On February 13, 2009, the Nuclear Energy Institute (NEI) moved to strike the State of Nevada’s (Nevada’s) Answer to NEI’s Petition to Intervene. NEI argues that Nevada cannot answer NEI’s Petition because it is not a "party" within the meaning of 10 C.F.R. § 2.309(h)(1). Nevada anticipated that such a motion might be filed, and included a potential answer in its Answer. However, Nevada answers again below.

10 C.F.R. § 2.309(h)(1) provides that “the applicant/licensee, the NRC staff, and any other party to the proceeding” may answer a petition to intervene. NEI objects that Nevada cannot answer and oppose NEI’s Petition because it is not a "party" within the meaning of 10 C.F.R. § 2.309(h)(1). This would mean that Nevada may be forced to litigate against an additional party (NEI) advocating the licensing of Yucca Mountain without being afforded any opportunity to object to that party’s standing or contentions, which is patently unfair.
Such an unfair result is easily avoided by a fair and reasonable reading of the regulations. NEI’s opposition to Nevada’s right to file must depend on the proposition that, when answers to timely petitions are due, only DOE and NRC Staff will qualify as "parties" who are entitled to file answers under 10 C.F.R. § 2.309(h)(1). However, under the definition of "party" in 10 C.F.R. § 2.1001, Nevada, affected units of local government, and affected Indian Tribes are already designated as "parties." NEI wrongly assumes that to be a "party," Nevada, affected units of local government, and affected Indian Tribes must be admitted as a party by some adjudicatory action, separate from and in addition to their designation as "parties" in 10 C.F.R. § 2.1001. However, 10 C.F.R. § 2.1001 defines "party" to include DOE, NRC Staff, Nevada, affected units of local government, and affected Indian Tribes, and then provides that "a person admitted under § 2.309 to the proceeding" would also be a "party" [emphasis added]. The Commission must have considered whether adjudicatory "admission" should be a precondition to party status and decided in the affirmative for "persons," but in the negative for DOE, NRC Staff, Nevada, affected units of local government, and affected Indian Tribes.

To be sure, there is a proviso at the end of the definition of party in § 2.1001 that Nevada, an affected unit of local government, or an affected Indian Tribes "files a list of contentions in accordance with the provisions of § 2.309." However, to be consistent with the preceding text, the proviso must be construed as a condition subsequent whereby party status, granted by regulation, is revoked by adjudicatory decision if no admissible contention is filed. Moreover, the proviso language uses the word "files," looking to the future. If NEI were correct that the proviso is a condition precedent, the language here would have been "filed." The Commission knows the difference between tenses, and the corresponding difference between conditions
subsequent and conditions precedent, because it used the past tense "admitted" when it established when "persons" would qualify as parties in the definition.

NEI cannot offer any reason why the Commission would have wanted to preclude Nevada and the others from answering timely petitions and contentions, but then allow them to answer untimely ones filed after they are admitted as parties.¹

The text is clear: Nevada, affected units of local government, and affected Indian Tribes, are already designated as "parties" for the purpose of applying 10 C.F.R. § 2.309(h)(1), will remain so at least until after answers are due, and are entitled to file answers.

Finally, 10 C.F.R. § 2.309(h) provides that § 2.309(h)(1) applies "[u]nless otherwise specified by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene." Therefore, even if Nevada is not now a party, it may request permission to file an answer, and Nevada so requests, based on its unique status as the host State, and the patent unfairness of being forced to litigate against an additional party (NEI) advocating the licensing of Yucca Mountain without being afforded any opportunity to object to that party’s standing or contentions.

Respectfully submitted,

Honorable Catherine Cortez Masto
Nevada Attorney General
Marta Adams
Chief, Bureau of Government Affairs
100 North Carson Street
Carson City, Nevada  89701
Tel:  775-684-1237
madams@ag.nv.gov

¹ The definition of "potential party" in 10 C.F.R. § 2.1001 is needed because "persons" who are not "parties" until they are admitted still need to participate as "potential parties" in the pre-application phase.
(signed electronically)
Martin G. Malsch *
Charles J. Fitzpatrick *
John W. Lawrence *
Egan, Fitzpatrick & Malsch, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Tel: 210.496.5001
Fax: 210.496.5011
mmalsch@nuclearlawyer.com
cfitzpatrick@nuclearlawyer.com
jlawrence@nuclearlawyer.com

