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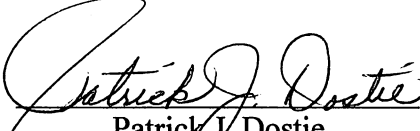
April 30, 2010

To: Honorable Ms. Elizabeth Mitchell, President of the Senate  
Honorable Ms. Hannah Pingree, Speaker of the House

Subject: State Nuclear Safety Inspector Office's March 2010 Monthly Report to the Maine  
Legislature

Legislation was enacted in the second regular session of the 123<sup>rd</sup> and signed by Governor John Baldacci requiring that the State Nuclear Safety Inspector prepare a monthly report on the oversight activities performed at the Maine Yankee Independent Spent Fuel Storage Installation facility located in Wiscasset, Maine.

Enclosed please find the Inspector's March 2010 monthly activities report. This year the reports will not feature the glossary and the historical addendum. However, both the glossary and the addendum will be available on the Radiation Control Program's website at <http://www.maineradiationcontrol.org> under the nuclear safety link. For facilitating the connectivity and impact of some of the newsworthy items an editorial section is being contemplated. Should you have questions about its content, please feel free to contact me at 207-287-6721, or e-mail me at [pat.dostie@maine.gov](mailto:pat.dostie@maine.gov).

  
Patrick J. Dostie  
State Nuclear Safety Inspector

Enclosure

cc:

Ms. Vonna Ordaz, U.S. Nuclear Regulatory Commission  
Ms. Nancy McNamara, U.S. Nuclear Regulatory Commission, Region I  
Mr. James Connell, Site Vice President, Maine Yankee  
Ms. Brenda Harvey, Commissioner, Department of Health and Human Services  
Mr. Geoff Green, Deputy Commissioner, Department of Health and Human Services  
Ms. Lucky Hollander, Director of Legislative Relations, Department of Health and Human Services  
Dr. Dora Mills, Director, Maine Center for Disease Control and Prevention  
Mr. Patrick Ende, Senior Policy Advisor, Governor's Office  
Mr. David Littell, Commissioner, Department of Environmental Protection  
Mr. Richard Davies, Maine Public Advocate  
Lt. Christopher Grotton, Special Services Unit, Maine State Police  
Ms. Nancy Beardsley, Director, Division of Environmental Health  
Mr. Jay Hyland, PE, Manager, Radiation Control Program

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# State Nuclear Safety Inspector Office

## March 2010 Monthly Report to the Legislature

### Introduction

As part of the Department of Health and Human Services' responsibility under Title 22, Maine Revised Statutes Annotated (MRSA) §666 (2), as enacted under Public Law, Chapter 539 in the second regular session of the 123<sup>rd</sup> Legislature, the foregoing is the monthly report from the State Nuclear Safety Inspector.

The State Inspector's individual activities for the past month are highlighted under certain broad categories, as illustrated below. Since some activities are periodic and on-going, there may be some months when very little will be reported under that category. It is recommended for reviewers to examine previous reports to ensure connectivity with the information presented as it would be cumbersome to continuously repeat prior information in every report. Past reports are available from the Radiation Control Program's web site at the following link: [www.maineradiationcontrol.org](http://www.maineradiationcontrol.org) and by clicking on the nuclear safety link in the left hand margin.

Commencing with the January 2010 report the glossary and the historical perspective addendum will no longer be included in the report. Instead, this information will be available at the Radiation Control Program's website noted above. In some situations the footnotes may include some basic information and will redirect the reviewer to the website.

### Independent Spent Fuel Storage Installation (ISFSI)

During March the general status of the ISFSI was normal. There was one instance of a spurious alarm due to environmental conditions. All alarms were investigated and no further actions were warranted.

There were no fire-related or security impairments in March. There were two security events logged. The two SELs logged were associated with transient camera issues due to temporary environmental conditions.

There were 12 condition reports<sup>1</sup> (CRs) for the month of March. The first two CR's were written on March 1<sup>st</sup>. The first involved rain water leaking into the ISFSI building. The second CR addressed a security issue. The third CR was written on March 4<sup>th</sup> for a broken office chair. A fourth CR was written on March 8<sup>th</sup> for using an incorrect revision of a procedure attachment. Another CR was also written that same day for a security shift turnover issue. A sixth CR was written on March 15<sup>th</sup> for a leak in an air duct. A seventh CR was written on March 17<sup>th</sup> over another security shift turnover issue. An eighth CR was written on March 22<sup>nd</sup> to document the fraying on a grounding strap for the lift gate. A ninth CR was written on March 29<sup>th</sup> for water found in the new dry fire hydrant. A second CR was also written the same day on safeguards information, which can not be disclosed to the public. An eleventh CR was written on March 30<sup>th</sup> on guidance on how to reboot the security computer. A twelfth CR was written on March 31<sup>st</sup> over a question on procedure compliance for a document review.

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<sup>1</sup> A condition report is a report that promptly alerts management to potential conditions that may be adverse to quality or safety. For more information, refer to the glossary on the Radiation Program's website.

### *Other ISFSI Related Activities*

On March 9<sup>th</sup> Maine Yankee submitted its annual Decommissioning Funding Assurance Status Report to the Nuclear Regulatory Commission. The amount of decommissioning funds necessary for the operation of the ISFSI until 2023 and subsequent decommissioning of the facility was estimated at \$119.9 million with \$95.7 million in the fund at the end of 2009.

On March 16<sup>th</sup> a suspicious vehicle was observed moving up and down Ferry Road several times. By the time security reached Ferry Road the vehicle had left. The local law enforcement agency was notified but was not able to intercept the vehicle. The incident did not rise to the level that required reporting to the Nuclear Regulatory Commission's Operations Center.

On March 18<sup>th</sup> another suspicious vehicle with two individuals was observed by the new mailbox receptacle at the entrance of the West Access Road near the Ferry Road. One of the individuals, who had worked at the Maine Yankee plant, was just visiting. The person's identity was corroborated by one of Maine Yankee's on-site personnel. The local law enforcement agency was notified and intercepted the vehicle. The person's identity was further verified through the vehicle's registration. The incident did not rise to the level that required reporting to the Nuclear Regulatory Commission's Operations Center.

On March 22<sup>nd</sup> Maine Yankee submitted two annual reports to the Nuclear Regulatory Commission. The first was the ISFSI Annual Radiological Environmental Operating Report. Since there are no effluent releases from the casks, Maine Yankee is only required to monitor the direct gamma exposure from the facility with thermoluminescent dosimeters (TLDs)<sup>2</sup>. There are nine TLD stations in the vicinity of the ISFSI and one control station at the Wiscasset Fire Station. All nine stations were comparable to or slightly higher than the control station. However, there was one station that was noticeably higher than the other eight ISFSI stations. This location has been consistently high since March of 2005. Due to its distance from the bermed area of the ISFSI, the values are higher than expected and could be due to its proximity to naturally higher background radiation, such as a ledge outcrop. The second document was the Annual Radioactive Effluent Release Report for 2009. By design there are no gaseous or liquid releases from the ISFSI. In addition, there were no solid waste shipments from the ISFSI site.

On March 25<sup>th</sup> Maine Yankee submitted a proposed amendment and exemption request to the Nuclear Regulatory Commission. The proposed amendment and exemption request contain safeguards information, which is not available for public disclosure.

On March 30<sup>th</sup> Maine Yankee submitted to the Nuclear Regulatory Commission a request for an exemption to extend the date of implementation for new requirements for physical protection against radiological sabotage. Initially, Maine Yankee was told the new rules would not apply to stand alone ISFSI's. However, NRC officials informed Maine Yankee on March 30<sup>th</sup> that the new rule could apply to the ISFSI. The new rule had to be implemented by March 31<sup>st</sup>. Therefore, Maine Yankee immediately requested an extension to the rule until December 31<sup>st</sup> to allow it sufficient time to review and implement the new rule's requirements.

On March 31<sup>st</sup> Maine Yankee submitted two letters to the Nuclear Regulatory Commission (NRC) indicating that there were no changes, tests or experiments pursuant to 10 CFR 72.48 (c) and 10 CFR 50.59. Any changes that were made did not meet the 50.59 definition. Both NRC regulations provide guidelines on how Maine Yankee can perform changes, tests or experiments without impacting their defueled safety analysis report for the ISFSI. If impacts were to occur, then Maine Yankee would have to submit the changes to the NRC for approval prior to their implementation.

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<sup>2</sup> Thermoluminescent Dosimeters (TLD) are very small, passive radiation monitors requiring laboratory analysis. For a further explanation, refer to the glossary on the Radiation Program's website.

## Environmental

With the closure of the State's air sampling unit at the old Bailey Farm House at Maine Yankee on December 30, 2009, the 24 hour surveillance of the site ceased after 39 years. The remaining surveillance program of the Maine Yankee site is the quarterly fresh and salt water and seaweed sampling, and the quarterly thermoluminescent dosimeters (TLD) around the ISFSI and Bailey Cove. A review of the monitoring program is slated for late spring to evaluate what final monitoring will remain for the Maine Yankee site.

## Maine Yankee Decommissioning

At present, there are eleven confirmatory reports that are essentially complete. Due to the extensive delays in ongoing commitments and emerging issues, the confirmatory summary report is expected to be partially drafted in May.

## Groundwater Monitoring Program

On March 4<sup>th</sup> the Department of Environmental Protection (DEP), the State Nuclear Safety Inspector (SNSI) and Maine Yankee met to discuss options on how best to control and minimize costs for the radiological groundwater monitoring program. Approximately \$125,000 remains out of the \$500,000 agreed upon. Numerous possibilities were suggested, ranging from minimizing sample recounts to application of further screening criteria on a specific transuranic, (element heavier than uranium), to well abandonment techniques, to minimizing comments on the remaining reports to discontinuing sampling at three wells. The suggestion to discontinue the monitoring of some wells was based on the SNSI's memory that there were no Hard-To-Detect/Transuranics (HTD/TRU) indications in the testing of those wells. The DEP requested the SNSI and Maine Yankee to summarize their understanding of the discussions to the DEP Project Manager so that he could formalize a summary position for all the parties to agree on.

On March 5<sup>th</sup> in preparing the basis for the SNSI summary, the SNSI noted that there were some positive HTD/TRU indications in two of the three wells suggested for closure. The SNSI notified Maine Yankee, the Manager of the Radiation Control Program, and the DEP Project Manager of his findings and that the State may have to re-evaluate its initial recommendation on the three wells.

On March 16<sup>th</sup> Maine Yankee notified the DEP and the State Radiation Control Program that it was planning on not sampling the three wells that were recommended to be dropped on March 4<sup>th</sup>. Considering that the sampling was about to start, the SNSI proposed some interim actions to Maine Yankee pending further discussions to which Maine Yankee respectfully disagreed with the SNSI's position.

On March 18<sup>th</sup> the DEP Project Manager, the Manager of the Radiation Control Program and the SNSI met to discuss the recent re-evaluation of the three wells that were recommended to be dropped. Some suggestions were formulated, based on the Maine Yankee Rad Work Plan, Rev. 3.

On March 18<sup>th</sup> the DEP Project Manager provided a summary of what was discussed at the March 4<sup>th</sup> meeting, where the areas of agreement and disagreement were, and qualitative estimates on the potential savings on the agreed upon areas. His memorandum also included the recent re-evaluation of the three wells originally recommended for discontinuance.

On March 22<sup>nd</sup> Maine Yankee acknowledged the electronically transmitted memorandum, but questioned the reversal on the three wells. Maine Yankee stated that it was “committed to successful completion of the program as outlined in the Agreement and the Work Plan.”

