

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	May 29, 2009

STATE OF NEVADA'S BRIEF IN OPPOSITION TO NRC STAFF APPEAL

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STATE OF NEVADA'S BRIEF IN OPPOSITION TO NRC STAFF APPEAL

NRC Staff ("Staff") appealed from the Atomic Safety and Licensing Boards' ("ASLBs") decision admitting 31 of Nevada's contentions. Staff did not appeal from the ASLBs' admission of 191 of Nevada's remaining contentions. For the reasons given below, the State of Nevada ("Nevada") opposes Staff's appeal.

I. REVIEW STANDARD

Nevada agrees with Staff discussion of the Commission review standard (Brief at 4-5).

II. STAFF'S ARGUMENT THAT LEGAL ISSUES WERE ADMITTED WITHOUT A FINDING OF COMPLIANCE WITH 10 C.F.R. § 2.309(f)(1) LACKS MERIT

Staff argues (Brief at 7-10) that 28 Nevada contentions were admitted as legal issue contentions without a finding of compliance with 10 C.F.R. § 2.309(f).¹ While Staff asked that these contentions be dismissed, Staff failed to brief any arguments supporting the dismissal of any of these 28 contentions, except NEV-SAFETY-161, discussed below.² Therefore, at most, Staff's brief supports remand to the ASLBs to make additional findings. However, even a remand is unnecessary because Staff's argument makes no sense, misreads 10 C.F.R. § 2.309(f), and ignores relevant regulatory history.

¹ For simplicity, identical NEV-SAFETY-146 and 201 are counted as two contentions.

² NRC case law is clear that "general arguments [that] do not come to grips with the Board's reasons . . . are not nearly enough . . ." and that claims of error are waived when they are inadequately briefed on appeal. *Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3)*, CLI-04-36, 60 NRC 631, 639 (2004). See also *FirstEnergy Nuclear Operating Company (Davis-Besse Nuclear Power Station, Unit 1)*, CLI-04-23, 60 NRC 154, 158 (2004); *Advanced Medical Systems, Inc. (One Factory Row, Geneva, Ohio)*, CLI-94-06, 39 NRC 285 (1994); *General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2)*, ALAB-926, 31 NRC 1, 10, 12 (1990). Staff also suggests (Brief at 6, n.11) that the Commission exercise its supervisory power and remand most of the ASLBs' admission decisions for further explanation. Nevada submits that the ASLBs' approach to drafting its Memorandum and Order was both reasonable and necessary given the deadline for decision in Appendix D of Part 2 and Staff's and the Department of Energy's ("DOE") litigation tactic of opposing essentially all contentions, which required the filing of thousands of pages of briefs. All told, more than 12,000 pages of petitions, answers, and replies were filed. Moreover, a remand will make it impossible to adhere to the schedule in Appendix D to 10 C.F.R. Part 2 and almost certainly delay any final Commission decision beyond three years. Finally, the fact that the ASLB members collectively possessed more than 80 years' experience as NRC judges (Memorandum and Order at 101) speaks volumes.

Staff argues first that 10 C.F.R. § 2.309(f)(1)(v) requires that all contentions raising a "pure legal issue" be supported by facts and expert opinions. This makes no sense. Legal positions are supported by legal citations and legal argument, not facts and expert opinions, and Staff does not and cannot explain how facts and expert opinions would necessarily be relevant to resolving a legal issue. Staff argues (Brief at 7) that a petitioner must "allege the facts that show why resolution of a legal question implicates the Commission's licensing decision that is the subject of the proceeding." However, there is no "licensing decision" in this proceeding that can be "implicated" by a legal question in a contention, and in any event, the materiality of a legal issue (its "implication") is always apparent from the nature of the legal issue, and there is no need to "allege the facts."³

10 C.F.R. § 2.309(f)(1)(v) is carefully drafted to require "a concise statement of the alleged facts or expert opinions . . . *on which the petitioner intends to rely at hearing*" [emphasis added]. The "hearing" mentioned here is the evidentiary hearing. Petitioners do not rely on facts or expert opinions to resolve legal issues at an evidentiary hearing, and therefore, 10 C.F.R. § 2.309(f)(1)(v) does not require them. This is confirmed by regulatory history. In promulgating its contention requirements (originally 10 C.F.R. § 2.714(b)(2)), the Commission was clear that "purely legal contentions . . . may be admitted as issues in the proceeding. However, they will not be a part of an evidentiary hearing, but rather, will be handled on the

