of Counsel of record for that Party; and
- (iv) The following statement:

"This envelope [or other container] contains classified information. It is sealed and is not to be opened nor its contents displayed or revealed except in accordance with U.S. Nuclear Regulatory Commission Case Management Order and Protective Order PAPO-00-\_\_."

e. An outer envelope that is addressed to the PSO, the NRC and the DOE, as applicable, at the designated address shall be marked with the words "To Be Opened by the Addressee Only." The outer envelope must not indicate that its contents contain Classified Information. The PSO will provide classified mailing addresses for the Parties, as applicable.

f. All classified filings must be reviewed, marked and appropriately packaged (including double wrapping) when being transmitted outside the facility or location where it was generated or obtained to another approved facility or location in accordance with

NRC and DOE regulations, as applicable. This includes new documents generated from classified discussions or other classified documents.

## VI. MISCELLANEOUS

### A. Reservation of Rights.

Nothing in this Sixth Case Management Order, or any appendices attached hereto, shall preclude:

1. Any Party from objecting to the introduction or use of Classified Information in this proceeding;
2. DOE from arguing that the NRC does not have the authority to override DOE's determination that a Requestor lacks the appropriate security clearance, lacks a need to know, or that a document contains Classified Information; and
3. DOE from finding in the course of this proceeding that all or part of previously-designated Classified Information need no longer be protected.

It is so ORDERED.

The Pre-license Application  
Presiding Officer Board\*

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Alex S. Karlin  
ADMINISTRATIVE JUDGE

*/RA/*

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Alan S. Rosenthal  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January \_\_, 2009

**Appendix A to Sixth Case Management Order**

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before Administrative Judges:**

**Thomas S. Moore, Chairman  
Alex S. Karlin  
Alan S. Rosenthal**

<b>In the Matter of</b>	)	<b>Docket No. PAPO-00</b>
	)	
<b>U.S. DEPARTMENT OF ENERGY</b>	)	<b>ASLBP No. 04-829-01-PAPO</b>
	)	
<b>(High Level Waste Repository: Pre-Application Matters)</b>	)	<b>January ____, 2009</b>
	)	

**PROTECTIVE ORDER**

(Regarding State of Nevada's Access to Classified Information)

- (1) Except where otherwise expressly defined in this Protective Order, all terms used herein shall have the same meaning and definition as in the Sixth Case Management Order, to which this Protective Order is attached as Appendix A.
- (2) No Party or Representative can have access to Classified Information in this proceeding unless such Party or Representative has the appropriate security clearance, has a need to know the Classified Information, and is a United States Citizen.
- (3) Access under this Protective Order to Classified Information, including but not limited to any classified notes, memoranda, or work product based thereon, shall only be had and used for purposes of this proceeding, including any appeals therefrom.
- (4) Prior to the deposition of any witness who may be shown or asked about Classified Information in a deposition, deposing Counsel shall provide written notice to DOE's Counsel (and to Counsel who have entered a Notice of Appearance for all other Parties) no later than 20 calendar days prior to the date of the deposition, via overnight mail. The Party seeking to conduct a deposition shall comply with the requirements of Section IV.A. of the Sixth Case Management Order.
  - (a) The Party responsible for the Secure Facility where the classified deposition will take place must ensure—through written confirmation from the PSO or a written Visitor Access Form completed by a the Security Officer for the Party, or a combination of both—that all individuals attending the deposition, including the court reporter, are authorized to have access, and that any equipment the

court reporter uses in recording, transcribing and otherwise preparing a transcript of the deposition testimony is approved for use in handling Classified Information. Anyone who does not have the appropriate clearance or need to know will be excluded. For any person who has not previously been given access to the Classified Information that will be addressed in the deposition pursuant to the terms of this Protective Order, the Party with whom that person is affiliated must submit the information required by Section IV.A of the Sixth Case Management Order to the PSO, who will request a need to know determination from the DOE. DOE's Counsel shall notify the PSO of any objection by the DOE to the proposed access by said individuals within 10 calendar days of receipt of the notice.

