NUCLEAR ENERGY INSTITUTE’S RESPONSE TO COMMISSION’S ORDER REGARDING RESUMPTION OF YUCCA MOUNTAIN LICENSING ACTIVITIES

In accordance with the Commission’s August 30, 2013 Order, the Nuclear Energy Institute ("NEI") hereby provides its additional views as to how the Nuclear Regulatory Commission ("NRC" or “Commission”) should continue with the Yucca Mountain licensing process. On August 13, 2013, the United States Court of Appeals for the District of Columbia Circuit (the “Court” or the “D.C. Circuit”) ruled that it would issue a writ of mandamus directing the Commission to proceed with Yucca Mountain licensing activities “unless and until Congress authoritatively says otherwise or there are no appropriated funds remaining” for those activities.¹

On August 23, 2013, Nye County, Nevada and the State of Nevada each filed a motion concerning the possible resumption of Yucca Mountain licensing activities in light of the Court’s decision.² On August 30, 2013, NEI answered the Nye County and Nevada motions.³ NEI respectfully submitted that the remaining appropriated funds should be directed first toward the

¹ In re Aiken County, 725 F.3d 255, 267 (D.C. Cir. 2013) ("Aiken").
expeditious and efficient completion and publication of the unfinished volumes of the NRC Staff’s Safety Evaluation Report ("SER") for the proposed high-level waste repository at Yucca Mountain, including conclusions as to whether the proposed Yucca Mountain repository satisfies the applicable Commission regulations. NEI Answer at 2, 4-7. NEI believes that this would be the most judicious use of the limited funds available. NEI also requested that, after the unfinished SER volumes are completed, the Commission should identify its budget and prepare a prioritized plan for use of the appropriated funds, including funds available after completion of the SER. Id. at 5. NEI opposed Nye County’s and Nevada’s requests that the limited funds available be spent on other licensing or adjudicatory activities on grounds that those activities were premature or fruitless tasks. Id. at 5-7.

As permitted by the Commission’s August 30, 2013 Order, NEI provides the following input in addition to that provided in answering Nye County’s and Nevada’s motions. Beginning in October 2012, the NRC Staff began the process of terminating its Yucca Mountain-related activities. One consequence of this now three-year-old process is that stakeholders in the Yucca Mountain licensing proceeding (parties, non-party participants, Congress, state and local governments, the public, etc.) currently do not have a clear and consistent understanding of the licensing and adjudicatory steps needed to finish the licensing process, and the resources that the NRC and other participants in the proceeding need to accomplish those steps. Thus, NEI respectfully submits that, after the Commission has first used the available appropriated funds to complete and publish the unfinished volumes of the Yucca Mountain SER, the Commission should produce (1) a detailed timeline of all of the activities needed to complete the licensing process, and (2) an estimate of the NRC resources needed to complete those activities. Once the Commission and stakeholders have a clear understanding of the steps to be completed, the
resources needed to complete them, and the amount of any appropriations remaining after the SER volumes are completed, appropriate next steps can be decided.

In addition, once the Commission has produced the Yucca Mountain licensing activity timeline and resource allocation estimate, the Commission should seek the necessary appropriations from Congress to complete the remaining licensing and adjudicatory activities. Whether or not the Commission believes it will receive further appropriations from Congress, the Commission must “comply with the law as it has been set by Congress” and “is under a legal obligation to continue the licensing process . . . .” *Aiken*, 725 F.3d at 257, 259. The Commission should not sit passively by and see if Congress will on its own provide the requisite funding. It must actively seek those funds from Congress. Accordingly, until such time as the Commission is no longer obligated to proceed with Yucca Mountain, the Commission should request from Congress appropriations sufficient to complete the licensing process in accordance with its statutory obligations under the Nuclear Waste Policy Act, and the timeline and resource allocation estimate it produces as requested above.

Respectfully submitted,

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Nuclear Energy Institute’s Response to Commission’s Order Regarding Resumption of Yucca Mountain Licensing Activities” has been served upon the following persons on this 30th day of September, 2013 by Electronic Information Exchange.

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