### Other Newsworthy Items

1. On March 1<sup>st</sup> the Department of Energy (DOE) filed with Congress the Advisory Committee Charter for the Blue Ribbon Commission on America’s Nuclear Future. A copy of the charter is attached to the end of the report.
2. On March 2<sup>nd</sup> the Northeast High Level Radioactive Waste Transportation Task Force (NEHLRWTF), a subsidiary of the Eastern Regional Conference of the Council of State Governments, notified its membership, which the State of Maine is a member, that it had received increased funding from the Department of Energy (DOE) to monitor federal and commercial transuranics, (elements heavier than uranium), shipments to the salt domes at the Waste Isolation Pilot Project in New Mexico. The increase funding provides sufficient revenues to allow the four regional groups of which the Northeast group is one, to meet on an annual basis. The previous funding for the regional groups was reduced two years ago by the DOE. The last annual meeting of the NEHLRWTF was in June 2008.
3. On March 3<sup>rd</sup> the Department of Energy (DOE) issued a press release announcing the first meeting of the newly formed Blue Ribbon Commission on America’s Nuclear Future will be held in Washington, D.C. on March 25<sup>th</sup> and 26<sup>th</sup>. A copy of the press release is attached to the end of the report.
4. On March 3<sup>rd</sup> the Department of Energy (DOE) moved to end almost 30 years of trying to bury nuclear waste in Nevada by filing its motion to “withdraw its pending license application for a permanent geologic repository at Yucca Mountain, Nevada” and DOE asked “the Board (*Nuclear Regulatory Commission’s Atomic Safety and Licensing Board*) to dismiss its application with prejudice and to impose no additional terms of withdrawal. Nevada officials and long time opponents of the repository celebrated and hailed the DOE filing as a victory. A copy of the motion is attached to the end of the report.
5. On March 3<sup>rd</sup> the State of Washington filed a petition with the Nuclear Regulatory Commission’s Atomic Safety and Licensing Board to intervene in the Department of Energy’s motion to withdraw with prejudice its pending license application “for a construction authorization to proceed with a deep geologic repository for high level waste and spent nuclear fuel at Yucca Mountain, Nevada.”
6. On March 3<sup>rd</sup> the State participated in the quarterly Federal Energy Regulatory Commission rate case settlement briefing. The briefing discussed the different phases of the three Yankees (Maine Yankee Connecticut Yankee and Yankee Rowe) litigation with the Department of Energy (DOE) and their current status. Other topics included the DOE’s FY 2011 budget request, the status of the Yucca Mountain license proceedings, the Yucca Mountain lawsuits, the Blue Ribbon Commission, the Nuclear Waste Fund fee, and the Department of Justice’s FY 2011 Budget requesting an additional \$11.4 million to devote to nuclear waste litigation.
7. On March 4<sup>th</sup> the U.S. Nuclear Infrastructure Council issued a statement saying the public would be better served by continuing with the Yucca Mountain licensing process in concert with the Blue Ribbon Commission’s review of nuclear waste management strategies. A copy of the news release is attached to the end of the report.
8. On March 4<sup>th</sup> the Nuclear Waste Strategy Coalition, a consortium of state utility regulators, state attorneys general, electric utilities and associate members representing 47 organizations from 31 states, held a

conference call to discuss the Department of Energy's letters a) to alert congressional leaders of their intent to reprogram its FY 2010 appropriation to close down the Yucca Mountain Project instead of pursuing its license application before the Nuclear Regulatory Commission (NRC) and b) to file its motion with the NRC's Atomic safety and Licensing Board to stay the licensing proceedings on Yucca Mountain for 30 days to allow the agency time to file a motion to withdraw its license application with prejudice. Additional topics included the filing of three lawsuits from Tri-City business leaders from the State of Washington, Aiken County in South Carolina and the Attorney General from South Carolina.

9. On March 5<sup>th</sup> the Nuclear Regulatory Commission's Atomic Safety and Licensing Board issued an order concerning the scheduling of petitions it received from the States of Washington and South Carolina, and Aiken County, South Carolina to intervene on the Department of Energy's motion to withdraw its license application for Yucca Mountain and how they will be processed. A copy of the order is attached at the end of the report.
10. On March 5<sup>th</sup> Xcel Energy sent a letter to Energy Secretary Chu requesting that the 1 mill per kilowatt-hour fee to the Nuclear Waste Fund be suspended in light of the Department of Energy's recent motion to withdraw with prejudice its license application on Yucca Mountain. A copy of their letter is attached to the end of the report.
11. On March 9<sup>th</sup> out-going Nuclear Regulatory Commission (NRC) Commissioner, Dr. Dale Klein, criticized the Obama's Administration handling of the Yucca Mountain shutdown at a (NRC) regulatory information conference attended by more than 2700 industry officials, academics and scientists. Dr. Klein was quoted as saying, "In his opinion, the administration's stated rationale for changing course does not seem to rest on factual findings and thus does not bolster the credibility of our government to handle this matter competently." At that same conference Dr. Gregory Jaczko, Chairman of the NRC, said in an interview the NRC needs to determine just how many centuries spent fuel can be safely stored above ground, and was quoted as saying "the NRC will work to see what that time frame is really like – 100 years, 200years, 400".
12. On March 9<sup>th</sup> the Nuclear Waste Strategy Coalition sent a letter to the Inspector General of the Department of Energy requesting an investigation into "the willful failure on the part of the DOE to preserve key records associated with the proposed geologic repository at Yucca Mountain. A copy of the letter is attached to the end of the report.
13. On March 9<sup>th</sup> the State of Nevada notified the U.S. Surface Transportation Board of the Department of Energy's (DOE) motion to withdraw its license application pending before the Nuclear Regulatory Commission. The Surface Transportation Board is responsible for reviewing the DOE's proposed rail construction and operation of the Caliente rail line in Lincoln, Nye, and Esmeralda counties in Nevada. A copy of the notification is attached to the end of the report.
14. On March 10<sup>th</sup> the Manager of the Radiation Control Program in consultation with the State Nuclear Safety Inspector recommended to his senior management, the Public Utilities Commission Chair and the Governor's Office that the State should join a Joint Intervention Petition with other states, local governments, and Indian nations to the Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board contesting the recent Department of Energy's motion to withdraw with prejudice its Yucca Mountain license application before the NRC. The filing deadline for the petition was May 12<sup>th</sup>, which imposed an overwhelming time constraint for the State to properly review and participate in the process.
15. On March 15<sup>th</sup> the Prairie Island Indian Community of Red Wing, Minnesota, filed a petition with the Nuclear Regulatory Commission (NRC) opposing the Department of Energy's (DOE) request to withdraw

its license application on Yucca Mountain with prejudice, which means the Department of Energy could never go back and resubmit its application.

16. On March 15<sup>th</sup> the National Association of Regulatory Utility Commissioners (NARUC) also filed a petition with the Nuclear Regulatory Commission (NRC) contesting the Department of Energy's (DOE) motion to withdraw its construction license application for the nuclear waste repository at Yucca Mountain.
17. On March 16<sup>th</sup>, after receiving two new petitions from the National Association of Regulatory Utility Commissioners and the Prairie Island Indian Community to intervene in the Department of Energy's motion to withdraw its Yucca Mountain license application, the Nuclear Regulatory Commission's (NRC) Atomic Safety and Licensing Board issued a second order citing the section of the NRC's regulations that will govern the filing times and replies, inclusive of any new petitions. A copy of the order is attached to the end of the report.
18. On March 16<sup>th</sup> the legal counsel for the Prairie Island Indian Community forwarded a letter to the Attorney General's Offices throughout the U.S. suggesting that it was not too late to still intervene on the Yucca Mountain license proceeding. Counsel based his opinion on the March 5<sup>th</sup> Order from the Atomic Safety and Licensing Board indicating that there may be an opportunity for others to present motions to intervene on the Yucca Mountain license withdrawal. A copy of the letter and order are attached at the end of the report.
19. On March 17<sup>th</sup> the U.S. Chamber of Commerce and 17 other business groups sent a letter to the leaders of the House and Senate Appropriations Subcommittees requesting the restoration of funds for the Yucca Mountain repository. The letter was sent under the logo of the Sustainable Fuel Cycle Task Force. The letter lists five repercussions from the DOE's motion to withdraw its license application and six suggestions for the Appropriations Committees to consider. A copy of the letter is attached to the end of the report.
20. On March 17<sup>th</sup> the State of Maine participated in the Nuclear Waste Strategy Coalition's second conference call to brief its membership on congressional FY 2010 and 2011 Appropriations activities, specifically the Department of Energy's (DOE) February 17<sup>th</sup> letter to the Appropriations Committees to reprogram its FY 2010 allocations to terminate Yucca Mountain. Other topics included the DOE's motion to withdraw the Yucca Mountain license application with prejudice and the upcoming Blue Ribbon Commission's first public meeting.
21. On March 18<sup>th</sup> five lawmakers from the States of Washington and South Carolina, including House Majority Whip James Clyburn and Budget Committee Chairman John Spratt, sent a letter to Energy Secretary Chu protesting the reallocation of \$115 million appropriated for the Yucca Mountain license proceedings and requested that funding be restored for the Yucca Program. A copy of the letter is attached to the end of the report.
22. On March 19<sup>th</sup> the U.S. Senate confirmed three new Commissioners for the U.S. Nuclear Regulatory Commission. The nominees were confirmed by unanimous consent, rather than a roll call vote.
23. On March 22<sup>nd</sup> the Skull Valley Band of Goshutes from Utah asked a federal judge to throw out two U. S Interior Department rulings that stopped their proposal to use their reservation as an interim high level waste storage site. The Goshutes had received a storage license from the Nuclear Regulatory Commission in 2005 for 44,000 metric tons of used nuclear fuel. The Interior Department's rulings dismissed the right-of-way and lease agreement that the Goshutes needed to construct the temporary storage facility.
24. On March 23<sup>rd</sup> a bipartisan group of House Representatives introduced a resolution opposing the Obama Administration's position to end the nuclear waste repository at Yucca Mountain in Nevada. The

resolution is aimed at stopping the DOE from using appropriated funds to end the project and to preserve all scientific and site specific file and data related to Yucca Mountain. A copy of the resolution is attached to the end of the report.

25. On March 24<sup>th</sup> in an Appropriations Subcommittee meeting, Representative Rodney Frelinghuysen from New Jersey told Energy Secretary Chu that he did not have the authority to close the Yucca Mountain repository. The remark was made in opposition to the Department of Energy's (DOE) reprogramming of \$115 million in current fiscal year revenues to shutdown the Yucca Mountain Project in Nevada. Other lawmakers also charged that the Administration was violating the Nuclear Waste Policy Act and had no right to shift money away from the purpose for which Congress appropriated it.
26. On March 24<sup>th</sup> Representative Fred Upton from Michigan, Ranking Member of the House Appropriations Subcommittee on Energy and Environment, forwarded a letter to Energy Secretary Chu expressing his concerns and fears over the accelerated pace to shutdown the Yucca Mountain Project by the end of this fiscal year could cause the irreparable loss of scientific and technical records. A copy of his letter is attached to the end of the report.
27. On March 25<sup>th</sup> the Blue Ribbon Commission on America's Nuclear Future (BRC), established by Secretary of Energy Stephen Chu, met for the first time. Senator's Chu opening remarks directed the Commission to "look to the future, not the past and not to whether Yucca was a good or bad decision, or whether it should be used as a future repository." Dr. Chu went on to say that there was no immediate crisis and dry cask storage used today is safe for decades and stated his belief that the U.S. has at least 50 years to develop a strategy, if not more. He urged the panel to seek outside scientific input and appealed for consideration of both civilian and military uses of nuclear energy. A copy of the BRC agenda is attached to the end of the report.
28. On March 25<sup>th</sup> the State of South Carolina petition filing in the Fourth Circuit challenging the Yucca Mountain license application withdrawal was transferred to the District of Columbia Circuit where the Aiken County, South Carolina petition was filed and is undergoing briefing.
29. On March 26<sup>th</sup> Energy Secretary Chu responded in a letter to the House Appropriations Energy and Water Subcommittee that, contrary to what lawmakers said on March 24<sup>th</sup>, he has the legal authority to reprogram the remaining funds in FY 2010 to terminate the Yucca Mountain project. The Subcommittee will be the first body on Capitol Hill to weigh the Department of Energy's request to zero out the Yucca Mountain program when it writes a FY 2011 energy spending bill this summer. A copy of Dr. Chu's letter is attached to the end of the report.
30. On March 26<sup>th</sup> Nye County from Nevada answers to the petitions to intervene filed by the States of South Carolina and Washington, Aiken County, South Carolina, the National Association of Regulatory Utility Commissioners and the Prairie Island Indian Community. Nye County did not oppose the petitions to intervene from the five petitioners to the Nuclear Regulatory Commission's Atomic Safety and Licensing Board. A copy of their answer is attached to the end of the report.
31. On March 29<sup>th</sup> the Department of Energy (DOE) responded to the Nuclear Regulatory Commission's Atomic Safety and Licensing Board on the five petitions to intervene on their license application withdrawal to construct a geologic repository at Yucca Mountain. The five petitioners are the State of Washington, the State of South Carolina, Aiken County South Carolina, the National Association of Regulatory Utility Commissioners (NARUC), and the Prairie Island Indian Community. The DOE did not oppose the five petitioners provided the petitioners agreed to three ground rules. Four of the five petitioners agreed to the ground rules, but NARUC did not. A copy of the DOE response is attached to the end of the report.



32. On March 31<sup>st</sup> the Nuclear Waste Strategy Coalition conducted its third conference call of the month. The topics covered congressional activities, such as the House's Resolution on the Department of Energy's withdrawal of its license application and Representative's Upton letter to Secretary Chu, and the Blue Ribbon Commission's first meeting held on March 25-26 in Washington, D.C.

### *Other Noteworthy Items*

1. On February 18<sup>th</sup>, as part of Department of Energy's (DOE) restructuring of its radioactive waste program due to the Administration's position to terminate the DOE's license application for Yucca Mountain pending before the Nuclear Regulatory Commission's Atomic Safety and Licensing Board, the DOE established the National Transportation Stakeholders Forum (NTSF). "The purpose of the NTSF is to bring transparency, openness, and accountability to DOE's offsite transportation activities through collaboration with state and tribal governments, and the four regional groups operating under the Council of State Governments." The first annual Forum is scheduled to take place in Chicago on May 25<sup>th</sup> -27<sup>th</sup>. A copy of the NTSF Charter is attached to the end of the report.

