



# NRC NEWS

**U.S. NUCLEAR REGULATORY COMMISSION**

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December 12, 2007

## **PRE-LICENSING BOARD REJECTS NEVADA'S BID TO STRIKE DOE DOCUMENT LIBRARY IN YUCCA MOUNTAIN PROCEEDING**

The Nuclear Regulatory Commission's Pre-License Application Presiding Officer (PAPO) Board today rejected the state of Nevada's petition to strike the Department of Energy's certification of its document collection on the Licensing Support Network for the Yucca Mountain proceeding.

The two-page ruling was issued one week after oral arguments were heard in Las Vegas. The PAPO board explained that it was issuing its order quickly to give other parties advance notice, because NRC regulations require them to certify their own document collections by Jan. 18. The PAPO Board will issue a full decision on Nevada's motion at a later date.

The Licensing Support Network is an extensive online library of documents relating to DOE's potential license application for a proposed high-level nuclear waste repository at Yucca Mountain, Nev. It is intended to assist potential parties in preparing and arguing contentions challenging the application in hearings before the NRC's Atomic Safety and Licensing Board. DOE is expected to submit its application by the end of June 2008.

Nevada had argued that DOE's document collection, which the department certified Oct. 19, was incomplete because it did not include key documents that are currently in development or not yet prepared.

NRC "regulations recognize that parties and potential parties, such as DOE, will continue to develop, prepare, and finalize additional documentary material, and to supplement their document production, after the date of initial certification," the PAPO Board wrote in its ruling. "The regulations do not specify that DOE, or any other potential party, must finalize all documentary material before it can certify."

The text of the Board's ruling, which can be found online on the NRC's electronic hearing docket at: <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hlw-hearings.html>, is appended below:

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

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In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository:  
Pre-Application Matters)

Docket No. PAPO-00

ASLBP No. 04-829-01-PAPO

December 12, 2007

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ORDER  
(Denying Motion to Strike)

The motion by the State of Nevada to strike the October 19, 2007 certification by the United States Department of Energy (DOE) that DOE has made all of its documentary material available on the Licensing Support Network (LSN), and to suspend the obligation of other potential parties to make their documentary material available within 90 days thereof, is denied.<sup>1</sup> Nevada concedes, for the sake of argument, that DOE has made available all of DOE's documentary material "in existence as of a reasonable cutoff date' before certification."<sup>2</sup> The "crux of Nevada's complaint," however, is that DOE's document production "is incomplete because [DOE has not provided certain] key documents [that] are in development or not yet prepared."<sup>3</sup>

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<sup>1</sup> Motion to Strike DOE's October 19, 2007 LSN Recertification and to Suspend Certification Obligations of Others Until DOE Validly Recertifies (October 29, 2007).

<sup>2</sup> Id. at 18 n.4.

<sup>3</sup> Id. at 17.

Nevada's legal position is incorrect. The regulations recognize that parties and potential parties, such as DOE, will continue to develop, prepare, and finalize additional documentary material, and to supplement their document production, after the date of initial certification. The regulations do not specify that DOE, or any other potential party, must finalize all documentary material before it can certify. The duty to produce documents applies to documentary material in existence (with a reasonable lag time) on the date of certification. Accordingly, Nevada's motion is denied.

The Pre-License Application Presiding Officer Board is issuing this order quickly to provide maximum advance notice to the State of Nevada, and other potential parties, who are obliged to produce their own documentary material, and submit their own certifications, on January 17, 2008. See 10 C.F.R. § 2.1003(a). The Board will issue a memorandum and order, more fully articulating its ruling on this matter in due course. The time period for filing an appeal to the Commission under 10 C.F.R. § 2.1015 will not start until that memorandum and order is issued.

It is so ORDERED.

The Pre-license Application  
Presiding Officer Board

*/RA/*

Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

Alex S. Karlin  
ADMINISTRATIVE JUDGE

*/RA/*

Alan S. Rosenthal  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 12, 2007

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