³ Some legal issue contentions are based on factual premises. In such cases, Nevada carefully and properly pled the necessary factual premises in accordance with 10 C.F.R. § 2.309(f)(1). The ASLBs' Memorandum and Order does not hold that such factual premises can be supplied without regard for any of the applicable requirements in 10 C.F.R. § 2.309(f)(1), and in many cases, the factual premises are apparent on the face of the License Application, and compliance with 10 C.F.R. § 2.309(f)(1) is straightforward if not trivial. Staff's brief lists the legal issue contentions at 8, but does not offer any legal argument to support the proposition that any particular Nevada legal issue contention violates 10 C.F.R. § 2.309(f)(1) (except for NEV-SAFETY-161, discussed below) and in accordance with established case-law (*supra* n.2) has waived any argument that the factual premises for any particular Nevada legal issue contention have not been pled properly.

basis of briefs and oral arguments."⁴ No NRC adjudicatory decision supports Staff's novel theory. The one case Staff cites, the ASLB's Memorandum and Order in *Calvert Cliffs 3 Nuclear Project, LLC and Unistar Nuclear Generating Services LLC (Calvert Cliffs Unit 3)*, LBP-09-04, __ NRC __ (2009), does not discuss whether legal issues must be supported by facts and expert opinions and does not bind the Commission in any event.

Staff next argues that the ASLBs improperly admitted 8 of the 28 contentions "where the legal issue is within the scope of this proceeding, material to the NRC's licensing decision, or otherwise compliant with 10 C.F.R. § 2.309(f)(1)" (Brief at 8). Staff conflates contention admissibility and the merits. Staff briefed only identical NEV-SAFETY-146 and NEV-SAFETY-201, so it has effectively waived issues as to the other six.⁵ However, Staff's discussion of NEV-SAFETY-146 and NEV-SAFETY-201 amply illustrates the defect in Staff's argument. Staff notes that that NEV-SAFETY-146 and NEV-SAFETY-201 "raise[s] one very specific legal issue—whether Part 63 requires that the application include final design information" (Brief at 9-10, referring to Nevada's Reply at 483), and Staff then jumps to the conclusion that this legal issue is a contention admissibility requirement that should have been addressed and resolved against Nevada by the ASLB in accordance with 10 C.F.R. § 2.309(f)(1)(iv). Not so.

Whether Part 63 requires that the application include final design information obviously presents a material issue within the meaning of 10 C.F.R. § 2.309(f)(1)(iv), because the Commission cannot determine "whether the application satisfies . . . the NRC's standards in 10 C.F.R. Part 63 for a construction authorization" (Notice of Hearing (slip opinion) at 2) without

⁴ 54 Fed. Reg. 33,168, 33,172 (Aug. 11, 1989) (Notice of Final Rulemaking on changes to Part 2, including 10 C.F.R. § 2.714). The current rule, 10 C.F.R. § 2.309(f), "incorporate[s] the longstanding contention support requirements of former §2.714" 69 Fed. Reg. 2,182, 2,221 (Jan. 14, 2004).

⁵ *Supra* note 2.

resolving this issue. Nevada so argued in its Petition (at 171, 1040) and in its Reply (at 483, 641). This demonstration of the materiality is all that 10 C.F.R. § 2.309(f)(1)(iv) requires. Whether NEV-SAFETY-146 and NEV-SAFETY-201 present a *correct* reading of Part 63 goes not to admissibility, but to the merits. As the Commission stated in promulgating its contention requirements, "purely legal contentions . . . may be admitted as issues in the proceeding. However, they will not be a part of an evidentiary hearing, but rather, will be handled on the basis of briefs and oral arguments."⁶ And in admitting NEV-SAFETY-146 and NEV-SAFETY-201, the ASLB quite obviously made no decision on the merits of the legal question presented therein. Nevada is fully prepared to support NEV-SAFETY-146 and NEV-SAFETY-201 by legal briefs and oral argument when these are scheduled.⁷

III. NEV-MISC-003 IS AN ADMISSIBLE CONTENTION

Staff argues (Brief at 23-24) that NEV-MISC-003 is not admissible because Nevada did not cite to any Commission regulation requiring that the License Application be a "stand-alone" document. This ignores what Nevada said in support of its contention. NEV-MISC-003 reads as follows:

Error of Omission: The LA SAR is insufficient on its face because it cannot be determined whether its safety conclusions are correct without also considering about 196 references listed therein, but as provided in LA General Information Subsection 1.4.1 at 1-21, DOE refuses to incorporate these references into the LA.