**Blue Ribbon Commission on America's Nuclear Future  
U.S. Department of Energy**

**Advisory Committee Charter**

- 1. Committee's Official Designation.** Blue Ribbon Commission on America's Nuclear Future (the Commission).
- 2. Authority.** The Commission is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, and as directed by the President's Memorandum for the Secretary of Energy dated January 20, 2010: Blue Ribbon Commission on America's Nuclear Future. This charter establishes the Commission under the authority of the U.S. Department of Energy (DOE).
- 3. Objectives and Scope of Activities.** The Secretary of Energy, acting at the direction of the President, is establishing the Commission to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel, high-level waste, and materials derived from nuclear activities. Specifically, the Commission will provide advice, evaluate alternatives, and make recommendations for a new plan to address these issues, including:
  - a) Evaluation of existing fuel cycle technologies and R&D programs. Criteria for evaluation should include cost, safety, resource utilization and sustainability, and the promotion of nuclear nonproliferation and counter-terrorism goals.
  - b) Options for safe storage of used nuclear fuel while final disposition pathways are selected and deployed;
  - c) Options for permanent disposal of used fuel and/or high-level nuclear waste, including deep geological disposal;
  - d) Options to make legal and commercial arrangements for the management of used nuclear fuel and nuclear waste in a manner that takes the current and potential full fuel cycles into account;
  - e) Options for decision-making processes for management and disposal that are flexible, adaptive, and responsive;
  - f) Options to ensure that decisions on management of used nuclear fuel and nuclear waste are open and transparent, with broad participation;

- g) The possible need for additional legislation or amendments to existing laws, including the Nuclear Waste Policy Act of 1982, as amended; and
- h) Any such additional matters as the Secretary determines to be appropriate for consideration.

The Commission will produce a draft report to the Secretary and a final report within the time frames contained in paragraph 4.

4. **Description of Duties.** The duties of the Commission are solely advisory and are as stated in Paragraph 3 above.

A draft report shall be submitted within 18 months of the date of the Presidential memorandum directing establishment of this Commission; a final report shall be submitted within 24 months of the date of that memorandum. The reports shall include:

- a) Consideration of a wide range of technological and policy alternatives, and should analyze the scientific, environmental, budgetary, financial, and management issues, among others, surrounding each alternative it considers. The reports will also include a set of recommendations regarding policy and management, and any advisable changes in law.
- b) Recommendations on the fees currently being charged to nuclear energy ratepayers and the recommended disposition of the available balances consistent with the recommendations of the Commission regarding the management of used nuclear fuel; and
- c) Such other matters as the Secretary determines to be appropriate.

5. **Official to Whom the Committee Reports.** The Commission reports to the Secretary of Energy.

6. **Agency Responsible for Providing the Necessary Support.** DOE will be responsible for financial and administrative support. Within DOE, this support will be provided by the Office of the Assistant Secretary for Nuclear Energy or other Departmental element as required. The Commission will draw on the expertise of other federal agencies as appropriate.

7. **Estimated Annual Operating Cost and Staff Years.** The estimated annual operating cost of direct support to, including travel of, the Commission and its subcommittees is \$5,000,000 and requires approximately 8.0 full-time employees.

8. **Designated Federal Officer.** A full-time DOE employee, appointed in accordance with agency procedures, will serve as the Designated Federal Officer (DFO). The DFO will

approve or call all of the Commission and subcommittee meetings, approve all meeting agendas, attend all Commission and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest. Subcommittee directors who are full-time Department of Energy employees, as appointed by the DFO, may serve as DFOs for subcommittee meetings.

- 9. Estimated Number and Frequency of Meetings.** The Commission is expected to meet as frequently as needed and approved by the DFO, but not less than twice a year.

The Commission will hold open meetings unless the Secretary of Energy, or his designee, determines that a meeting or a portion of a meeting may be closed to the public as permitted by law. Interested persons may attend meetings of, and file comments with, the Commission, and, within time constraints and Commission procedures, may appear before the Commission.

Members of the Commission serve without compensation. However, each appointed non-Federal member may be reimbursed for per diem and travel expenses incurred while attending Commission meetings in accordance with the Federal Travel Regulations.

- 10. Duration and Termination.** The Commission is subject to biennial review and will terminate 24 months from the date of the Presidential memorandum discussed above, unless, prior to that time, the charter is renewed in accordance with Section 14 of the FACA.

- 11. Membership and Designation.** Commission members shall be experts in their respective fields and appointed as special Government employees based on their knowledge and expertise of the topics expected to be addressed by the Commission, or representatives of entities including, among others, research facilities, academic and policy-centered institutions, industry, labor organizations, environmental organizations, and others, should the Commission's task require such representation. Members shall be appointed by the Secretary of Energy. The approximate number of Commission members will be 15 persons. The Chair or Co-Chairs shall be appointed by the Secretary of Energy.

**12. Subcommittees.**

- a) To facilitate functioning of the Commission, both standing and ad hoc subcommittees may be formed.
- b) The objectives of the subcommittees are to undertake fact-finding and analysis on specific topics and to provide appropriate information and recommendations to the Commission.

- c) The Secretary or his designee, in consultation with the Chair or Co-Chairs, will appoint members of subcommittees. Members from outside the Commission may be appointed to any subcommittee to assure the expertise necessary to conduct subcommittee business.
- d) The Secretary or his designee, in consultation with the Chair or co-Chairs will appoint Subcommittees.
- e) The DOE Committee Management Officer (CMO) will be notified upon establishment of each subcommittee.

**13. Recordkeeping.** The records of the Commission and any subcommittee shall be handled in accordance with General Records Schedule 26, Item 2 and approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

**14. Filing Date.**

Date filed with Congress:           MAR - 1 2010          



Carol A. Matthews  
Committee Management Officer



# U.S. DEPARTMENT OF **ENERGY**

**News Media Contact(s):**  
(202) 586-4940

**For Immediate Release**  
March 2, 2010

## **Blue Ribbon Commission on America's Nuclear Future Charter**

The Secretary of Energy, acting at the direction of the President, is establishing the Commission to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel, high-level waste, and materials derived from nuclear activities. Specifically, the Commission will provide advice, evaluate alternatives, and make recommendations for a new plan to address these issues, including:

- A. Evaluation of existing fuel cycle technologies and R&D programs. Criteria for evaluation should include cost, safety, resource utilization and sustainability, and the promotion of nuclear nonproliferation and counter-terrorism goals.
- B. Options for safe storage of used nuclear fuel while final disposition pathways are selected and deployed;
- C. Options for permanent disposal of used fuel and/or high-level nuclear waste, including deep geological disposal;
- D. Options to make legal and commercial arrangements for the management of used nuclear fuel and nuclear waste in a manner that takes the current and potential full fuel cycles into account;
- E. Options for decision-making processes for management and disposal that are flexible, adaptive, and responsive;
- F. Options to ensure that decisions on management of used nuclear fuel and nuclear waste are open and transparent, with broad participation;
- G. The possible need for additional legislation or amendments to existing laws, including the Nuclear Waste Policy Act of 1982, as amended; and
- H. Any such additional matters as the Secretary determines to be appropriate for consideration.

[Review the Advisory Committee Charter \(pdf – 56kb\)](#)

**U.S. Department of Energy, Office of Public Affairs, Washington, D.C.**

March 3, 2010

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

Before Administrative Judges:  
Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

_____ )	
In the Matter of )	Docket No. 63-001
U.S. DEPARTMENT OF ENERGY )	
(High-Level Waste Repository) )	ASLBP No. 09-892-HLW-CAB04
_____ )	

**U.S. DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW**

The United States Department of Energy ("DOE") hereby moves, pursuant to 10 C.F.R. § 2.107, to withdraw its pending license application for a permanent geologic repository at Yucca Mountain, Nevada. DOE asks the Board to dismiss its application with prejudice and to impose no additional terms of withdrawal.

While DOE reaffirms its obligation to take possession and dispose of the nation's spent nuclear fuel and high-level nuclear waste, the Secretary of Energy has decided that a geologic repository at Yucca Mountain is not a workable option for long-term disposition of these materials. Additionally, at the direction of the President, the Secretary has established the Blue Ribbon Commission on America's Nuclear Future, which will conduct a comprehensive review

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and consider alternatives for such disposition.<sup>1</sup> And Congress has already appropriated \$5 million for the Blue Ribbon Commission to evaluate and recommend such “alternatives.” Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-85, 123 Stat. 2845, 2864-65 (2009). In accord with those decisions, and to avoid further expenditure of funds on a licensing proceeding for a project that is being terminated, DOE has decided to discontinue the pending application in this docket,<sup>2</sup> and hereby moves to withdraw that application with prejudice.

Under the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101 *et seq.* (“NWPA”), this licensing proceeding must be conducted “in accordance with the laws applicable to such applications . . . .” NWPA § 114(d), 42 U.S.C. § 10134(d). Those laws necessarily include the NRC’s regulations governing license applications, including, as this Board has already recognized, 10 C.F.R. § 2.107(a). *See* CAB Order (Concerning LSNA Memorandum), ASLBP No. 09-892-HLW-CAB04, at 2 (Dec. 22, 2009) (stating that “the parties are reminded that, pursuant to 10 C.F.R. § 2.107, withdrawal shall be on such terms as the Board may prescribe.”). That section provides in relevant part that “[w]ithdrawal of an application after the

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<sup>1</sup> *See* Presidential Memorandum -- Blue Ribbon Commission on America’s Nuclear Future (Jan. 29, 2010) (“Presidential Memorandum”), *available at* <http://www.whitehouse.gov/the-press-office/presidential-memorandum-blue-ribbon-commission-americas-nuclear-future>; Department of Energy Press Release, Secretary Chu Announces Blue Ribbon Commission on America’s Nuclear Future (January 29, 2010), *available at* <http://www.energy.gov/news/8584.htm>; Charter, Blue Ribbon Commission on America’s Nuclear Future (filed March 1, 2010), *available at* [http://www.energy.gov/news/documents/BRC\\_Charter.pdf](http://www.energy.gov/news/documents/BRC_Charter.pdf). The Commission will conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle, including all alternatives for the storage, processing, and disposal of civilian and defense used nuclear fuel and materials derived from nuclear activities. *See id.*

<sup>2</sup> This decision was announced in the Administration’s Fiscal Year 2011 Budget, which states that “[i]n 2010, the Department will discontinue its application to the Nuclear Regulatory Commission (NRC) for a license to construct a high-level waste geologic repository at Yucca Mountain, Nevada.” Budget of the U.S. Government, Fiscal Year 2011: Terminations, Reductions, and Savings, at 62 (Feb. 1, 2010). The Department of Energy’s Fiscal Year 2011 Congressional Budget Request similarly states that “in 2010, Department will discontinue its application to the U.S. Nuclear Regulatory Commission for a license to construct a high-level waste geologic repository at Yucca Mountain.” Department of Energy, FY 2011 Congressional Budget Request, Vol. 7, at 163 (Feb. 2010).



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issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.” 10  
C.F.R. § 2.107(a).

Thus, applicable Commission regulations empower this Board to regulate the terms and conditions of withdrawal. *Philadelphia Electric Company* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 N.R.C. 967, 974 (1981). Any terms imposed for withdrawal must bear a rational relationship to the conduct and legal harm at issue. *Id.* And the record must support any findings concerning the conduct and harm in question to impose a term. *Id.*, citing *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604-05 (5th Cir. 1976); 5 Moore's Federal Practice ¶ 41.05[1] at 41-58.

#### **A. The Board Should Grant Dismissal With Prejudice**

In this instance, the Board should prescribe only one term of withdrawal—that the pending application for a permanent geologic repository at the Yucca Mountain site shall be dismissed with prejudice.<sup>3</sup>

That action will provide finality in ending the Yucca Mountain project for a permanent geologic repository and will enable the Blue Ribbon Commission, as established by the Department and funded by Congress, to focus on alternative methods of meeting the federal government's obligation to take high-level waste and spent nuclear fuel. It is the Secretary of Energy's judgment that scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced dramatically over the twenty years since the Yucca Mountain project was initiated. *See also* Presidential Memorandum at 1. Future proposals for the disposition of such materials should thus be based on a comprehensive and

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<sup>3</sup> DOE seeks this form of dismissal because it does not intend ever to refile an application to construct a permanent geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain.

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careful evaluation of options supported by that knowledge, as well as other relevant factors, including the ability to secure broad public support, not on an approach that “has not proven effective” over several decades. *Id.*

The Board should defer to the Secretary’s judgment that dismissal of the pending application with prejudice is appropriate here. Settled law in this area directs the NRC to defer to the judgment of policymakers within the Executive Branch.<sup>4</sup> And whether the public interest would be served by dismissing this application with prejudice is a matter within the purview of the Secretary.<sup>5</sup> From public statements already made, we of course understand that some will nevertheless argue that dismissing this application is contrary to the NWPA. Although it is impossible to anticipate exactly what parties will argue at this point, at least one litigant seeking to raise these issues in federal court has said the NWPA obligation to file the pending application is inconsistent with the decision to withdraw the application. This is simply wrong.