*Special Deputy Attorneys General

Dated: February 23, 2009
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges:

<table>
<thead>
<tr>
<th>ASLBP BOARD 09-876-HLW-CAB01</th>
<th>ASLBP BOARD 09-877-HLW-CAB02</th>
<th>ASLBP BOARD 09-878-HLW-CAB03</th>
</tr>
</thead>
<tbody>
<tr>
<td>William J. Froehlich, Chairman</td>
<td>Michael M. Gibson, Chairman</td>
<td>Paul S. Ryerson, Chairman</td>
</tr>
<tr>
<td>Thomas S. Moore</td>
<td>Lawrence G. McDade</td>
<td>Michael J. Farrar</td>
</tr>
<tr>
<td>Richard E. Wardwell</td>
<td>Nicholas G. Trikouros</td>
<td>Mark O. Barnett</td>
</tr>
</tbody>
</table>

In the Matter of
U.S. DEPARTMENT OF ENERGY
(High Level Waste Repository)
Docket No. 63-001-HLW
February 23, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada's Answer to Nuclear Energy Institute's Motion to Strike has been served upon the following persons by the Electronic Information Exchange.

<table>
<thead>
<tr>
<th>U.S. Nuclear Regulatory Commission</th>
<th>Lawrence G. McDade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atomic Safety and Licensing Board Panel</td>
<td>Administrative Judge</td>
</tr>
<tr>
<td>Mail Stop - T-3 F23</td>
<td>E-mail: <a href="mailto:lgm1@nrc.gov">lgm1@nrc.gov</a></td>
</tr>
<tr>
<td>Washington, DC 20555-0001</td>
<td>Nicholas G. Trikouros</td>
</tr>
<tr>
<td>CAB 01</td>
<td>Administrative Judge</td>
</tr>
<tr>
<td>William J. Froehlich, Chair</td>
<td>E-mail: <a href="mailto:NGT@NRC.GOV">NGT@NRC.GOV</a></td>
</tr>
<tr>
<td>Administrative Judge</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:wjf1@nrc.gov">wjf1@nrc.gov</a></td>
<td></td>
</tr>
<tr>
<td>Thomas S. Moore</td>
<td></td>
</tr>
<tr>
<td>Administrative Judge</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:tsm2@nrc.gov">tsm2@nrc.gov</a></td>
<td></td>
</tr>
<tr>
<td>Richard E. Wardwell</td>
<td></td>
</tr>
<tr>
<td>Administrative Judge</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:rew@nrc.gov">rew@nrc.gov</a></td>
<td></td>
</tr>
<tr>
<td>CAB 02</td>
<td></td>
</tr>
<tr>
<td>Michael M. Gibson, Chair</td>
<td></td>
</tr>
<tr>
<td>Administrative Judge</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:mmg3@nrc.gov">mmg3@nrc.gov</a></td>
<td></td>
</tr>
<tr>
<td>CAB 03</td>
<td></td>
</tr>
<tr>
<td>Paul S. Ryerson, Chair</td>
<td></td>
</tr>
<tr>
<td>Administrative Judge</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:psr1@nrc.gov">psr1@nrc.gov</a></td>
<td></td>
</tr>
<tr>
<td>Michael C. Farrar</td>
<td></td>
</tr>
<tr>
<td>Administrative Judge</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:mcf@nrc.gov">mcf@nrc.gov</a></td>
<td></td>
</tr>
<tr>
<td>Mark O. Barnett</td>
<td></td>
</tr>
<tr>
<td>Administrative Judge</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:mob1@nrc.gov">mob1@nrc.gov</a></td>
<td></td>
</tr>
</tbody>
</table>
Anthony C. Eitreim, Esq., Chief Counsel  
Email: ace1@nrc.gov  
Daniel J. Graser, LSN Administrator  
Email: djg2@nrc.gov  
Lauren Bregman  
Email: lrb1@nrc.gov  
Sara Culler  
Email: sara.culler@nrc.gov  
Joseph Deucher  
Email: jhd@nrc.gov  
Patricia Harich  
Email: patricia.harich@nrc.gov  
Zachary Kahn  
Email: zxk1@nrc.gov  
Erica LaPlante  
Email: eal1@nrc.gov  
Matthew Rotman  
Email: matthew.rotman@nrc.gov  
Andrew Welkie  
Email: axw5@nrc.gov  
Jack Whetstine  
Email: jgw@nrc.gov