In its Petition (at 1149-1150), Nevada stated in support of NEV-MISC-003 that:

10 C.F.R. § 63.31 provides that safety findings are to be made "on review and consideration of an application," and 10 C.F.R. § 63.24 reinforces the concept that the LA is the basis for the NRC's safety review by requiring that the application be as complete

⁶ *Supra* note 3.

⁷ Conflating admissibility requirements with the merits of legal issue contentions would be especially prejudicial in this proceeding. Nevada was forced to reply to DOE's and Staff's indiscriminate objections to Nevada's contentions within a very short timeframe and full briefing of the merits of every legal issue contention would have been impossible.

as possible in light of reasonable available information. This contention raises the issue whether the safety findings required by 10 C.F.R. § 63.31(a) can be made on the basis of the information in the SAR itself and the closely related issue whether DOE has complied with 10 C.F.R. § 63.24.

This contention is clear in alleging that the application must be sufficiently complete to support all of the necessary *Commission* compliance and safety findings, and Nevada cited to NRC regulations to support its contention. The contention does not address Staff's review practice, and Staff's ability to issue RAIs is irrelevant. Moreover, the fact that these references are publicly available and that parties may refer to all of the references in this proceeding is irrelevant if the application itself is deficient for not incorporating them by reference.

IV. NEV-SAFETY-001 AND 002 ARE ADMISSIBLE

NEV-SAFETY-001 argues that DOE lacks the necessary integrity (safety culture) to be an NRC licensee, and NEV-SAFETY-002 argues that DOE lacks the necessary management ability to construct and operate the repository safely. Nevada provided extensive documentary support for the proposition that DOE lacks the necessary safety culture and management ability, and Staff does not claim that Nevada's contentions lack specificity or factual support. Instead, Staff argues that these two contentions are inadmissible because, in designating DOE as the sole applicant for a license for Yucca Mountain, Congress also deemed DOE qualified to be an NRC licensee notwithstanding a lack of safety culture or management ability. Carried to its logical conclusion, Staff's legal theory would mean that NRC would license DOE to construct and operate the Yucca Mountain repository notwithstanding irrefutable evidence that DOE puts safety last, not first, and would be managerially incapable of putting safety first, not last, even if it tried to do so.

Staff offers absolutely no legal support for this remarkable proposition, does not (and cannot) dispute legal authority to the contrary, does not (and cannot) reconcile its theory with 10

C.F.R. § 63.21(c)(22) (which imposes requirements related to DOE management), does not (and cannot) reconcile its theory with its suggestion (Brief at 25) that DOE safety culture and management would be subject to post-license NRC oversight, and does not (and cannot) offer any specific rebuttal to the ASLB's well considered opinion admitting both contentions.

Clearly, Staff has no credible legal argument, but instead uses an appeal to make sure the Commission understands the "policy issue" associated with the admission of these two contentions. Nevada respectfully submits that the "policy issue" of whether NRC should pass judgment on the safety culture and management competence of another federal agency (DOE) was resolved by the Congress when it enacted Section 114(d) of the Nuclear Waste Policy Act ("NWPA"), 42 U.S.C. § 10134(d), which provides that NRC shall judge DOE's Yucca Mountain application "in accordance with the laws applicable to such applications." Congress considered whether, for policy reasons, DOE should be granted some exception from "the laws applicable to such applications" because it granted one such exception, providing a specific time deadline for a final decision on the construction authorization application. Congress specifically made no exception for regulatory laws relating to matters of integrity and management competence.

Designating DOE as the applicant is manifestly not the same as designating DOE as fully qualified, and nothing in the NWPA or its legislative history supports the proposition that, in designating DOE as the applicant, Congress also concluded that DOE possesses the requisite attributes of an applicant and licensee. Staff completely ignores Section 114(f)(5) of the NWPA, 42 U.S.C. § 10134(f)(5), which provides that "[n]othing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission," and which was specifically reenacted when Congress amended the NWPA in 1987 to designate DOE as the applicant for the Yucca Mountain repository. *See* Section 5011(l)

of the Nuclear Waste Policy Amendments Act of 1987. Adequate character, safety culture, and management ability are "licensing requirements of the Nuclear Regulatory Commission," imposed pursuant to Section 182a of the Atomic Energy Act of 1954, as amended ("AEA"), 41 U.S.C. § 2232(a), and in enacting the original NWPA in 1982, and in amending it in 1987, Congress specifically preserved NRC's authority under this subsection to impose safety culture and management requirements on DOE.