Nothing in the text of the NWPA strips the Secretary of an applicant’s ordinary right to seek dismissal. In fact, the text of the statute cuts sharply in favor of the Secretary’s right to seek

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<sup>4</sup> *U.S. Department Of Energy* (Plutonium Export License), CLI-04-17, 59 N.R.C. 357, 374 (2004) (deferring, upon “balanc[ing] our statutory role in export licensing with the conduct of United States foreign relations, which is the responsibility of the Executive Branch,” to Executive Branch determination on an export license application). See also *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-03-30, 58 N.R.C. 454, 472 (2003) (expressing “considerable doubt” about the NRC’s authority to “second-guess” the Bureau of Land Management on an issue relating to recommendations as to the wilderness status of land, and declining an invitation to do so); see also *Environmental Radiation Protection Standards for Nuclear Power Operations*, 40 CFR 190, CLI-81-4, 13 N.R.C. 298, 301 (1981) (deferring to EPA standards for radiation protection: “This agency does not sit as a reviewing court for a sister agency’s regulations....”). See generally *Pacific Gas & Electric Company* (Stanislaus Nuclear Project, Unit 1), LBP-83-2, 17 N.R.C. 45, 52 (1983) (“The law on withdrawal does not require a determination of whether [the applicant’s] decision [to withdraw] is sound.”).

<sup>5</sup> The Atomic Energy Act (“AEA” or “Act”) gives the Secretary broad authority to carry out the Act’s purposes, including the authority to direct the Government’s “control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare.” AEA § 3(c), 42 U.S.C. § 2013(c). Indeed, as the D.C. Circuit has recognized, the AEA established “a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives.” *Siegel v. AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968). While *Siegel* concerned directly the branch of the then-Atomic Energy Commission that later became the NRC, its recognition that broad discretion is to be given to the governmental agencies charged with administering the AEA’s objectives applies equally to the Department of Energy, the other lineal descendant of the AEC.

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dismissal. The statute simply requires that the Secretary “shall submit . . . an application for a construction authorization.” NWPA § 114(b), 42 U.S.C. § 10134(b). It neither directs nor circumscribes the Secretary’s actions on the application after that submission.<sup>6</sup>

Indeed, far from imposing special limitations on DOE after the submission, the NWPA expressly requires that the application be considered “in accordance with the laws applicable to such applications.” NWPA § 114(d), 42 U.S.C. § 10134(d). Those laws include 10 C.F.R. § 2.107, which, as this Board has recognized, authorizes withdrawals on terms the Board prescribes. Congress, when it enacted the NWPA in 1982, could have dictated that special rules applied to this proceeding to prevent withdrawal motions, or could have prescribed duties by DOE with respect to prosecution of the application after filing, but it chose not to do so.

Nor does the structure of the NWPA somehow override the plain textual indication in the statute that ordinary NRC rules govern here or dictate that the Secretary must continue with an application he has decided is contrary to the public interest. The NWPA does not prescribe a step-by-step process that leads inexorably to the opening of a repository at Yucca Mountain. Indeed, even if the NRC granted the pending application today, the Secretary would not have the authority to create an operational repository. That would require further action by DOE, other agencies, and Congress itself, yet none of those actions is either mandated or even mentioned by the NWPA. The NWPA does not require the Secretary to undertake the actions necessary to obtain the license to receive and possess materials that would be necessary to open a repository. 10 C.F.R. §§ 63.3, 63.32(d). Rather, the NWPA refers only to the need for a “construction

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<sup>6</sup> After filing the application, the only NWPA mandate imposed on the Secretary is a *reporting* requirement to Congress to note the “project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part.” NWPA § 114(e)(1), 42 U.S.C. §10134(e)(1).

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authorization,” NWPA § 114(b), 42 U.S.C. § 10134(b) – and even there, as discussed, it mandates only the submission of an application. To open a facility, moreover, the Department would be required to obtain water rights, rights of way from the Bureau of Land Management for utilities and access roads, and Clean Water Act § 404 permits for repository construction, as well as all the state and federal approvals necessary for an approximately 300-mile rail line, among many other things. None of those actions is mandated by the NWPA. At least as important, as the prior Administration stressed, *Congress* would need to take further action not contained in the NWPA before any such repository could be opened.<sup>7</sup> In short, there are many acts between the filing of the application and the actual use of the repository that the NWPA does not require.

Where, even if the NRC granted the pending application, Congress has not authorized the Secretary to make the Yucca Mountain site operational, or even mandated that he take the many required steps to make it operational, it would be bizarre to read the statute to impose a non-discretionary duty to continue with any particular intermediate step (here, prosecuting the application), absent clear statutory language mandating that result. More generally, it has not been the NRC’s practice to require any litigant to maintain a license application that the litigant does not wish to pursue. That deference to an applicant’s decisions should apply more strongly where a government official has decided not to pursue a license application because he believes that other courses would better serve the public interest.

Finally, the fact that Congress has approved Yucca Mountain as the site of a repository, *see* Pub. L. No. 107-200, 116 Stat. 735 (2002) (“there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted

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<sup>7</sup> *See* January 2009 Project Decision Schedule at 1 (“This schedule is predicated upon the enactment of legislation ... [regarding] land withdrawal.”). *See also, e.g.*, Nuclear Fuel Management and Disposal Act, S.2589, 109th Congress, 2d Sess. § 3 (2006) (proposed legislation authorizing the withdrawal of lands necessary for the Yucca Mountain repository).

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by the Governor of the State of Nevada on April 8, 2002”), means, in the D.C. Circuit’s words, simply that the Secretary is “permitted” to seek authority to open such a site and that challenges to the prior process to select that site are moot. *Nuclear Energy Institute, Inc. v. EPA*, 373 F.3d 1251, 1309-10 (D.C. Cir. 2004). It does *not* require the Secretary to continue with an application proceeding if the Secretary decides that action is contrary to the public interest. *See, e.g.*, S. Rep. No. 107-159, at 13 (2002) (“It bears repeating that enactment of the joint resolution will not authorize construction of the repository or allow DOE to put any radioactive waste or spent nuclear fuel in it or even allow DOE to begin transporting waste to it. Enactment of the joint resolution will only allow DOE to take the next step in the process laid out by the Nuclear Waste Policy Act and apply to the NRC for authorization to construct the repository at Yucca Mountain.”); H.R. Rep. No. 107-425, at 7 (2002) (“In accordance with the Nuclear Waste Policy Act (NWPA), such approval would allow the Department of Energy (DOE) to apply for a license with the Nuclear Regulatory Commission to construct a nuclear waste storage facility on the approved site.”).<sup>8</sup> That conclusion is even more strongly compelled now, in light of Congress’s recent decision to provide funding to a Blue Ribbon Commission, whose explicit purpose is to propose “alternatives” for the disposal of high-level waste and spent nuclear fuel.

Even if there were any ambiguity on these points, the Secretary’s interpretation of the NWPA would be entitled to deference. *See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *Gen. Elec. Uranium Mgmt. Corp. v. DOE*, 764 F.2d 896, 907 (D.C. Cir. 1985) (applying *Chevron* deference to uphold DOE’s interpretation of the NWPA); *see also Skidmore v Swift Co.*, 323 U.S. 65 (1944); *Auer v. Robbins*, 519 U.S. 452 (1977); *Coeur*

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<sup>8</sup> *See also* 148 Cong. Rec. 7155 (2002) (Rep. Dingell) (stating that Yucca Mountain Site Approval Act “is just about a step in a process”); *id.* at 7166 (Rep. Norwood) (“The vote today does not lock us in forever and we are not committed forever to Yucca Mountain.”); *id.* at 12340 (Sen. Crapo) (“[T]his debate is not about whether to open the Yucca Mountain facility so much as it is about allowing the process of permitting to begin to take place.”).

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*Alaska, Inc. v. Southeastern Alaska Conservation Council*, 129 S. Ct. 2458 (2009). Simply put, the text of the NWPA does not specify actions the Secretary can or must take once the application is filed. Accordingly, while some may disagree with the wisdom of the Secretary's underlying policy decision, the Secretary may fill this statutory "gap." The Secretary's interpretation is a reasonable one that should be given great weight and sustained. *See, e.g., Tennessee v. Herrington*, 806 F.2d 642, 653 (6th Cir. 1986) ("[W]e are mindful of the Supreme Court's statement in *Chevron, supra*, that: 'When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail.'").

**B. No Conditions Are Necessary As to the Licensing Support Network**

Finally, there is no reason to impose conditions relating to the Licensing Support Network ("LSN") as a term of withdrawal. As DOE's prior filings with this Board explain, DOE will, at a minimum, maintain the LSN throughout this proceeding, including any appeals, and then archive the LSN materials in accordance with the Federal Records Act and other relevant law. *See* Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference (filed Feb. 4, 2010); Department of Energy's Status Report on Its Archiving Plan (filed Feb. 19, 2010). Thus, DOE will retain the full LSN functionality throughout this proceeding, including appeal, and then follow well established legal requirements that already govern DOE's obligations regarding these documents. DOE is also considering whether sound public and fiscal policy, and the goal of preserving the knowledge gained both inside and outside of this proceeding, suggest going even further than those legal

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requirements. There is thus no need for this Board to impose additional conditions concerning the preservation of records.

\* \* \*

DOE counsel has communicated with counsel for the other parties commencing on February 24, 2010, in an effort to resolve any issues raised by them prior to filing this Motion, per 10 C.F.R. § 2.323(b). The State of Nevada and the State of California have stated that they agree with the relief requested here. The Nuclear Regulatory Commission Staff has stated that it takes no position at this time. The Nuclear Energy Institute has stated that it does not consent to the relief requested and will file its position in a response. All other parties that have responded have stated that they reserve their positions until they see the final text of the motion.<sup>9</sup>

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<sup>9</sup> These parties include: Clark County, Eureka County, Four Counties (Esmeralda, Lavender, Churchill, Mineral), Inyo County, Lincoln County, Native Community Action Council, Nye County, Timbisha Shoshone Tribal Group, White Pine County.

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Respectfully submitted,

**U.S. DEPARTMENT OF ENERGY**  
By Electronically Signed by Donald P. Irwin

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**UNITED STATES  
NUCLEAR INFRASTRUCTURE  
COUNCIL**

**NIC**

The below reflects the advice and counsel of the NIC Executive Committee.

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March 4, 2010

**Statement by the U.S. Nuclear Infrastructure Council**

Regarding the U.S. Department of Energy's (DOE) filing of a request to the U.S. Nuclear Regulatory Commission (NRC) to withdraw the Yucca Mountain license application with prejudice.

We continue to believe that the public interest with respect to U.S. energy security, competitiveness and environmental progress -- as well as nuclear new build -- is best served by continuation of the Yucca Mountain licensing process in tandem with the Blue Ribbon Commission review.

This action stands in marked contrast to President Obama's recent call for new nuclear energy plants and his announcement of the first loan guarantee along with a proposed \$36 billion expansion of the program.

The DOE's justification of its request to withdraw the license application is not compelling in light of the mandates of the Nuclear Waste Policy Act. It is conspicuously devoid of a meaningful scientific basis for the program's termination in the face of the President's Executive Order on Scientific Integrity. It offers little explanation for a withdrawal with prejudice. It is not surprising that several parties to the proceedings have already signaled their opposition to the request and others are seeking to intervene in support of the project through the courts.

We hope that Congress will provide clarity to this process by continuing to fund the license application as the Blue Ribbon Commission goes through its deliberations. We also urge DOE to show restraint on any further steps towards termination of the program until the NRC and Congress have provided more definitive guidance. Any rush to dismantle the 25 years worth of ratepayer funded scientific effort in a hasty manner before challenges can be aired and resolved will result in a serious breach of public confidence.

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Note: The above statement reflects the consensus view of the Council: however, it does not necessarily represent the specific views of individual members.

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

Before Administrative Judges:

Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

March 5, 2010

ORDER  
(Concerning Scheduling)

Before the Board are several related matters. First, the Department of Energy (DOE) has moved to withdraw its application.<sup>1</sup> Second, the State of South Carolina (South Carolina), the State of Washington (Washington), and Aiken County, South Carolina (Aiken County) have each petitioned to intervene, challenging whether DOE's motion should be granted and, if so, on what terms.<sup>2</sup> Third, the parties have not yet been afforded an opportunity to comment on DOE's filings regarding the preservation and archiving of its Licensing Support Network (LSN) document collection.<sup>3</sup>

The stay imposed by our February 16, 2010 Order does not prevent briefing of these matters, which shall proceed as follows:

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<sup>1</sup> U.S. Department of Energy's Motion to Withdraw (Mar. 3, 2010).

<sup>2</sup> Petition of the State of South Carolina to Intervene (Feb. 26, 2010); State of Washington's Petition for Leave to Intervene and Request for Hearing (Mar. 3, 2010); Petition of Aiken County, South Carolina, to Intervene (Mar. 4, 2010).

<sup>3</sup> The Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference (Feb. 4, 2010); The Department of Energy's Status Report on Its Archiving Plan (Feb. 19, 2010); see CAB Order (Granting Stay of Proceeding) (Feb. 16, 2010) at 2 (unpublished) (stating that a schedule for further filings regarding the preservation and archiving of the LSN documentation collection will be set in a subsequent order).

1. In accordance with CAB Case Management Order #1<sup>4</sup> and Commission regulations,<sup>5</sup> answers to the South Carolina, Washington and Aiken County petitions would ordinarily be due 25 days after service, and replies due seven days thereafter. For convenience, there shall be common filing dates: that is, answers to the three petitions shall be due Monday, March 29, 2010, and the replies of South Carolina, Washington and Aiken County shall be due Monday, April 5, 2010. To the extent practicable, the parties are encouraged to file answers jointly with other parties asserting similar positions.

