

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NEVADA, CLARK
COUNTY, NEVADA, and CITY OF
LAS VEGAS, NEVADA

Petitioners,

v.

UNITED STATES NUCLEAR
REGULATORY COMMISSION

Respondent.

Case No. 02-1116

**PETITIONERS' REPLY IN SUPPORT OF SUGGESTION REGARDING
ORDER IN WHICH CASES SHOULD BE ARGUED**

Petitioners, the State of Nevada, Clark County, Nevada, and the City of Las Vegas, Nevada (collectively, "Petitioners") hereby respectfully submit this reply in support of their suggestion regarding the order in which the three groups of pending cases that pertain to the federal government's Yucca Mountain project should be argued (the "Suggestion"). For purposes of this Suggestion, Petitioners refer to these three sets of cases as the "Recommendations Case," the "EPA Case," and the "NRC Case," respectively. In this filing, Petitioners suggested that oral argument would be of the most assistance to the Court if the Recommendations Case were argued first, followed by the EPA Case and the NRC Case.

In their opposition to the Suggestion, Respondents argue that the Suggestion is premature, and that the "Court will be in a better position after the completion of briefing in all the cases to decide how it wishes to organize the oral argument in these cases." Federal Respondents' Opposition To Nevada's Suggestion Regarding Order In Which Cases Should Be Argued at 3. Respondents themselves go on to suggest that "the Court should provide the parties an op-

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portunity to suggest an appropriate argument format after all the briefs have been submitted and the merits panel has had the opportunity to become familiar with the issues." *Id.*

Because it was not clear to Petitioners when the Court would calendar the cases for oral argument, Petitioners filed their Suggestion in order to ensure that the Court would have the benefit of Petitioners' views as to this issue when it scheduled argument. Having said that, Petitioners have no objection to Respondents' proposal that the Court provide the parties with an opportunity to suggest an appropriate argument format. Indeed, Petitioners intend to consult with counsel for Respondents and counsel for intervenor Nuclear Energy Institute, Inc. ("NEI") to attempt to reach consensus on such issues, in the hope that the parties may be able to submit a joint recommendation to the Court. Petitioners are prepared to attempt to reach such a consensus, or, if such a consensus is not achieved, to submit their own further recommendations as to such issues, at any time that the Court considers appropriate.¹

¹ NEI has submitted its own opposition to the Suggestion, in which it first argues that the Suggestion is premature but then goes on to argue that the EPA Case should be argued first, followed by the NRC Case and then the Recommendations Case. Response of Intervenor NEI to Petitioners' "Suggestion Regarding Order In Which Cases Should Be Argued" at 2-3. For the reasons discussed in the Suggestion, Petitioners believe that oral argument would be of the most benefit to the Court if the Recommendations Case were argued first, followed by the EPA Case and then the NRC Case. In light of Respondents' suggestion that the Court later provide an opportunity for the parties to submit suggestions regarding argument format and Petitioners' intention to consult with other parties in the hope that all parties can ultimately agree on a joint recommendation to the Court, Petitioners will not further respond at this time to NEI's arguments on this issue.

Respectfully submitted,

Elizabeth A. Vibert, Deputy District Attorney
CLARK COUNTY, NEVADA
500 South Grand Central Parkway
Las Vegas, NV 89106
(702) 455-4761 TEL
(702) 382-5178 FAX

Bradford R. Jerbic, City Attorney
William P. Henry, Senior Litigation Counsel
CITY OF LAS VEGAS, NEVADA
400 Stewart Avenue
Las Vegas, NV 89101
(702) 229-6590 TEL
(702) 386-1749 FAX

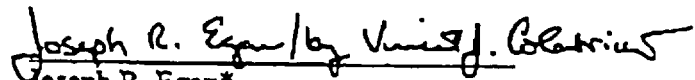
William H. Briggs, Jr.*
ROSS, DIXON & BELL, L.L.P.
2001 K Street N.W.
Washington, DC 20006-1040
(202) 662-2063 TEL
(202) 662-2190 FAX

Antonio Rossmann*
Special Deputy Attorney General
Roger B. Moore
Special Deputy Attorney General
LAW OFFICE OF ANTONIO ROSSMANN
380 Hayes Street
San Francisco, CA 94102
(415) 861-1401 TEL
(415) 861-1822 FAX

Frankie Sue Del Papa, Attorney General
Marta A. Adams,*
Sr. Deputy Attorney General
STATE OF NEVADA
100 North Carson Street
Carson City, NV 89701
(775) 684-1237 TEL
(775) 684-1108 FAX

Charles J. Cooper*
Robert J. Cynkar*
Vincent J. Colatristano*
COOPER & KIRK, PLLC
1500 K Street, N.W., Suite 200
Washington, DC 20001
(202) 220-9660 TEL
(202) 220-9601 FAX

Joseph R. Egan*
Special Deputy Attorney General
Charles J. Fitzpatrick*
Martin G. Malsch*
Howard K. Shapar*
EGAN & ASSOCIATES, PLLC
7918 Jones Branch Drive, Suite 600
McLean, VA 22102
(703) 918-4942 TEL
(703) 918-4943 FAX


Joseph R. Egan*
Counsel of Record for Petitioners

DATED: January 2, 2003

* Member, D.C. Circuit Bar

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served this 2d day of January, 2003 by facsimile and by first class mail, postage prepaid on:

John F. Cordes, Jr. Solicitor Steven F. Crockett Senior Attorney Office of the General Counsel 015 B18 U.S. Nuclear Regulatory Commission Washington, D.C. 20555-0001 FAX: 301-415-3200	Michael A. Bauser Nuclear Energy Institute, Inc. 1776 I Street, N.W., Suite 400 Washington, D.C. 20006 FAX: 202-533-8231
John Bryson Ronald M. Spritzer Attorneys, Appellate Section Environment & Natural Resources Division U.S. Department of Justice Washington, D.C. 20530 FAX: 202-514-8865	


Vincent J. Colatrigano