- (b) It is possible that deponents may give answers during an unclassified deposition that disclose Classified Information. Counsel may not, however, initiate such disclosure by asking questions or using documents containing Classified Information without proper authorization in accordance with this Protective Order. If a deponent gives answers that disclose Classified Information in an unclassified deposition, Counsel shall not ask follow-up questions of the deponent that contain Classified Information that was previously disclosed by the deponent until authorized in accordance with this Protective Order.
  - (c) Transcripts of deposition testimony that may contain Classified Information must be reviewed by a DOE authorized derivative classifier and identified and marked as containing Classified Information, if applicable. All portions of transcripts of deposition testimony that contain Classified Information shall be bound separately and labeled "Classified Information," and if filed with the NRC, shall be filed in accordance with this Protective Order. Counsel for the Party on whose behalf Classified Information may be presented, quoted, or referred to shall make arrangements to ensure that the portions of the transcripts of deposition testimony containing Classified Information are properly identified and marked.
- (5) A Party and its Representatives shall not disclose the substance or contents of any Classified Information except to persons who meet the requirements for such disclosure pursuant to the 6th Case Management Order and this Protective Order.
  - (6) All documents selected for copying during a site visit to access Classified Information, or generated by a Party or its Representatives, during such a visit, whether marked or unmarked, will be screened and appropriately marked by the Facility Security Officer, or a classifying official authorized by the DOE. Documents that are screened and determined to contain no Classified Information will be appropriately marked and turned over to the requesting Party. Documents that are determined to contain Classified Information will be appropriately classified and marked.
  - (7) Classified Information shall at all times be kept secure at a Government-approved location which has a facility for storage of the appropriate level and category of classified material. Depositions conducted in accordance with Paragraph (4) shall only occur in a secure facility under this paragraph.

- (8) Receivers permitted to inspect documents containing Classified Information pursuant to this Protective Order may make written notes of the documents and their contents. However, notes, excerpts, photographs, logs or filings taken from any documents containing Classified Information shall be reviewed for classification and marked with the appropriate classification markings by a DOE or NRC authorized derivative classifier and shall not be disseminated or disclosed in any manner or form to any person not authorized to review or inspect the same, and shall be subject to the provisions of this Protective Order. Such notes, excerpts, photographs, logs or filings will be maintained under appropriate security conditions as set forth in this Protective Order. No person permitted to inspect documents containing Classified Information shall copy or reproduce any parts of said documents or their contents in any manner or form, except as provided in this Protective Order. No Party waives any privilege applicable to notes, including work product, or other materials they generate by giving them to the DOE for classification review. Those DOE personnel reviewing a Party's documents for classification may only discuss the contents of privileged documents with Representatives of the Party generating the privileged documents.
- (9) Classified Information shall not be discussed outside of a Secure Facility. Classified Information shall not be discussed or transmitted over any standard commercial telephone instruments or non-secure communication systems. Classified Information shall not be discussed, transmitted, or processed in any manner on any computer, word processing system, copy machine, or fax that has not been specifically approved by DOE or NRC.
- (10) Whenever Classified Information is or may be presented, quoted, or referred to in any hearing in this proceeding, including any appeals, and subject to the provisions of paragraph (2) above, the PSO, DOE or the NRC, as applicable, shall make arrangements to ensure that only persons qualified under this Protective Order have access to such information, are present during such presentation, quotation, or reference, and that all portions of transcripts containing such information are bound separately, labeled "Classified Information." Specific arrangements for handling Classified Information at the hearing will be resolved as a pre-hearing matter held in camera.
- (11) Nothing in this Order shall relieve any person from safeguarding Classified Information in accordance with applicable provisions of the laws of the United States and rules, regulations or orders of any government agency.
- (12) A Party's improper or unauthorized production or disclosure of a classified document during the course of this proceeding, or failure to protect the document in accordance with this Order, shall not constitute a waiver of the classified nature of the document. This includes an improper or unauthorized release by the DOE.
- (13) A copy of this Protective Order shall issue forthwith to Counsel for the Parties to this proceeding who shall advise their respective clients of the contents of this Protective Order, as well as furnish their respective clients with a copy of this Protective Order.
- (14) Nothing contained in this Protective Order shall be construed as a waiver of any rights or regulations of DOE or NRC.