U.S. Nuclear Regulatory Commission  
Office of the Secretary of the Commission  
Mail Stop - O-16 C1  
Washington, DC 20555-0001  
Hearing Docket  
Email: hearingdocket@nrc.gov  
Andrew L. Bates  
Email: alb@nrc.gov  
Adria T. Byrdsong  
Email: atb1@nrc.gov  
Emile L. Julian, Esq.  
Email: elj@nrc.gov  
Evangeline S. Ngbea  
Email: esn@nrc.gov  
Rebecca L. Giitter  
Email: rll@nrc.gov

U.S. Nuclear Regulatory Commission  
Office of Comm Appellate Adjudication  
Mail Stop - O-16C1  
Washington, DC 20555-0001  
OCAA Mail Center  
Email: ocaamail@nrc.gov

Hunton & Williams LLP  
Counsel for the U.S. Department of Energy  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219  
Kelly L. Faglioni, Esq.  
Email: kflagnioli@hunton.com  
Donald P. Irwin, Esq.  
Email: dirwin@hunton.com  
Michael R. Shebelskie, Esq.  
Email: mshebelskie@hunton.com  
Pat Slayton  
Email: pslayton@hunton.com
U.S. Department Of Energy
Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
George W. Hellstrom
Email: george.hellstrom@ymp.gov

U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue, S.W.
Washington, DC 20585
Martha S. Crosland, Esq.
Email: martha.crosland@hq.doe.gov
Nicholas P. DiNunzio, Esq.
Email: nick.dinunziok@rw.doe.gov
James Bennett McRae
Email: ben.mcrae@hq.doe.gov
Mary B. Neumayr, Esq.
Email: mary.neumayr@hq.doe.gov
Christina C. Pak, Esq.
Email: christina.pak@hq.doe.gov

Yucca Mountain Project, Licensing Group,
DOE/BSC
6000 Executive Blvd., Suite 608
North Bethesda, MD 20852
Edward Borella, Sr Staff,
Licensing/Nuclear Safety
Email: edward_borella@ymp.gov
Danny R. Howard, Sr. Licensing Engineer
Email: danny_howard@ymp.gov

U.S. Department of Energy
Office of Civilian Radioactive Waste Mgmt
Office of Repository Development
1551 Hillshire Drive
Las Vegas, NV 89134-6321
Timothy C. Gunter
Email: timothy_gunter@ymp.gov

Morgan, Lewis, Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Lewis Csedrik, Esq.
Email: lcsedrik@morganlewis.com
Jay Gutierrez, Esq.
Email: jgutierrez@morganlewis.com
Charles B. Moldenhauer, Associate
Email: cmoldenhauer@morganlewis.com
Brian P. Oldham, Esq.
Email: boldham@morganlewis.com
Thomas Pointdexter, Esq.
Email: tpoindexter@morganlewis.com
Alex S. Polonsky, Esq.
Email: apolonsky@morganlewis.com
Thomas A. Schmutz, Esq.
Email: tschmutz@morganlewis.com
Donald Silverman, Esq.
Email: dsilverman@morganlewis.com

Yucca Mountain Project, Licensing Group,
DOE/BSC
1251 Center Crossing Road, M/S 423
Las Vegas, NV 89144
Jeffrey Kriner, Regulatory Programs
Email: jeffrey_kriner@ymp.gov
Stephen J. Cereghino, Licensing/Nucl Safety
Email: stephen_cereghino@ymp.gov

U.S. Department of Energy
Office of Counsel
Naval Sea Systems Command
Nuclear Propulsion Program
1333 Isaac Hull Avenue, SE
Washington Navy Yard, Building 197
Washington, DC 20376
Frank A. Putzu, Esq.
Email: frank.putzu@navy.mil

Edward Borella, Sr Staff,
Licensing/Nuclear Safety
Email: edward_borella@ymp.gov
Annette M. White, Associate  
Email: c@morganlewis.com
Paul J. Zaffuts, Esq.  
Email: pzaffuts@morganlewis.com
Clifford W. Cooper, Paralegal  
Email: ccooper@morganlewis.com
Shannon Staton, Legal Secretary  
Email: sstaton@morganlewis.com