Moreover, as indicated above, Congress provided in Section 114(d) of the NWPA, 42 U.S.C. § 10134(d), that the Commission must judge DOE's application "in accordance with the laws applicable to such applications," thereby sweeping in the full plethora of NRC case law making licensee character and management qualifications important considerations in reviewing the application and in a licensing hearing. *E.g., Georgia Power Company (Vogtle Electric Generating Plant, Units 1 and 2)*, CLI-93-16, 38 NRC 25, 31-32 (1993); *Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1)*, CLI-85-9, 21 NRC 1118, 1136-37 (1985); *Piping Specialists, Inc. (Kansas City, Missouri)*, 36 NRC 156 (1992); *Louisiana Energy Services, LP (Claiborne Enrichment Center)*, LBP-91-41, 34 NRC 332, 343, 359 (1991).

Staff cannot reconcile its unsupported legal theory with the NRC's license application requirements in 10 C.F.R. § 63.21(c)(22)(i) and (ii), which ask DOE to describe its "organizational structure . . . as it pertains to construction and operation of the geologic repository operations area" and to "identif[y] key positions that are assigned responsibility for safety at and operation of the geologic repository operations area." If DOE were deemed qualified by Congress, these application requirements would be unnecessary and in excess of NRC authority. Similarly, if DOE were deemed qualified by Congress, the "ongoing, performance-based inspection program" mentioned by Staff (Brief at 25) could not address

matters of safety culture or management ability. If DOE safety culture or management deficiencies were revealed to be a root cause of significant regulatory violations, under Staff's theory, NRC could do nothing but beg DOE to do better. But in fact, Staff offers nothing to suggest that it stands powerless to address these problems or that DOE cannot be treated just like any other applicant. Indeed, Section 182a of the AEA, 42 U.S.C. § 2232(a), which authorizes the Commission to require that applicants describe their "qualifications" and "character," is cited as a source of authority for 10 C.F.R. Part 63 at the beginning of that Part. Obviously, when Part 63 was promulgated, the Commission understood that Section 182a applied to DOE and that DOE management qualifications and character (safety culture) could be important and material issues.

Finally, Staff tries to establish that the ASLB erred in finding that DOE is a "person" within the meaning of Section 11s of the AEA, 42 U.S.C. § 2014(s). While Nevada agrees with Staff that this issue is not dispositive (Brief at 25), Nevada also believes Staff is wrong and the ASLB is right. The NRC holds (and has held since it was created in 1975) that DOE "shall be considered a person . . . to the extent that its facilities and activities are subject to the licensing and regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244)."⁸ Because DOE's Yucca Mountain repository is subject to NRC licensing under both the NWPA *and* Sections 202(3) and 202(4) of the Energy Reorganization Act of 1974 ("ERA"), 42 U.S.C. § 5842 (3) and (4), DOE is indeed a "person."⁹

⁸ *E.g.*, 10 C.F.R. §§ 30.4, 40.4, 50.2, 70.4. There is no corresponding definition of "person" in Parts 60 and 63 because DOE is the only entity subject to those parts and no definition of "person" is necessary.

⁹ Section 202 of the ERA is cited as authority for 10 C.F.R. Parts 60 and 63.

V. NEV-SAFETY-161 IS ADMISSIBLE

NEV-SAFETY-161 contends that DOE's application violates the requirement that there be "multiple barriers" because post-closure repository safety depends upon a single element of the engineered barrier system – the drip shield. Nevada pointed out (Petition at 858-859), and Staff does not dispute, that the EPA dose standards are exceeded if the waste packages are not protected by the drip shields. Staff argues in its Brief that Nevada's argument is the same as the one rejected by the Court of Appeals in *NEI v. EPA*, 373 F.3d 1251, 1294-5 (D.C. Cir. 2004), that Part 63 does not preclude the possibility that safety would depend on a single barrier, and that, in any event, the contention relies on "speculative scenarios" and an "implied premise that future events are inherently unknowable" that Staff "refutes" in its Answer (Brief at 27-28). Staff is wrong on all counts.