IT IS SO ORDERED

FOR THE PRE-LICENSE  
APPLICATION PRESIDING BOARD

/RA/

Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Dated at Rockville, Maryland

this \_\_\_\_\_ day of January, 2009



**Appendix B to Sixth Case Management Order**

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before Administrative Judges:**

**Thomas S. Moore, Chairman  
Alex S. Karlin  
Alan S. Rosenthal**

<b>In the Matter of</b>	)	<b>Docket No. PAPO-00</b>
	)	
<b>U.S. DEPARTMENT OF ENERGY</b>	)	<b>ASLBP No. 04-829-01-PAPO</b>
	)	
<b>(High Level Waste Repository: Pre-Application Matters)</b>	)	<b>January ____, 2009</b>
	)	

**NON-DISCLOSURE AGREEMENT  
(Regarding Classified Information)**

Under penalty of perjury, I hereby declare my understanding that access to Classified Information is provided to me pursuant to the terms and restrictions of the Protective Order governing Classified Information, dated **[DATE]**, that I have been given a copy of and have read that Protective Order; and that I agree to be bound by it as well as the terms of the Sixth Case Management Order, dated **[DATE]**.

I understand that direct or indirect unauthorized disclosure, retention, or negligent handling of Classified Information reasonably could, at a minimum, be expected to cause damage to the national security of the United States or be used to advantage a foreign nation. I will never divulge Classified Information disclosed to me to anyone who is not authorized to receive it, in conformity with the Sixth Case Management Order or the Protective Order governing Classified Information.

I acknowledge that a violation of this Agreement, the Sixth Case Management Order, or the Protective Order governing Classified Information, which incorporates the terms of these

Orders, constitutes a violation of an order of the U.S. Nuclear Regulatory Commission and may result in the imposition of sanctions as the Pre-Licensing Application Presiding Officer (PAPO) Board, a subsequent Presiding Officer in this proceeding, or the Commission may deem to be appropriate. Such sanctions may include, but are not limited to, refusal to consider a filing by the offending receiver; denial of the right to receive documents under this or any other protective order in this proceeding; denial of the right to cross-examine or present evidence; refusal to allow the counsel, consultant, or other representative of a Receiver to participate in this proceeding; dismissal of one or more of a Receiver's contentions; or dismissal of the participant from the proceeding. Sanctions may also include, and are not limited to, referral of the violation to appropriate bar associations and/or other disciplinary authorities.

I also acknowledge that any unauthorized disclosure of Classified Information may constitute violations of United States criminal law, including, but not limited to, the provisions of Title 18, United States Code, Sections 793, 794, and 798; and Title 42, United States Code, Section 2274. In addition, anyone who violates the terms of this Protective Order may be charged with contempt and may be subject to civil and/or criminal penalties. Persons are further advised that any breach of this Protective Order may result in the termination of their access to Classified Information as well as access by the Party with whom they are affiliated.

WHEREFORE, I do solemnly agree to protect such Classified Information as may be disclosed to me in this Yucca Mountain licensing proceeding, in accordance with the terms of this Agreement.

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn or affirmed before me this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires on: \_\_\_\_\_

**Appendix C to Sixth Case Management Order**

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before Administrative Judges:**

**Thomas S. Moore, Chairman  
Alex S. Karlin  
Alan S. Rosenthal**

<b>In the Matter of</b>	)	<b>Docket No. PAPO-00</b>
	)	
<b>U.S. DEPARTMENT OF ENERGY</b>	)	<b>ASLBP No. 04-829-01-PAPO</b>
	)	
<b>(High Level Waste Repository: Pre-Application Matters)</b>	)	<b>January ____, 2009</b>
	)	

**THIS ENVELOPE (OR OTHER CONTAINER) CONTAINS CLASSIFIED INFORMATION. IT IS SEALED AND IS NOT TO BE OPENED EXCEPT BY AUTHORIZED INDIVIDUALS IN A SECURE FACILITY APPROVED BY THE U.S. NUCLEAR REGULATORY COMMISSION OR THE U.S. DEPARTMENT OF ENERGY. ITS CONTENTS MAY NOT BE DISPLAYED OR REVEALED EXCEPT BY NRC ORDER.**

The information contained in this envelope or other container has been filed by the Party identified below:

Party: \_\_\_\_\_

Counsel: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD**

In the Matter of:	)	January 16, 2009
U.S. Department of Energy	)	Docket No. PAPO-00
(High-Level Waste Repository: Pre-Application Matters)	)	ASLBP No. 04-829-01-PAPO

CERTIFICATE OF SERVICE

I hereby certify that copies of the “Sixth Case Management Order (Regarding State of Nevada’s Access to Classified Information)” have been served today on the following persons by the Nuclear Regulatory Commission’s Electronic Information Exchange.

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