Carter Ledyard & Milburn, LLP  
Counsel for Lincoln County  
1401 Eye Street, N.W., Suite 300  
Washington, DC 20005
Barry S. Neuman, Esq.  
Email: neuman@clm.com

Churchill, Esmeralda, Eureka, Mineral and Lander Counties  
1705 Wildcat Lane  
Ogden, UT  84403
Loreen Pitchford, LSN Coordinator for Lander County  
Email: lpitchford@comcast.net

Robert List  
Armstrong Teasdale LLP  
1975 Village Center Circle, Suite 140  
Las Vegas, NV  89134-62237
Email: rlist@armstrongteasdale.com

City of Las Vegas  
400 Stewart Ave.  
Las Vegas, NV  89101
Margaret Plaster, Management Analyst  
Email: mplaster@LasVegasNevada.gov

Clark County Nuclear Waste Division  
500 S. Grand Central Parkway  
Las Vegas, NV  89155
Irene Navis  
Email: iln@co.clark.nv.us
Engelbrecht von Tiesenhausen  
Email: evt@co.clark.nv.us
Philip Klevorick  
Email: klevorick@co.clark.nv.us

Carter Ledyard & Milburn, LLP  
Counsel for Lincoln County  
1401 Eye Street, N.W., Suite 300  
Washington, DC 20005
Barry S. Neuman, Esq.  
Email: neuman@clm.com

Churchill, Esmeralda, Eureka, Mineral and Lander Counties  
1705 Wildcat Lane  
Ogden, UT  84403
Loreen Pitchford, LSN Coordinator for Lander County  
Email: lpitchford@comcast.net

Robert List  
Armstrong Teasdale LLP  
1975 Village Center Circle, Suite 140  
Las Vegas, NV  89134-62237
Email: rlist@armstrongteasdale.com

City of Las Vegas  
400 Stewart Ave.  
Las Vegas, NV  89101
Margaret Plaster, Management Analyst  
Email: mplaster@LasVegasNevada.gov

Clark County Nuclear Waste Division  
500 S. Grand Central Parkway  
Las Vegas, NV  89155
Irene Navis  
Email: iln@co.clark.nv.us
Engelbrecht von Tiesenhausen  
Email: evt@co.clark.nv.us
Philip Klevorick  
Email: klevorick@co.clark.nv.us

Carter Ledyard & Milburn, LLP  
Counsel for Lincoln County  
1401 Eye Street, N.W., Suite 300  
Washington, DC 20005
Barry S. Neuman, Esq.  
Email: neuman@clm.com

Churchill, Esmeralda, Eureka, Mineral and Lander Counties  
1705 Wildcat Lane  
Ogden, UT  84403
Loreen Pitchford, LSN Coordinator for Lander County  
Email: lpitchford@comcast.net

Robert List  
Armstrong Teasdale LLP  
1975 Village Center Circle, Suite 140  
Las Vegas, NV  89134-62237
Email: rlist@armstrongteasdale.com

City of Las Vegas  
400 Stewart Ave.  
Las Vegas, NV  89101
Margaret Plaster, Management Analyst  
Email: mplaster@LasVegasNevada.gov

Clark County Nuclear Waste Division  
500 S. Grand Central Parkway  
Las Vegas, NV  89155
Irene Navis  
Email: iln@co.clark.nv.us
Engelbrecht von Tiesenhausen  
Email: evt@co.clark.nv.us
Philip Klevorick  
Email: klevorick@co.clark.nv.us

City of Las Vegas  
400 Stewart Ave.  
Las Vegas, NV  89101
Margaret Plaster, Management Analyst  
Email: mplaster@LasVegasNevada.gov

Clark County Nuclear Waste Division  
500 S. Grand Central Parkway  
Las Vegas, NV  89155
Irene Navis  
Email: iln@co.clark.nv.us
Engelbrecht von Tiesenhausen  
Email: evt@co.clark.nv.us
Philip Klevorick  
Email: klevorick@co.clark.nv.us
White Pine County
City of Caliente
Lincoln County
P.O. Box 126
Caliente, NV 89008
Jason Pitts
Email: jayson@idtservices.com

Nuclear Information and Resource Service
6930 Carroll Avenue, Suite 340
Takoma Park, MD 20912
Michael Mariotte, Executive Director
Email: nirsnet@nirs.org