First, *NEI v. EPA* does not require the dismissal of this contention. In contrast to 10 C.F.R. Part 60, 10 C.F.R. Part 63 included no quantitative performance measures on individual barriers in order that "DOE is provided flexibility . . . and . . . may place greater or lesser reliance on individual components of the repository system when deciding how best to achieve the overall safety objective." 66 Fed. Reg. 55,732, 55,758 (Nov. 2, 2001). Nevada's argument in *NEI v. EPA* was that Part 63's failure to include pre-established, quantitative subsystem performance requirements violated section 121(b)(1)(B) of the NWPA, 42 U.S.C. § 10141(b)(1)(B). NEV-SAFETY-161 does not complain about a lack of predetermined subsystem performance requirements, but about whether, after exercising the design flexibility that Part 63 gave it, DOE chose a repository design that complies with Part 63. No such issue was before the Court in *NEI v. EPA*. *NEI v. EPA* says nothing about whether any particular selection of barriers in a license application would be acceptable under Part 63, and therefore,

NEI v. EPA does not dispose of Nevada's contention, which asks for nothing more or less than what Part 63 requires.

Second, Staff argues that that Part 63 does not preclude the possibility that post-closure safety (compliance with the EPA dose standards) would depend on a single barrier, as is the case with DOE's proposed drip shields. Staff's argument is misleading and incomplete and ignores Part 63 and its regulatory history. There were significant interactions among the Commission, the Staff, and the Advisory Committee on Nuclear Waste ("ACNW") as Part 63 was being developed, especially on the subject of multiple barriers and defense-in-depth. These interactions culminated in a March 31, 2000 letter from the ACNW to the Commission (LSN# NRC000003289). In this letter, the ACNW summarized its understanding of what Part 63 would require with respect to multiple barriers and defense-in-depth as follows (emphasis added):

We understand that the staff's approach in the proposed regulation for demonstrating multiple barriers is to require that DOE demonstrate reliance on both natural and engineered barriers *and that the repository system not depend unduly on any single barrier*. We understand that the staff plans to require use of hypothetical calculations wherein barriers are assumed to perform to a lesser degree than anticipated, as a way of gaining insights into the contributions of barriers to overall repository performance. In addition, the staff may require in the rule that the results of the barrier underperformance analyses be compared to a numerical dose failure criterion. The staff also plans to provide more detailed guidance on acceptable methods to demonstrate compliance of multiple barriers in the Yucca Mountain Review Plan (YMRP). The ACNW has closely followed the development of draft 10 CFR Part 63.

The ACNW then concluded that:

In past advice, the Committee has endorsed the staff's general approach to address multiple barriers in the draft rule and has commended the staff for developing a regulation that captures the intent of risk-informed, performance-based (RIPB) regulation.

Therefore, both the ACNW and the Staff endorsed the policy, to be expressed in the final Part 63 rulemaking, that a proper risk-informed approach to multiple barriers and defense-in-depth would require that "*the repository system not depend unduly on any single barrier.*"

The notice of final rulemaking on Part 63 is in accord with the Staff's and the ACNW's recommendations. In the preamble to the final Part 63, just after stressing the need to give DOE flexibility in deciding how it wants to meet the performance objectives, the Commission stated explicitly that "[t]herefore, the emphasis should not be on the isolated performance of individual barriers, but rather on ensuring the repository system is robust, *and is not wholly dependent on a single barrier.*" 66 Fed. Reg. 55,732, 55,758 (Nov. 2, 2001) (emphasis added).¹⁰ This avoidance of single-barrier dependency ties directly to the requirement in 10 C.F.R. § 63.102(h) that the barriers work in combination "to enhance the resiliency of the geologic repository," and ultimately to the requirement in Section 63.113(b) that "[t]he engineered barrier system must be designed so that, working in combination with natural barriers, radiological exposures to the reasonably maximally exposed individual are within the limits specified at § 63.311 of subpart L of this part"

Nevada's contention is admissible because it contends there is a violation of 10 C.F.R. §§ 63.102(h) and 63.113(b) in light of DOE's reliance on drip shields and the implications for repository safety if they are absent. Specifically, Nevada argues that DOE's attempt to comply with 10 C.F.R. § 63.113(b) fails because its proposed repository system does not satisfy the requirement in 10 C.F.R. § 63.102(h) that the barrier system exhibit "enhance[ed] resiliency" by "not [being] wholly dependent on a single barrier."¹¹

¹⁰ The Commission holds that interpretative language like this in a statement of considerations is entitled to "special weight." *Pa'ina Hawaii, LLC (Materials License Application)*, CLI-08-03, 67 NRC 151, 166 (2008).