2. The ten-day deadline for answers to DOE's motion to withdraw is waived.<sup>6</sup> The Board will set a time for responses to DOE's motion to withdraw after it has determined whether South Carolina, Washington and Aiken County shall be permitted to intervene.

3. The Board expects shortly to seek written responses from DOE to additional questions concerning DOE's LSN collection. After the Board's questions have been answered, we will establish a schedule for comments by the parties on DOE's preservation and archiving plans.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 5, 2010

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<sup>4</sup> CAB Case Management Order #1 (Jan. 29, 2009) at 3 (unpublished).

<sup>5</sup> See 10 C.F.R. § 2.309(h)(1)-(2).

<sup>6</sup> See id. at § 2.323(c).



Michael C. Connelly  
Vice President and General Counsel

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March 5, 2010

The Honorable Dr. Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
Forrestal Building 7A-257  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Re: Payments to the Nuclear Waste Fund

Dear Dr. Chu:

Xcel Energy, on behalf of its regulated subsidiaries – Northern States Power Company-Minnesota and Northern States Power Company-Wisconsin – and in light of the administration's zeroing out the 2011 budget for Yucca Mountain<sup>1</sup> and the recent request by the Department of Energy (DOE) to withdraw with prejudice its Yucca Mountain license application, respectfully requests that the one mill per kilowatt-hour nuclear waste fund fee be suspended until Congress enacts and DOE begins implementing a new nuclear waste strategy that requires more funds than are generated by the interest on the existing balance in the Nuclear Waste Fund (NWF).

As you are aware, Xcel Energy has been very supportive of the need for adequate funding for the federal government to fulfill its statutory and contractual obligations and begin removing used fuel from nuclear plant sites. However, recent developments call for a review of previous funding levels.

Section 302 of the Nuclear Waste Policy Act (NWPA) requires the Secretary of Energy to annually review and determine whether the one mill per kilowatt-hour fee currently paid by utilities into the NWF is sufficient to offset the cost of the DOE's used nuclear fuel management program and, if it is not, to adjust the fee accordingly.<sup>2</sup> To our knowledge, the last fee adequacy analysis was prepared in 2008 and one has not been prepared since the DOE announced that it was developing a new strategy of dealing with nuclear waste and was terminating the development of a deep geological repository at Yucca Mountain. Even if a fee adequacy analysis has been prepared since then, a fee of more than zero cannot be justified now, given the DOE's motion to withdraw the license application pending before the Nuclear Regulatory Commission and the absence

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<sup>1</sup> *Budget of the U.S. Government, Fiscal year 2011, Appendix 437, Terminations, Reductions, and Savings*, at 4.

<sup>2</sup> NWPA, Sec.302(d).

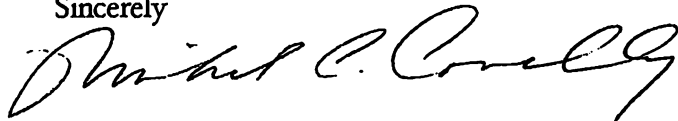
of any current program to replace Yucca Mountain. While we trust the DOE will meet its obligation to take nuclear waste, at this time no alternative program exists. Considering these actions, the DOE has no basis to justify the continued collection of any additional money for the NWF.

The NWPA specifies that money deposited in the NWF is to fund the DOE's civilian nuclear waste program authorized by that Act. Since 1983, electricity customers across the country have paid over \$30 billion into the NWF, including interest. Over \$750 million is paid into the NWF annually, and the fund's current balance is \$22 billion. Xcel Energy's customers in Minnesota, North Dakota, South Dakota, Wisconsin and Michigan have contributed \$398 million to the fund, or approximately \$13 million per year. The corpus of the fund will continue to earn interest (approximately \$1 billion per year<sup>3</sup>) until an alternative disposal option is identified and enacted into law and a fee adequacy determination is performed based on the new program. The interest that continues to accrue is more than sufficient to pay for any on-going costs until that time.

On October 8, 2009, the DOE denied requests<sup>4</sup> by the Nuclear Energy Institute and the National Association of Regulatory Commissioners to suspend the fee based on the administration's and DOE's intention to terminate the Yucca Mountain program. The basis of DOE's rejection was that "all of the fees collected in the Nuclear Waste Fund are essential to meet the obligations of the Federal Government for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste." In light of the pronouncements by DOE and the administration, and particularly in light of the DOE's March 3 motion to withdraw the Yucca Mountain license application, DOE no longer has a program "for managing and ultimately disposing of spent nuclear fuel and high-level radioactive waste." Thus, there is no basis to claim that further collection of nuclear waste fees by the government is necessary until a replacement program is available. The collection of the one mill fee should therefore be temporarily suspended.

Thank you for your attention to this matter.

Sincerely



Michael C. Connelly  
Vice President and General Counsel

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<sup>3</sup> *Summary of Program Financial & Budget Information*, Office of Civilian Radioactive Waste Management presentation, December 31, 2009 (slide 4).

<sup>4</sup> Separate requests were made by NEI and NARUC on July 8, 2009.

**Executive Committee Officers:**

**David Wright, Chairman**  
Commissioner, SC Public Service Commission

**Renze Hoeksema, Vice Chairman**  
Director of Federal Affairs, DTE Energy

**David Boyd, Membership**  
Chairman, MN Public Utilities Commission

**Robert Capstick, Finance**  
Director of Government Affairs, Yankee Atomic/Connecticut Yankee



March 9, 2010

Letter sent by facsimile

Mr. Gregory Friedman  
Inspector General  
U. S. Department of Energy  
Office of Inspector General  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Mr. Friedman:

The Nuclear Waste Strategy Coalition (NWSC) requests that your office investigate the willful failure on the part of the Department of Energy (DOE) to preserve key records associated with the proposed geologic repository at Yucca Mountain.

Over the course of close to three decades, DOE has generated an immense quantity of records in support of the ongoing application for the construction of a permanent repository at Yucca Mountain. These records take many forms, including reports, studies, calculations, notebooks, and actual metallurgical and geological samples. Now, despite the fact that Congress appropriated money to support the Yucca Mountain license application in fiscal year (FY) 2010, the Secretary of Energy has moved to withdraw the license application<sup>1</sup>. DOE stated that it will bring the Yucca Mountain Project to an orderly close in FY 2010<sup>2</sup>, despite the fact that it currently has no authorization or direction from Congress to do so. Moreover, the Nuclear Regulatory Commission (NRC) has yet to rule on DOE's very recent motion to withdraw the license application, and NRC approval or denial of DOE's motion may be months away. Numerous citizens, groups, and government entities have expressed opposition to the Secretary's action, and several petitions to intervene and court actions have been filed with the intent of stopping the Yucca Mountain termination<sup>3,4,5,6</sup>.

Nuclear ratepayers and taxpayers have spent more than \$10 billion on the Yucca Mountain project. The Secretary's actions to terminate the licensing of Yucca Mountain constitute a massive waste of money that was taken from the citizens of the United States, and a colossal abuse of the public trust. Even more disconcerting is the fact that the NWSC has received reliable reports that the shutdown is being conducted in a manner that exhibits disregard for the integrity of the information that was carefully assembled at ratepayer and taxpayer expense.

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<sup>1</sup> U. S. Department of Energy Motion to Withdraw, Docket No. 63-001, ASLBP No. 09-892-HLW-CAB04, March 3, 2010.

<sup>2</sup> Letter, Steve Isakowitz (DOE Chief Financial Officer) to the Honorable Peer J. Visclosky, United States House of Representatives, February 17, 2010.

<sup>3</sup> Petition for Declaratory and Injunctive Relief and Writ of Mandamus made to the United States Court of Appeals for the District of Columbia Circuit, Aiken County, February 19, 2010.

<sup>4</sup> Petition for Review made to the United States Court of Appeals for the District of Columbia Circuit, Robert L. Ferguson, William Lampson, and Gary Petersen, February 25, 2010.

<sup>5</sup> Petition of the State of South Carolina to Intervene, Docket No. 63-001, ASLBP No. 09-892-HLW-CAB04, February 26, 2010.

<sup>6</sup> State of Washington's Petition for Leave to Intervene and Request for Hearing, Docket No. 63-001, ASLBP No. 09-892-HLW-CAB04, March 3, 2010.

While DOE asserted that DOE will archive "... project and program documents and scientific material so that lessons learned during this process are not lost,"<sup>7</sup> reports from Nevada are that power is being shut off to key records facilities. DOE is reportedly acting with unprecedented haste to terminate knowledgeable project employees who have devoted many years to the service of their country through their work on Yucca Mountain Project. It appears that DOE's actions (and failure to take actions) stems from a desire to ensure that the Yucca Mountain Project termination is irrevocable, even if a future Administration were to determine that it is in the public interest to resume the licensing process. This appearance is entirely consistent with DOE's request to withdraw the Yucca Mountain license application "with prejudice"<sup>8</sup> so that it cannot be resubmitted.

In your independent oversight role with DOE, you have the opportunity to conduct an expedited investigation of the shutdown practices. By holding up a spotlight on DOE's actions in Nevada, you can help protect the information that was assembled at billions of dollars of taxpayer and ratepayer expense.

The NWSC<sup>9</sup> was formed because of our mutual, pressing need for storage and disposal of civilian radioactive waste from nuclear power plants. The NWSC was established by three states in 1993 due to a lack of progress by DOE's Office of Civilian Radioactive Management and has since grown to include state utility regulators, state attorneys general, electric utilities and associate members representing 47 organizations from 31 states.

If you have any questions on this request, please contact the NWSC Executive Director, Martez Norris. We look forward to hearing from you soon.

Respectfully yours,



David Wright  
Commissioner, South Carolina Public Service Commission, and  
Chairman, Nuclear Waste Strategy Coalition

- C: The President of the United States.
- The Secretary of Energy.
- Members of the House and Senate Appropriations Committees.
- Members of the House and Senate Armed Services Committees.
- Members of Congress that represents 41 states whose ratepayers pay into the NWF.
- Governors with stranded SNF/HLRW in their state.
- States Attorney Generals.
- Mr. Pete Lyons, Principal Deputy Assistant Secretary, DOE/Nuclear Energy.
- Mr. David Zabransky, Acting Principal Director, DOE/OCRWM.

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<sup>7</sup> Letter, Steve Isakowitz (DOE Chief Financial Officer) to the Honorable Peer J. Visclosky, United States House of Representatives, February 17, 2010.

<sup>8</sup> U. S. Department of Energy Motion to Withdraw, Docket No. 63-001, ASLBP No. 09-892-HLW-CAB04, March 3, 2010.

<sup>9</sup> <http://www.thenwsc.org/>

**UNITED STATES OF AMERICA**

**BEFORE THE SURFACE TRANSPORTATION BOARD**

**STB FINANCE DOCKET NO. 35106**

**UNITED STATES DEPARTMENT OF ENERGY – RAIL  
CONSTRUCTION AND OPERATION – CALIENTE RAIL LINE  
IN LINCOLN, NYE, AND ESMERALDA COUNTIES, NEVADA**

**NOTICE OF U.S. DEPARTMENT OF ENERGY’S MOTION TO WITHDRAW  
LICENSE APPLICATION IN NRC DOCKET NO. 63-001**

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*Attorneys for State of Nevada*

**March 9, 2010**



**NOTICE OF U.S. DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW  
LICENSE APPLICATION IN NRC DOCKET NO. 63-001**

On March 3, 2010 the United States Department of Energy (DOE) filed with the Construction Authorization Board (CAB or Board) a motion to withdraw the license application for a permanent geologic repository at Yucca Mountain, Nevada now pending in Docket No. 63-001 before Atomic Safety and Licensing Board of the United States Nuclear Regulatory Commission (NRC).

DOE's Motion requests the Board to prescribe only one term for withdrawal - that "*the pending application...shall be dismissed with prejudice*". DOE Motion, p. 3. (Italics added). DOE explains it "*seeks this form of dismissal because it does not intend ever to refile an application to construct a permanent geologic repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain.*" *Id.*, n. 3 (Italics added).

A true copy of DOE's Motion to Withdraw is attached hereto as Exhibit A.

Dated this 9<sup>th</sup> day of March 2010 by \_\_\_\_\_/s/\_\_\_\_\_

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Paul H. Lamboley, for  
Catherine Cortez Masto  
Attorney General  
Marta A. Adams  
Chief Civil Deputy Attorney General  
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*Attorneys for State of Nevada*

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

Before Administrative Judges:

Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

March 16, 2010

ORDER

(Filing Times for Answers and Replies)

The provisions of 10 C.F.R. § 2.309(h) shall control the time for filing answers to the newly filed intervention petitions of the National Association of Regulatory Utility Commissioners and the Prairie Island Indian Community and the time for filing any replies. In the event any additional intervention petitions are filed, those same provisions shall control the time period for filing answers and replies.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

---

Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 16, 2010

# PUBLIC LAW RESOURCE CENTER PLLC

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Public Law Resource Center PLLC  
505 North Capitol Avenue  
Lansing, Michigan 48933  
T (517) 999-7572  
firm@publiclawresourcecenter.com

March 16, 2010

To Attorney General's Offices:

Please find an Order of the Administration Law Judge in the Yucca Mountain licensing case that suggests that interested States may still have the opportunity to present a position concerning DOE's Motion to withdraw its license application.

