ANSWER OF CLARK COUNTY, NEVADA
TO PETITIONS TO INTERVENE OF THE
PRAIRIE ISLAND INDIAN COMMUNITY AND
THE NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS

Pursuant to the CAB Order issued March 5, 2010 (“March 5 Order”) and the April 27, 2010 Order (Setting Briefing Schedule), Clark County, Nevada (“Clark County”), hereby files this Answer to the Petitions to Intervene of the Prairie Island Indian Community (“PIIC”) and the National Association of Regulatory Utility Commissioners (“NARUC”) (together, the “Petitioners”) filed on March 15, 2010.1 Clark County joins in the Answers filed today by the State of Nevada (“Nevada”) in response to the Petitioners’ requests.2 Nevada’s Answers address each of the Petitioners’ lack of standing, untimeliness, and matters of LSN compliance. Nevada’s Answers also address in detail each element of the proffered contentions. Clark County files this Answer to offer the following additional points regarding the Petitioners’ contrived claims of timeliness.

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1 Although PIIC’s petition is dated February 26, 2010, it was not actually filed on the Electronic Information Exchange until March 15, 2010.
2 See March 5 Order at Ordering Paragraph 1 (“To the extent practicable, the parties are encouraged to file answers jointly with other parties asserting similar positions.”)
Neither PIIC or NARUC has proffered sufficient grounds for intervening at this stage of the proceeding, nearly two years since the DOE filed its License Application, and nearly a year and a half since the NRC called for all interested parties to come forward to be heard. The Petitioners each claim that its interests in the proceeding ripened only after learning of the DOE’s intent to withdraw the License Application. These arguments fail. Consideration of the Petitioners’ own characterizations of their respective alleged interests and harms underscores the untimeliness of their petitions to intervene.

For example, PIIC and NARUC argue that they each have direct interests in this proceeding. Yet, Petitioners apparently did not themselves consider these interests sufficient enough to warrant their active involvement when the DOE filed the License Application in 2008. Indeed, the Petitioners freely admit that they were aware of the initiation of this proceeding following the DOE’s filing of the License Application in 2008.

The Petitioners claim that they did not file within the 60-day period because the DOE’s withdrawal of the license application was unforeseeable. However, the Petitioners’ rationale wrongly presumed that the only outcome of this proceeding would be the ultimate approval of the License Application. This presumption reveals an unreasonably narrow construction of the NRC’s authority and ignores the possibility of denial of the License Application on the merits – an outcome not unlike that which will result if the DOE’s motion to withdraw is granted.

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4 See Petition to Intervene of the Prairie Island Indian Community (March 15, 2010) (“PIIC Petition”) at 10 (“These very recent events [the DOE’s filing of a motion to withdraw] have now created the necessity and urgency for the Petitioner to file this petition”); National Association of Regulatory Utility Commissioners Petition to Intervene (March 15, 2010) (“NARUC Petition”) at 18-19 (“there was no reason for NARUC to intervene” until NARUC learned that the DOE filed a motion to withdraw).
5 See PIIC Petition, at 6 (“the Petitioner has a direct and concrete interest in this proceeding”); NARUC Petition, at 4 (“NARUC’s State commission members have an obvious interest in this proceeding”).
6 See PIIC Petition, at 9; NARUC Petition, at 17.
7 See PIIC Petition, at 9 (The DOE’s withdrawal “could clearly not be reasonably foreseen”); NARUC Petition, at 17 (The DOE’s withdrawal was “unpredictable” and “highly improbable”).
The DOE’s filing and prosecution of the License Application was always subject to potential rejection or dismissal by the NRC. Under the Petitioners’ rationale of what constitutes timeliness, parties could be admitted timely even after a full hearing on the merits, and after a potential decision to deny the application. Such a result is at odds with the Commission’s desire that all interested parties come forward to protect their respective interests early in the proceeding. Only now, after Petitioners’ presumptions that the filing of the DOE’s License Application equates to construction approval have proven false, do Petitioners complain that each will be affected by an NRC decision that will constitute a concrete and particularized injury and a distinct and palpable harm that they will suffer if the DOE’s motion to withdraw is granted.  

PIIC and NARUC claim to have interests that may be affected by the outcome of this proceeding. It is precisely because these interests date back to well before the NRC published the Notice of Hearing that each of the Petitioners’ new-found desire to intervene is untimely. The Petitioners presumed at their own peril that this proceeding was nothing more than a procedural formality with a pre-determined outcome that rendered their appearance unnecessary. In short, Petitioners have made no showing today that could not have been made over a year and a half ago (within the time specified in the Notice of Hearing). Good cause cannot be created on a whim, based on one’s desire or one’s evaluation of how or whether the litigation proceeds.

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8 See PIIC Petition, at 6 (withdrawal will strand SNF in several states “in such a fashion as to create significant long-term environmental and safety risks”); see also NARUC Petition, at 12 (arguing that dismissal has the effect of taking the site selection process “back to square one”).

9 See, e.g., In the Matter of Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3) 62 N.R.C. 551, 564 (2005) (“To demonstrate good cause, a petitioner must show not only why it could not have filed within the time specified in the notice of opportunity for hearing, but also that it filed as soon as possible thereafter.”)
Indeed, NARUC now argues that the interests it seeks to protect by intervening out of
time “are central and germane to its purpose.”\textsuperscript{10} It also alleges that the DOE’s withdrawal of the
License Application undermines the ability of various NARUC members “to fulfill their
respective \textit{parens patriae} statutory duties to protect the health, safety, and economic welfare of
electric ratepayers.”\textsuperscript{11} It is evident that such deep interests warranted \textit{timely} intervention and
continued participation in the proceeding from the outset, not a sudden, belated desire to
participate triggered by a development to which the Petitioner objects. Surely there are many
potential parties that would prefer stay out of litigation as long as it proceeds according to their
desires, but remain free to “jump in” should the process take a turn not to their liking. That is
not, however, how litigation proceeds generally, and it should not be how the License
Application proceeds before this Board and the Commission.

For the reasons stated in Nevada’s Answers, as supplemented herein, Clark County
respectfully requests that the Board issue an Order denying the Petitions to Intervene of PIIC and
NARUC.

Respectfully submitted,

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Dated: May 4, 2010

\textsuperscript{10} NARUC Petition, at 14.
\textsuperscript{11} Id. at 10.
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Answer of Clark County, Nevada to Petitions to Intervene of the Prairie Island Indian Community and the National Association of Regulatory Utility Commissioners have been served on the following persons this 29th day of April, 2010, by Electronic Information Exchange.

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