

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of)	Docket No. PAPO-00
)	
U.S. Department of Energy)	ASLBP No. 04-829-01-PAPO
)	
(High Level Waste Repository:)	
Pre-Application Matters))	August 13, 2007

**STATE OF NEVADA'S RESPONSE TO COMMENTS
ON PROPOSED THIRD CASE MANAGEMENT ORDER**

In accordance with the Pre-License Application Presiding Officer ("PAPO") Board's August 7, 2008 Order, the State of Nevada hereby responds to the comments of the Department of Energy ("DOE") and the NRC Staff on the Proposed Third Case Management Order.

NRC Staff Comment

Nevada does not object to the NRC Staff's request that Official Use Only ("OUO") material may include information withheld from public disclosure pursuant to 10 C.F.R. §2.390(d).

DOE Comments

- Comment 1

Nevada believes that its suggested definition of Naval Nuclear Propulsion Information ("NNPI"), with the language "in the possession of or under the control of the Naval Nuclear Propulsion Program within the Department of Defense" included, should be adopted because the language is lifted directly from the statute authorizing nondisclosure (10 U.S.C. §130). Protection of derivative documents is assured by the language of the Protective Order in Appendix A, which provides (in paragraph C) that notes derived from NNPI, and documents that

reproduce, expand, or modify NNPI, shall be marked and controlled in the same way as the original.

- Comment 2

Nevada objects to this overly broad definition of "Official Use Only Information" and prefers its narrower definition. A definition of OUO that simply references FOIA exemptions 2 and 3 will include huge categories of information, such as NNPI, Safeguards Information (SGI), Unclassified Controlled Nuclear Information (UCNI), and Archeological Privileged Information, that should not be OUO. OUO is a predominantly internal agency designation, and it is all too easy for agency employees to stamp something "OUO" simply to limit internal distribution or to avoid embarrassment or public scrutiny. The definition of OUO should be narrowly drawn to avoid misuse and abuse.

- Comments 3, 4, 5, 6, and 7

Nevada does not object to these comments.

- Comment 8

Nevada objects to the inclusion of "a diligent good faith effort to include." This suggested addition is, in effect, an extension of time to file redacted documents until after DOE's initial LSN certification. Nevada appreciates that the redaction of these documents may be time-consuming and intricate, but the same is true for other kinds of DOE documents, and it is entirely within DOE's control to schedule its initial LSN certification to simultaneously provide redacted documents so that this time-consuming and intricate process is completed satisfactorily beforehand. DOE's schedule for its initial LSN certification is now completely artificial, and it can reasonably be adjusted in order to avoid the disclosure of sensitive information.

- Comments 9, 10, 11, 12, and 13

Nevada does not object to these comments.

- Comment 14

It is not clear to Nevada that DOE's recommended language cures the ambiguity. However, marking a page of a document as OUO solely because other pages of the same document contain OUO material will mislead those who receive and handle unredacted versions of the document.

- Comments 15, 16, and 17

Nevada does not object to these comments.

Respectfully submitted,

/s/

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Dated: August 13, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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U.S. DEPARTMENT OF ENERGY)	Docket No. PAPO-00
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada's Responses to Comments on Proposed Third Case Management Order has been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (*)).

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