Please feel free to let me know if your State might consider participating in a joint filing (particularly if a number of states are doing so).

Very truly yours,



Don L. Keskey (P23003)  
Public Law Resource Center  
505 N. Capitol Avenue  
Lansing, MI 48933  
Phone: 517-999-7572  
donkeskey@publiclawresourcecenter.com

DLK/cd

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

Before Administrative Judges:

Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

March 5, 2010

ORDER  
(Concerning Scheduling)

Before the Board are several related matters. First, the Department of Energy (DOE) has moved to withdraw its application.<sup>1</sup> Second, the State of South Carolina (South Carolina), the State of Washington (Washington), and Aiken County, South Carolina (Aiken County) have each petitioned to intervene, challenging whether DOE's motion should be granted and, if so, on what terms.<sup>2</sup> Third, the parties have not yet been afforded an opportunity to comment on DOE's filings regarding the preservation and archiving of its Licensing Support Network (LSN) document collection.<sup>3</sup>

The stay imposed by our February 16, 2010 Order does not prevent briefing of these matters, which shall proceed as follows:

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<sup>1</sup> U.S. Department of Energy's Motion to Withdraw (Mar. 3, 2010).

<sup>2</sup> Petition of the State of South Carolina to Intervene (Feb. 26, 2010); State of Washington's Petition for Leave to Intervene and Request for Hearing (Mar. 3, 2010); Petition of Aiken County, South Carolina, to Intervene (Mar. 4, 2010).

<sup>3</sup> The Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference (Feb. 4, 2010); The Department of Energy's Status Report on Its Archiving Plan (Feb. 19, 2010); see CAB Order (Granting Stay of Proceeding) (Feb. 16, 2010) at 2 (unpublished) (stating that a schedule for further filings regarding the preservation and archiving of the LSN documentation collection will be set in a subsequent order).

1. In accordance with CAB Case Management Order #1<sup>4</sup> and Commission regulations,<sup>5</sup> answers to the South Carolina, Washington and Aiken County petitions would ordinarily be due 25 days after service, and replies due seven days thereafter. For convenience, there shall be common filing dates: that is, answers to the three petitions shall be due Monday, March 29, 2010, and the replies of South Carolina, Washington and Aiken County shall be due Monday, April 5, 2010. To the extent practicable, the parties are encouraged to file answers jointly with other parties asserting similar positions.

2. The ten-day deadline for answers to DOE's motion to withdraw is waived.<sup>6</sup> The Board will set a time for responses to DOE's motion to withdraw after it has determined whether South Carolina, Washington and Aiken County shall be permitted to intervene.

3. The Board expects shortly to seek written responses from DOE to additional questions concerning DOE's LSN collection. After the Board's questions have been answered, we will establish a schedule for comments by the parties on DOE's preservation and archiving plans.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

/RA/

---

Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 5, 2010

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<sup>4</sup> CAB Case Management Order #1 (Jan. 29, 2009) at 3 (unpublished).

<sup>5</sup> See 10 C.F.R. § 2.309(h)(1)-(2).

<sup>6</sup> See *id.* at § 2.323(c).



March 17, 2010

The Honorable Byron L. Dorgan  
Chairman  
Senate Appropriations Subcommittee on  
Energy & Water Development  
United States Senate  
Washington, DC 20510

**Re: Proposed Yucca Mountain Project Termination**

Identical Letters Sent to:

Senate Appropriations Subcommittee on Energy & Water Development:  
The Honorable Bob Bennett, Ranking Member

House Subcommittee on Energy & Water Development:  
The Honorable Peter Visclosky, Chairman  
The Honorable Ed Pastor, Vice Chairman  
The Honorable Rodney Frelinghuysen

Dear Mr. Chairman:

The undersigned organizations -- which represent energy and individual taxpayers; state elected and regulatory officials; communities and energy-related businesses -- wish to advise you of our vigorous opposition to the U.S. Department of Energy's (DOE) proposed termination of the Yucca Mountain license application now pending before the U.S. Nuclear Regulatory Commission (NRC).

We believe this termination action -- which the DOE has requested in its Fiscal Year 2011 budget request and is seeking to implement in the current fiscal year -- will:

- Unnecessarily leave the United States with no path forward or operative "Plan B" for the Nation's nuclear waste. This has especially profound implications for defense waste communities and ten shut-down civilian nuclear facilities in nine states, which can expect protracted waste storage for the better part of this century along with more than a hundred other communities in thirty-nine states;



The Honorable Byron L. Dorgan  
Chairman  
Senate Appropriations Subcommittee on Energy & Water Development  
United States Senate  
March 17, 2010  
Page Two of Four

- Violate the provisions of the bipartisanly-enacted Nuclear Waste Policy Act, which provide no discretion for DOE to effectively terminate a viable application while surely compounding the mounting breach-of-contract with respect to the Government's longstanding failure to meet its legal obligations to begin collecting spent fuel. This will result in damage claims now estimated to approach one hundred billion dollars, particularly in the wake of the recent Federal Circuit Court of Appeals January, 2010, decision blocking DOE from claiming unavoidable delay;
- Represent unjustified intrusion into an ongoing -- heretofore successful -- review by the NRC, contradicting the President's Memorandum on Scientific Integrity stating that "political officials should not suppress or alter scientific or technological findings and conclusions;"
- Result in wholly inadequate funding to preserve the integrity of the taxpayers' \$10 billion investment to date in the Yucca Mountain project; and
- Continue to siphon approximately \$770 million annually from electricity consumers in 41 states with no return on investment.

It is our hope that your Committee will consider the following measures in light of the DOE's actions:

1. Restore sufficient funding for the DOE to continue its defense of the Yucca Mountain license application in FY2011;
2. Deny DOE reprogramming of FY2010 appropriations (as outlined in its February 17, 2010 letter) to accelerate termination of the project before full consideration by the Congress and/or approval of the DOE's license withdrawal with prejudice request by the NRC;



The Honorable Byron Dorgan  
Chairman  
Senate Appropriations Subcommittee on Energy and Water Development  
United States Senate  
March 17, 2010  
Page Three of Four

3. Ensure that the Blue Ribbon Commission on America's Nuclear Energy Future's study includes Yucca Mountain "given the public investment made to date and the integrity of the scientific process", consistent with the Energy and Water Development Appropriations Bill Report for Fiscal Year 2010 allocating \$5,000,000 for the Blue Ribbon Commission "only for an analysis of alternatives that include all options for nuclear waste disposal based on scientific merit";
4. Facilitate the public release of all documents associated with the Administration's decision to terminate the Yucca Mountain Project;
5. Require on an urgent basis the preservation of all information of scientific value relevant to the Yucca Mountain repository licensing and all past site investigations; and
6. Suspend collection of payments to the Nuclear Waste Fund immediately, in the event Congress chooses to implement the Department's termination request.

Yucca Mountain is the most viable option for managing spent commercial fuel and defense waste under the current law, recognizing that the Blue Ribbon Commission has every right to review and enhance the current strategy. Cancelling this program, without providing a bona fide alternative path forward remains unacceptable and troubling, particularly to defense and civilian waste communities, taxpayers and future generations who will bear the full burden of this action.

Accordingly, we encourage you to continue the current approach of providing "costs necessary to answer inquiries from the NRC," while the Administration evaluates its strategy toward nuclear waste disposal, as embraced in the FY2010 budget.





The Honorable Byron Dorgan  
Chairman  
Senate Appropriations Subcommittee on Energy and Water Development  
United States Senate  
March 17, 2010  
Page Four of Four

Please note that -- while these views represent the consensus viewpoint of the undersigned organizations -- they do not necessarily represent the specific views of every individual member of these organizations.

Sincerely,

Sustainable Fuel Cycle Task Force  
National Association of Regulatory Utility Commissioners  
United States Chamber of Commerce  
National Association of Manufacturers  
Citizens Against Government Waste  
United States Nuclear Infrastructure Council  
Partnership for Science and Technology  
Nuclear Waste Strategy Coalition  
Tri-City Development Council  
Institute for 21st Century Energy  
United States Nuclear Energy Foundation  
Idaho Chamber Alliance  
Coalition 21  
Alliance for Nevada's Economic Prosperity  
Economic Development Partnership of Aiken and Edgefield Counties (SC)  
Nevadans 4 Carbon Free Energy  
SRS Community Reuse Organization  
Greater Idaho Falls Chamber of Commerce

**Congress of the United States**  
**Washington, DC 20515**

March 18, 2010

The Hon. Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585-0002

Dear Mr. Secretary:

The Department of Energy has given notice that it intends to reprogram \$115 million out of the Office of Civilian Radioactive Waste Management and that it will discontinue, with prejudice, licensing of the high-level waste geologic repository at Yucca Mountain. We consider the Department's actions contrary to the clear intent of Congress and regard your proposal as prematurely and unwisely removing deep geologic disposal from the options to be considered by the Blue Ribbon Commission on nuclear waste disposal, funded in the FY 2010 Energy and Water Appropriations Act, P.L. 111-85.

The proposed reprogramming also would appear to violate the Nuclear Waste Policy Act (NWPA), as amended in 1987, which requires the Department of Energy to assure the expeditious preparation and construction of the Yucca Mountain site. In addition to violating federal law, the proposed action appears to violate agreements made by the Department with a number of states, and seems even more inadvisable because of pending lawsuits filed in two states, Washington and South Carolina, challenging the Department's authority to circumvent the NWPA.


Furthermore, the proposed reprogramming would exacerbate the significant costs to the U.S. government for failing to meet its legal responsibilities for nuclear waste removal. For 25 years, nuclear utilities have paid fees to the government totaling more than \$16 billion for waste disposal services that they have not yet received. These firms continue to pay about \$750 million annually for this purpose. Since 1998, utilities have filed at least 72 claims for breach of contract against the Department for its failure to meet these obligations. To date, courts have awarded more than \$1 billion in damage awards and settlements, including \$565 million that the government already has paid. Estimates for potential liability owed by the government range from the Department's 2008 estimate of more than \$12 billion to an industry estimate of \$50 billion. On top of this amount, the Department of Justice has spent more than \$150 million on litigation-related expenses.

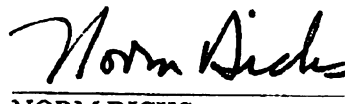
You recently testified before House and Senate Committees, and stated that you do not believe the Yucca Mountain site is environmentally sound. Whether this is your personal opinion or a scientific judgment, it does not seem right to recommend removing an option that has been considered scientifically sound and technically viable since it was designated by Congress in 1987, prior to the organization of the Blue Ribbon Commission. The proposed reprogramming of funds


supporting the licensing process is predicated upon your decision to withdraw the NRC license application with prejudice, which clearly contradicts the Nuclear Waste Policy Act, and implies that further proceedings before the NRC would be de novo.


Leaving aside the technical and political considerations that surround the Yucca Mountain issue, we are writing at this time to urge you to withdraw the reprogramming request in recognition of Congressional intent as well as the serious legal implications of an action that would also render useless billions of previously appropriated funds.

Yours sincerely,

  
\_\_\_\_\_  
JOHN SPRATT  
Member of Congress

  
\_\_\_\_\_  
NORM DICKS  
Member of Congress

  
\_\_\_\_\_  
JAMES F. CLYBURN  
Member of Congress

  
\_\_\_\_\_  
DOC HASTINGS  
Member of Congress

  
\_\_\_\_\_  
MAX INSLEE  
Member of Congress

.....  
(Original Signature of Member)

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

## H. RES.

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Expressing disapproval of the House of Representatives with respect to the Department of Energy's motion with the Nuclear Regulatory Commission to withdraw the license application for a high-level nuclear waste repository at Yucca Mountain with prejudice.

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### IN THE HOUSE OF REPRESENTATIVES

Mr. INSLEE submitted the following resolution; which was referred to the Committee on \_\_\_\_\_

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## RESOLUTION

Expressing disapproval of the House of Representatives with respect to the Department of Energy's motion with the Nuclear Regulatory Commission to withdraw the license application for a high-level nuclear waste repository at Yucca Mountain with prejudice.