¹¹ The Commission's approach is also in accord with International Atomic Energy Agency ("IAEA") guidelines. In its "Scientific And Technical Basis For Geological Disposal Of Radioactive Wastes, 2003," the IAEA states that "in different geological environments different safety concepts may be proposed for achieving adequate isolation of wastes . . . however, the leading principle is that long term safety is based on a multi-barrier system. The aim of the multi-barrier concept is to confine the radionuclides so that the failure of one component does not jeopardize the safety of the containment system as a whole."

Finally, Staff argues that the contention improperly relies on "speculative scenarios" and an "implied premise that future events are inherently unknowable" that Staff "refutes" in its Answer (Brief at 27-28). This is nonsense. Part 63 requires that we examine the contributions of individual barriers to post-closure performance, and nothing in Part 63 forbids us from doing so by considering the consequences of their postulated absence. Indeed, Staff's Brief contradicts what it told the ACNW about Part 63. As indicated above, the ACNW understood from Staff briefings that "the staff plans to require use of hypothetical calculations wherein barriers are assumed to perform to a lesser degree than anticipated, as a way of gaining insights into the contributions of barriers to overall repository performance. In addition, the staff may require in the rule that the results of the barrier underperformance analyses be compared to a numerical dose failure criterion." NEV-SAFETY-161 merely does what Staff said was appropriate under (if not required by) Part 63: it supports the contention that DOE's proposed barrier system is "wholly dependent on a single barrier" by calculating that the EPA dose standard would be exceeded if, hypothetically, the waste packages are not protected by drip shields (Petition at 858-859).

While NEV-SAFETY-161 uses a hypothetical scenario whereby the waste packages are not protected by drip shields, Nevada would point out that, in fact, such a scenario is realistic if not highly likely. NEV-SAFETY-130, which the ASLB admitted and Staff does not appeal, includes the following analysis (supported by expert affidavits) (Petition at 703):

In SAR Subsections 1.3.4.7.2 and 1.3.6.1, and other places in the LA, a plan is presented to delay manufacture and installation of drip shields, and more importantly to delay a demonstration that it can even be done, for several decades after waste packages are emplaced as part of closure of the repository. Drip shields would have to be placed using remote equipment, which has not been designed, under difficult underground conditions that include high levels of radioactivity and temperatures, and under conditions where drift degradation due to corrosion of steel components, rockfalls and drift collapse, and other unforeseen conditions might have occurred. The LA assumes that drip shield

emplacement will work as envisioned and that no foreseen or unforeseen event will occur in the time period between the placement of waste package and the installation of the drip shields that will prevent or hinder placement of the drip shields. This assumption is simply not credible given the lack of information provided in the LA and the absence of any form of prototype construction, mock-up, or demonstration.

Other Nevada contentions add still more problems with DOE's concept and plans for drip shields. *See, e.g.*, NEV-SAFETY-143, 144, 145, 147, 148, and 162. Staff does not appeal the ASLBs' admission of any of these contentions.

VI. CONCLUSION

Staff's appeal should be dismissed. The ASLBs' admission of NEV-SAFETY-004 through 006, NEV-SAFETY-009, NEV-SAFETY- 010 through 013, NEV-SAFETY-019, NEV-SAFETY-139, NEV-SAFETY-146, NEV-SAFETY-149, NEV-SAFETY-169, NEV-SAFETY-171, NEV-SAFETY-184 through 194, NEV-SAFETY-201, and NEV-MISC-002 should stand undisturbed, and the ASLB's admission of NEV-SAFETY-001, NEV-SAFETY- 002, NEV-SAFETY-161, and NEV-MISC-003 should be affirmed.

Respectfully submitted,

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Dated: May 29, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada's Brief in Opposition to NRC Staff Appeal has been served upon the following persons by the Electronic Information Exchange.

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