Radioactive Waste Watchdog
Beyond Nuclear
6930 Carroll Avenue, Suite 400
Takoma Park, MD 20912
Kevin Kamps
Email: kevin@beyondnuclear.org

Abigail Johnson
612 West Telegraph Street
Carson City, NV 89703
Email: abbyj@gbis.com

National Congress of American Indians
1301 Connecticut Ave. NW - Second floor
Washington, DC 20036
Robert I. Holden, Director
Nuclear Waste Program
Email: robert_holden@ncai.org

Churchill County (NV)
155 North Taylor Street, Suite 182
Fallon, NV 89406
Alan Kalt
Email: comptroller@churchillcounty.org

Inyo County Water Department
Yucca Mtn Nuclear Waste
Repository Assessment Office
163 May St.
Bishop, CA 93514
Matt Gaffney, Project Associate
Email: mgaffney@inyoyucca.org

Mr. Pat Cecil
Inyo County Planning Director
P.O. Box L
Independence, CA 93526
Email: pcecil@inyocounty.us

Environmental Protection Agency
Ray Clark
Email: clark.ray@epa.gov

Nuclear Waste Technical Review Board
Joyce Dory
Email: dory@nwtrb.gov
Intertech Services Corporation
(for Lincoln County)
P.O. Box 2008
Carson City, NV 89702-2008
Dr. Mike Baughman
Email: bigboff@aol.com

Nye County Department of Natural Resources & Federal Facilities
1210 E. Basin Road, Suite 6
Pahrump, NV 89048
David Swanson
Email: dswanson@nyecounty.net

Lincoln County Nuclear Oversight Prgm
100 Depot Ave., Suite 15; P.O. Box 1068
Caliente, NV 89008-1068
Lea Rasura-Alfano, Coordinator
Email: jcciac@co.lincoln.nv.us

Nye County Regulatory/Licensing Adv.
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy
Email: mrmurphy@chamberscable.com

Mineral County Board of Commissioners
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Administrator
Office of Nuclear Projects
Email: yuccainfo@mineralcountynv.org
State of Nevada  
100 N. Carson Street  
Carson City, NV 89710  
Marta Adams  
Email: maadams@ag.state.nv.us

White Pine County (NV) Nuclear Waste Project Office  
959 Campton Street  
Ely, NV 89301  
Mike Simon, Director  
(Heidi Williams, Adm. Assist. )  
Email: wpnucwst1@mwpower.net

Fredericks & Peebles, L.L.P.  
1001 Second Street  
Sacramento, CA 95814  
916-441-2700  
FAX 916-441-2067  
Darcie L. Houck  
Email: dhouck@ndnlaw.com  
John M. Peebles  
Email: jpeebles@ndnlaw.com  
Joe Kennedy, Chairman  
Email: chairman@timbisha.org  
Barbara Durham  
Tribal Historic Preservation Officer  
Email: dvdurbarbara@netscape.com

Susan Durbin  
Deputy Attorney General  
California Department of Justice  
1300 I St.  
P.O. Box 944255  
Sacramento, CA, 94244-2550  
Email: susan.durbin@doj.ca.gov

Brian Hembacher  
Deputy Attorney General  
California Department of Justice  
300 S. Spring St  
Los Angeles, CA 90013  
Email: brian.hembacher@doj.ca.gov

Timothy E. Sullivan  
Deputy Attorney General  
California Department of Justice  
1515 Clay St., 20th Flr.  
P.O. Box 70550  
Oakland, CA 94612-0550  
Email: timothy.sullivan@doj.ca.gov

Brian Wolfman  
Public Citizen Litigation Group  
1600 20th Street, N.W.  
Washington, D.C. 20009

Kevin W. Bell  
Senior Staff Counsel  
California Energy Commission  
1516 9th Street  
Sacramento, CA 95814  
Email: kwbell@energy.state.ca.us

Jeffrey D. VanNiel  
530 Farrington Court  
Las Vegas, NV 89123  
Email: nbridvnr@gmail.com

Ethan I. Strell  
Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, NY 10005  
Email: strell@clm.com

Jennings, Strouss & Salmon, PLC  
1700 Pennsylvania Avenue, N.W., Suite 500  
Washington DC 20006-4725  
Alan I. Robbins  
Email: arobbins@jsslaw.com  
Debra D. Roby  
Email: droby@jsslaw.com

(signed electronically)  
Susan Montesi