Whereas the Department of Energy filed a motion with the Nuclear Regulatory Commission to withdraw their Yucca Mountain license application for a high-level nuclear waste repository with prejudice;

Whereas Congress passed the Nuclear Waste Policy Act of 1982 (NWPA) to centralize the long-term management

of nuclear waste, including construction of a safe and permanent nuclear waste repository;

Whereas in 1987 Congress amended the NWPA by designating Yucca Mountain as the only option for a long-term storage site by a vote of 237–181 in the House of Representatives and 61–28 in the Senate;

Whereas Congress reaffirmed Yucca Mountain's designation as the only option for a long-term storage site in 2002 by a vote of 306–117 in the House of Representatives and 60-39 in the Senate;

Whereas in 2007 the House of Representatives overwhelmingly rejected by a vote of 80-351 an attempt to eliminate funding for the Yucca Mountain nuclear waste disposal program;

Whereas, since 1982, consumers of electricity produced at nuclear power plants have paid in excess of \$33,000,000,000 into a fund for a waste repository program;

Whereas the Department of Energy has not met the statutory and contractual deadline of January 31, 1998, to dispose of spent nuclear fuel, resulting in 72 breach of contract claims filed against the Department at an approximate liability cost of \$1,300,000,000 to date;

Whereas the Department of Energy predicts damages stemming from breach of contract claims will be approximately \$12,300,000,000 if the Department is able to begin accepting spent nuclear fuel by 2020 under the current plan, with nuclear utilities estimating the Department's total potential liability being closer to \$50,000,000,000;

Whereas the Department of Justice has incurred \$150,000,000 on litigation related expenses;

Whereas the total spent for the preparation and construction of a permanent storage site at Yucca Mountain has exceeded \$11,200,000,000;

Whereas without the Yucca Mountain repository, current law provides for no other alternative for the permanent or temporary central storage of the Nation's intensely radioactive reactor wastes;

Whereas taxpayers will receive nothing for their substantial investment as a result of the decision to abandon the Yucca Mountain project;

Whereas nuclear materials are stored at 121 locations in 39 States across the country awaiting transport to a permanent repository;

Whereas the Federal Government generated high-level nuclear waste as a part of its national defense program to help end World War II and the Cold War and is currently storing this waste at several sites across the Nation including the Hanford Site in Washington State, the Savannah River Site in South Carolina, and the Idaho National Laboratory;

Whereas the records of decision for the disposal of waste associated with multiple defense related activities have Yucca Mountain as the ultimate disposition site, including waste at many locations across the country storing and processing various types of defense related waste; and

Whereas plans underway to treat and process this waste are based on standards associated specifically with the na-

tional repository at Yucca Mountain: Now, therefore, be it

1       *Resolved*, That the House of Representatives—

2           (1) strongly believes that the decision to abandon  
3       the 23-year bipartisan project establishing  
4       Yucca Mountain as the Nation's primary permanent  
5       nuclear waste storage site—

6           (A) breaks a commitment made to certain  
7       States nearly 3 decades ago; and

8           (B) goes against the will and intent of  
9       Congress by extending the length of time States  
10      will be forced to store nuclear waste at significant  
11      additional cost to the taxpayers; and

12          (2) calls upon the Administration to uphold and  
13      comply with the bipartisan commitment passed by  
14      Congress and to—

15           (A) cease and desist withdrawing the  
16      Yucca Mountain license application from the  
17      Nuclear Regulatory Commission with or without  
18      prejudice;

19           (B) cease and desist any action to move  
20      forward with terminating activities required to  
21      complete the Yucca Mountain license application,  
22      including the termination of employees  
23      supporting the project and termination of any  
24      leases housing employees;

- 1 (C) halt reprogramming of fiscal year 2010
- 2 funds appropriated by Congress for the Yucca
- 3 Mountain license application; and
- 4 (D) preserve all scientific and site-specific
- 5 files and data related to Yucca Mountain in ac-
- 6 cordance with Nuclear Regulatory Commission
- 7 document controls and quality assurance proce-
- 8 dures.



**FRED UPTON**

6TH DISTRICT, MICHIGAN

COMMITTEE ON ENERGY AND COMMERCE

**SUBCOMMITTEES:**

ENERGY AND ENVIRONMENT  
RANKING REPUBLICAN MEMBER  
COMMUNICATIONS, TECHNOLOGY,  
AND THE INTERNET



**Congress of the United States**  
**House of Representatives**

March 24, 2010

The Honorable Steven Chu  
Secretary  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Dear Mr. Secretary:

I am writing to express my concern with your stated plans to bring the Yucca Mountain project to an "orderly" close this year. On February 17, 2010, you notified the House Appropriations Committee that you intend to reprogram \$115 million in FY 2010 funds previously dedicated to the Yucca Mountain licensing process, to expedite the project's termination.

Specifically, I fear that the accelerated pace at which this program is being terminated could cause much of the vast Yucca Mountain scientific and technical record to be lost. We cannot allow this to happen, and I seek your assurance that the proper steps are being taken to preserve these documents and records for posterity. This information, which was established through a \$10 billion, 28-year effort, is the product of one of the most extensive research and development programs in our nation's history. It is extremely important that this information be preserved and maintained to inform future decision-making on the management of spent nuclear fuel and other high-level radioactive waste.

It is therefore troubling that the Department has not yet offered a plan to preserve and maintain the millions of documents, massive amount of data, numerous geologic samples and other scientific evidence compiled by the project. Such an important undertaking would require a significant amount of infrastructure to support the computers and facilities, yet there has not been any indication that these necessary steps have been taken. In fact, the Department has published no plans, and requested no funds, to make all relevant Yucca Mountain documentation publicly accessible, as required by the NRC. Moreover, I understand that the Department is planning to separate project staff and vacate project offices, opening up the possibility that no one will be left to preserve the scientific record.

Addressing Yucca Mountain in a responsible and orderly manner is of the utmost importance, given its significance to our country's clean energy future. Therefore, I would appreciate if members of your team could brief my staff on the Department's plans to close Yucca Mountain at their earliest convenience, but no later than Thursday, April 15<sup>th</sup>. Should you or your staff have any questions or concerns, please contact Michael Beckerman of my office at (202) 225-3761.

Sincerely,

Fred Upton  
Ranking Member  
Subcommittee on Energy and Environment

cc: NRC Commissioners  
NARUC

**DC OFFICE:**

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WASHINGTON, DC 20515-2206  
(202) 225-3761  
FAX: (202) 225-4986

**MICHIGAN HOME OFFICES:**

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**Blue Ribbon Commission on America's Nuclear Future  
Agenda**

**March 25 – 26, 2010  
Willard Intercontinental Hotel, Washington, DC**

*Thursday, March 25, 2010*

**Open Meeting – Grand Ballroom**

11:00 a.m.	Open meeting/review agenda	Tim Frazier
11:10 a.m.	Opening comments from Secretary Chu	
11:25 a.m.	Opening discussion - Co-chairs	Honorable Lee Hamilton General Brent Scowcroft
11:35 a.m.	Opening discussion - members	Honorable Pete Domenici Honorable Chuck Hagel Honorable Phil Sharp Mr. Mark H. Ayers Honorable Vicky Bailey Dr. Albert Carnesale Ms. Susan Eisenhower Mr. Jonathan Lash Dr. Allison Macfarlane Dr. Richard A. Meserve Dr. Ernie Moniz Mr. John Rowe Dr. Per F. Peterson
12:30 p.m.	Lunch	
1:30 p.m.	How we got here <ul style="list-style-type: none"><li>- Historical background</li><li>- Nuclear Waste Policy Act</li><li>- Inventory of commercial spent Nuclear fuel<ul style="list-style-type: none"><li>o What is it</li><li>o Where located</li><li>o Quantity</li><li>o Generation rate</li></ul></li></ul>	Congressional Research Service
3:00 p.m.	Break	

- |           |  |                                       |
|-----------|--|---------------------------------------|
| 3:15 p.m. | Scenarios for nuclear energy growth<br>- Resulting increase in spent nuclear<br>Fuel for disposal  | Office of Nuclear Energy              |
| 3:30 p.m. | Magnitude of defense high-level waste<br>- Defense high-level waste<br>o Where located<br>o Quantity<br>o Schedule<br>o Production rate<br>o Form/characteristics<br>- Defense production reactor spent nuclear fuel | Office of Environmental<br>Management |
| 4:15 p.m. | Other spent nuclear fuel<br>- University research reactor<br>Spent nuclear fuel<br>- DOE spent nuclear fuel<br>- Foreign research reactor spent nuclear fuel   | Office of Environmental<br>Management |
| 4:30 p.m. | Navy spent nuclear fuel  | Office of Naval Reactors              |
| 5:00 p.m. | Adjourn meeting  |                                       |

*Friday, March 26, 2010*

Open Meeting – Grand Ballroom

- |            |                              |             |
|------------|------------------------------|-------------|
| 8:30 a.m.  | Open meeting/review agenda   | Tim Frazier |
| 8:35 a.m.  | Commission discussions       |             |
| 10:35 a.m. | Coffee break                 |             |
| 10:45 a.m. | Commission plans and actions |             |
| 11:45 a.m. | Oral statements              | Public      |
| 12:00 p.m. | Adjourn meeting              |             |



**The Secretary of Energy**  
Washington, DC 20585

March 26, 2010

The Honorable Peter J. Visclosky  
Chairman, Subcommittee on Energy and  
Water Development  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify before your committee on Wednesday. I appreciated our discussion about the President's FY 2011 Budget Request for the Department of Energy.

Much of our discussion centered on the Administration's plan to close down the Yucca Mountain project. There were several points during the hearing testimony when I misspoke or was not clear. I would like to clarify those points in this letter.

I understand your concerns about reprogramming. I assure you that I take very seriously the prerogatives of your committee, and our obligations under the law. My general counsel has studied this matter closely, and has advised me that we do have the authority within the law to take the reprogramming actions that we have planned. As you know, the Department of Energy sent you a letter on February 17, notifying you of our intent to reprogram funding in FY 2010 for the Office of Civilian and Radioactive Waste Management (OCRWM). I assure you that my staff and I will keep you better informed of the process as we move forward in the coming weeks and months with more significant steps toward shutting down the Yucca Mountain project.

I would also like to clarify my comments on the relationship between our Yucca Mountain shutdown activities and the NRC process. The Department is taking action to shut down the program in light of the NRC's decision to grant our motion to stay the license application process. In short, I do not believe we should spend money on a licensing process that has been suspended, especially given the Administration's intention to pursue alternatives to Yucca Mountain. I also believe that we need to begin actions now to ensure that the shutdown occurs in an orderly fashion that takes into account the impacts on our employees and their families. For example, we are making every effort to help affected employees find other opportunities within the government for which they are qualified. Finally, I want to assure you that an integral part of our plan is to proceed in a manner that preserves all relevant documents and all relevant learning so that no scientific knowledge is lost.



These are complex issues, and I would like to visit with you in person soon after the recess to discuss them in more detail. However, I did not want to let my statements yesterday go uncorrected.

Should you have any questions or require additional information, please contact Ms. Tara Hicks, Office of External Coordination, at (202) 586-7487.

Sincerely,

A handwritten signature in black ink that reads "Steven Chu". The signature is written in a cursive, flowing style.

Steven Chu

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:

09-892-HLW-CAB04  
Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

In the Matter of :	)	March 26, 2010
	)	
U.S. Department of Energy ) Docket No. 63-001	)	
	)	Docket No. 63-001-HLW
(High Level Waste Repository Construction	)	
Authorization Application)	)	

**NYE COUNTY ANSWERS TO THE PETITIONS TO INTERVENE  
FILED BY THE STATE OF SOUTH CAROLINA, STATE OF  
WASHINGTON, AIKEN COUNTY, SOUTH CAROLINA, THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY  
COMMISSIONERS, AND THE PRAIRIE ISLAND INDIAN  
COMMUNITY**

In accordance with the recent Construction Authorization Board 04's (CAB) Scheduling Orders dated March 5 and 16, 2010, Nye County, Nevada, hereby submits its Answer to the Petitions to Intervene<sup>1</sup> filed by the State of South Carolina, the State of Washington, Aiken County, South Carolina, The National Association of Regulatory Utility Commissioners, and the Prairie Island Indian Community [hereinafter "Five Additional Petitioners"]. Nye County, Nevada is the local governmental body in which the proposed Yucca Mountain repository is wholly located, and as such intervened in this proceeding as a matter of right under 10 CFR §2.309(d)(2)(iii).

<sup>1</sup> Petition of the State of South Carolina to Intervene (February 26, 2010); State of Washington's Petition For Leave To Intervene and Request for Hearing (March 3, 2010); Petition of Aiken County, South Carolina (March 4, 2010); National Association of Regulatory Utility Commissioners Petition to Intervene (March 15, 2010), and the Petition to Intervene of the Prairie Island Indian Community (March 16, 2010).

From the outset, Nye County has clearly stated that its primary interest in this proceeding is protecting the health and safety of its residents. Provided that the concerns raised by Nye County in its contentions are addressed and satisfied by NRC's inclusion of appropriate conditions on construction authorization, Nye County believes that the repository could be constructed and operated safely and in a manner which adequately protects the residents of Nye County and the public from radiological releases and exposures.

During consultation with counsel for the Five Additional Petitioners, Nye County's legal representatives have stated that Nye County does not oppose the Petitions to Intervene. Nye County supports the intervention of these parties who have demonstrated standing and a stake in this proceeding, and have met the requirements of 10 C.F.R. §§ 2.309(a) through (g). By granting intervention, the CAB assures that all perspectives are considered as it determines whether to grant, deny, or condition DOE's Motion to Withdraw in this licensing proceeding which has major implications for national nuclear policy. For the reasons stated in the Five Additional Petitioners' filings in response to the requirements of 10 C.F.R. §§ 2.309(a)-(g),

which responses are incorporated herein by reference, Nye County supports the late intervention of each of the Five Additional Petitioners in this proceeding.<sup>2</sup>

Respectfully Submitted,

*Signed electronically*

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**Counsel for Nye County, Nevada**

March 26, 2009

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<sup>2</sup> Unlike the other Five Additional Petitioners, Aiken, South Carolina, did not separately address the requirements of 10 C.F.R. §§ 2.309(a)-(g) in its petition, but rather incorporated the State of South Carolina's petition by reference.



March 29, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

Before Administrative Judges:  
Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

In the Matter of	)	Docket No. 63-001
U.S. DEPARTMENT OF ENERGY	)	ASLBP No. 09-892-HLW-CAB04
(High-Level Waste Repository)	)	

**U.S. DEPARTMENT OF ENERGY’S RESPONSE TO PETITIONS TO INTERVENE OF THE STATE OF WASHINGTON, THE STATE OF SOUTH CAROLINA, AIKEN COUNTY, THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, AND THE PRAIRIE ISLAND INDIAN COMMUNITY**

Three State governmental entities -- the States of South Carolina and Washington, and the County of Aiken, South Carolina -- have filed Petitions to Intervene in this proceeding.<sup>1</sup> The National Association of Regulatory Utility Commissioners (“NARUC”) and the Prairie Island Indian Community also filed Petitions to Intervene.<sup>2</sup> Each of these Petitioners has said its intended participation is solely to oppose the Department of Energy’s (“DOE”) March 3, 2010

<sup>1</sup> PETITION OF THE STATE OF SOUTH CAROLINA TO INTERVENE, February 26, 2010 , March 3, 2010 [South Carolina Pet.]; STATE OF WASHINGTON’S PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING [Washington Pet.]; PETITION OF AIKEN COUNTY, SOUTH CAROLINA, TO INTERVENE, March 4, 2010 [Aiken Pet.].

<sup>2</sup> NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS PETITION TO INTERVENE, March 15, 2010 [NARUC Pet.]; PETITION TO INTERVENE OF THE PRAIRIE ISLAND INDIAN COMMUNITY, March 15, 2010 [PIIC Pet.].

Motion to Withdraw its license application (“Motion to Withdraw”).<sup>3</sup> DOE is confident that its Motion to Withdraw is consistent with all governing law. Nevertheless, DOE believes that States and State subdivisions, affected tribes, and NARUC should be able to present their differing view of the law on this issue in this unique proceeding.

Each of these petitioners has stated that its opposition to the Motion to Withdraw is based solely on legal grounds and does not involve disputed issues of material fact.<sup>4</sup> Moreover, each of these petitioners has proffered contentions that consist purely of legal arguments opposing the Motion to Withdraw.<sup>5</sup> This suggests that they may be permitted to intervene without causing any

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<sup>3</sup> Washington states that it “seeks intervention to oppose an anticipated motion by [DOE] to dismiss with prejudice its application for a construction authorization to proceed with a deep geologic repository for high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada.” Washington Pet. at 1. It further declares: “Washington’s intervention will not broaden issues. Washington will merely oppose such withdrawal.” *Id.* at 13. South Carolina states: “The purpose of the requested intervention is to oppose, as a matter of law, the anticipated motion of [DOE] to withdraw, with prejudice, the application in this case.” South Carolina Pet. at 2. Aiken County states that it “moves to intervene in these proceedings in the same manner as set forth in the Petition to Intervene of the State of South Carolina dated February 26, 2010, which this petition incorporates by reference.” Aiken Pet. at 3. NARUC states that it “seeks leave to intervene as a party to contest the recently filed DOE motion to withdraw the license application for a permanent geologic repository at Yucca Mountain with prejudice.” NARUC Pet. at 3. PIIC asserts that it seeks “to oppose the March 3, 2010 motion by the Department of Energy (DOE) to dismiss with prejudice” its application, that PIIC’s “participation will not broaden the issues herein,” and that its opposition will be based “on legal grounds.” PIIC Pet. at 2, 13, 14.

<sup>4</sup> Washington Pet. at 17, 20, 23 (stating that the issues raised in the proffered contentions are “exclusively” or “primarily legal in nature” and “not factual.”), 23, 25-26 (asserting “genuine dispute” as to whether DOE “has satisfied NEPA as a procedural prerequisite”, thus raising inherently legal arguments); South Carolina Pet. at 18 (stating that South Carolina’s proffered contentions “are not anticipated to involve any contested issues as to any material fact and would involve only legal argument.”), 23, 25, 27 (“there is no disputed material issue of fact of which South Carolina is presently aware, given that DOE clearly intends to seek withdrawal of the application. Equally clear, however, is the existence of a material issue of law, that is, the question of whether DOE has the power to withdraw the application”); Aiken Pet. at 3 (stating that Aiken seeks to intervene “in the same manner as set forth in the Petition to Intervene of the State of South Carolina.”); NARUC Pet. at 27, 31, 34, 38 (stating that “[t]he issues raised in this pleading are exclusively legal in nature,” and that there are “no factual issues” or that they “are not anticipated”); PIIC Petition at 21, 23, 26, 29, 34 (stating, as to each contention, that the issue(s) raised are “primarily legal” and that, to the extent they may rely on factual matters, they rely either on the existing record or on an attached affidavit of Ronald C. Callen).

<sup>5</sup> South Carolina has proffered three contentions, all alleging violations of the Nuclear Waste Policy Act (“NWPA”). Washington has proffered four contentions, alleging violations of the NWPA, general federal standards for dismissal with prejudice, the National Environmental Policy Act and the Administrative Procedures Act. Aiken County has not proffered any contentions, but has stated that it “seeks to intervene in the same manner as set forth in the Petition to Intervene of the State of South Carolina.” Aiken Pet. at 3. By that statement, Aiken appears to adopt and be limited to the contentions filed by the State of South Carolina. NARUC has proffered four contentions akin to those raised by the State of Washington. PIIC has proffered five

undue delay. Finally, three petitioners are State or local governmental entities entitled to participate as such under 10 C.F.R. § 2.315(c), even without petitioning formally to intervene.<sup>6</sup> A fourth is a federally recognized Indian tribe and host to an NRC-licensed facility, similarly entitled to participate under 10 C.F.R. § 2.315(c); and the fifth is the national organization of state utility commissioners.<sup>7</sup> All of the petitions are timely relative to the filing of the Motion to Withdraw.

Accordingly, DOE does not oppose the intervention of these five petitioners to allow them to make their legal arguments in opposition to the Motion to Dismiss. To avoid delay and to promote efficiency, DOE respectfully submits that the Board should permit their intervention on the following terms:

1. The petitioners are allowed admission as intervenors under 10 C.F.R. § 2.309, with the scope of their intervention limited to opposition to the Motion to Withdraw;
2. The petitioners' contentions are to be resolved through a briefing process that the Board establishes for the Motion to Withdraw and any argument that the Board allows regarding that motion. The petitioners may raise their objections to the Motion to Withdraw without amending their proffered contentions.
3. The Board should establish the following briefing schedule to address the Motion to Withdraw and objections to that motion by these petitioners and any existing parties: (i) all briefs in opposition to the Motion to Withdraw are to be filed within 21 days after the order granting the petitioners' intervention; and (ii) DOE's consolidated reply to the briefs in opposition and the replies of any other parties aligned with DOE on the Motion to Withdraw are to be filed within 21 days after the last brief in opposition is filed.

DOE does not of course concede the merits of the petitioners' proffered contentions or any other matter that they have pleaded, and expressly reserves its right to contest all of these

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contentions, four of them akin to those raised by the State of Washington and NARUC, and the fifth proposing certain "conditions on any future consideration of DOE's Motion" (PIIC Pet. at 29).

<sup>6</sup> Aiken requests this form of participation in the alternative to intervention. Aiken Pet. at 3.

<sup>7</sup> See NARUC Pet. at 3-5 for NARUC's recitation of its previous involvements in nuclear matters.

petitioners' substantive arguments on the merits.<sup>8</sup> DOE also does not consent to any later attempt by petitioners to broaden the proposed scope of their participation or to modify the process for resolution of the Motion to Withdraw as it may be established by this Board.<sup>9</sup>

Counsel for South Carolina, Washington, Aiken County and PIIC have informed DOE that they are agreeable to the intervention terms and the briefing schedule proposed above. Counsel for NARUC has informed DOE that it does not agree with the terms proposed by DOE.

DOE has solicited the views of the existing parties about the proposed terms. The following have informed DOE that they do not agree with them: State of Nevada, Clark and Nye Counties, NAAC. DOE has not received responses from any other parties.

Respectfully submitted,

**U.S. DEPARTMENT OF ENERGY**

By: [Original Signed by Donald P. Irwin]

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<sup>8</sup> DOE also reserves the right to oppose admission of any further contentions by Petitioners (Washington, having filed on March 3 without seeing DOE's Motion, purports to reserve the right to advance further contentions, Washington Pet. at 14.).

<sup>9</sup> DOE reserves the right to object to participation by any further petitioner for intervention, not matching all the attributes or circumstances of the instant Petitioners, on this or any other issue.



## CHARTER

### PURPOSE

The U.S. Department of Energy (DOE) National Transportation Stakeholders Forum (NTSF) is the mechanism through which DOE communicates at a national level with states and tribes about the Department's shipments of radioactive waste and materials, as well as occasional high-visibility shipments that are nonradioactive. The purpose of the NTSF is to bring transparency, openness, and accountability to DOE's offsite transportation activities through collaboration with state and tribal governments. DOE will work through existing agreements and networks to ensure Federal, state, and tribal government participation. The NTSF meetings and webinars will be particularly relevant for personnel with responsibilities in packaging and transportation, emergency management, security, inspection and enforcement, and radiation protection.

### GOALS & OBJECTIVES

The NTSF will bring DOE and its transportation stakeholders together to accomplish three main goals:

Goal	Objective
<p>Inform states and tribes about ongoing, upcoming, or tentatively planned DOE shipments or shipping campaigns that may have an impact on their jurisdictions.</p>	<ol style="list-style-type: none"> <li>1. DOE will provide information about high visibility shipment campaigns, ongoing or planned, through the NTSF at annual meetings and semi-annual briefings (e.g. webinars, regional meetings, STGWG).</li> <li>2. Information on DOE shipment activities will be shared electronically with stakeholders through mechanisms like DOE's semi-annual Projected Shipment Report (PSR) and Waste Information Management System (WIMS).</li> <li>3. The information to be provided to stakeholders will include, at a minimum, the 14 topics identified in DOE M 460.2-1A as suitable content for transportation plans.</li> </ol>
<p>Obtain input from states and tribes about concerns, needs, or logistics that is relevant to</p>	<ol style="list-style-type: none"> <li>1. Annual meetings and webinars will include a session during which DOE</li> </ol>

shipment planning and execution.	<p>shipping programs will solicit specific input from participants.</p> <ol style="list-style-type: none"> <li>2. In the interim between meetings and webinars, stakeholders may provide input to DOE (through the Office of Packaging and Transportation, EM-45) directly or through regional cooperative agreement groups or other coordinating elements.</li> </ol>
Identify emerging issues for DOE and its transportation stakeholders that may affect shipment planning, preparedness, and execution, including intergovernmental consultation and cooperation.	<ol style="list-style-type: none"> <li>1. Annual meetings and webinars will include a session during which stakeholders and DOE personnel have an opportunity to raise issues of concern for discussion.</li> <li>2. Throughout the year, as issues, concerns, or stakeholder needs arise, participants will contact the DOE chairperson to relay information. Identified issues will be brought to the attention of the Planning Committee for potential action.</li> <li>3. As issues are identified, the Planning Committee will determine the priority for establishing an ad hoc working group within one (1) month. Once convened, the ad hoc working group will develop a task statement, and develop a timeline for resolution of the issue at the first meeting.</li> </ol>

## ORGANIZATION

A DOE chairperson will lead the NTSF and will be responsible for overall operation of the group. A Planning Committee will assist the chairperson with developing the agenda for annual meetings and webinars and prioritizing issues for ad hoc working groups. Ad hoc working groups will form as necessary to work on specific tasks when issues are identified.

## RESPONSIBILITIES

*DOE chairperson:* The chairperson is responsible for providing feedback from the NTSF to the Assistant Secretary for Environmental Management and various DOE elements such as the Environmental Management Advisory Board and corporate boards. The chairperson is also responsible for designating the members of the Planning Committee and the ad hoc working groups, organizing annual meetings and webinars, following up on action items, and coordinating participation by other DOE Program Offices and other elements.

*DOE representatives:* DOE Program Offices with ongoing or upcoming shipments will attend annual meetings and webinars, provide comprehensive information regarding their shipping

plans, identify a single point of contact for information on shipments, serve on ad hoc working groups as requested, and respond to stakeholder requests for information in a timely manner.

*State and tribal participants:* State and Tribal representatives who participate in the NTSF will attend meetings and webinars, provide their feedback on DOE's shipping campaigns, respond to requests for information in a timely manner, coordinate with other agencies in their jurisdictions, and serve on ad hoc working groups as requested. The representatives will act as conduits for information between DOE and their respective states and tribes.

*Planning Committee members:* The Planning Committee will consist of designees representing Federal, state, and tribal governments. The Planning Committee members will serve on a rotational basis. Participants that serve on the Planning Committee will solicit input from other NTSF participants, participate in regularly scheduled conference calls, assist with the development of the agenda for annual meetings/webinars, and monitor the progress made by DOE and its stakeholders in resolving emerging issues related to transportation.