

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Atomic Safety and Licensing Board**

**Before Administrative Judges:**

ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell
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<b>In the Matter of</b>	)	
	)	
<b>U.S. DEPARTMENT OF ENERGY</b>	)	<b>Docket No. 63-001-HLW</b>
	)	
<b>(High Level Waste Repository)</b>	)	<b>May 19, 2010</b>

**STATE OF NEVADA'S ANSWER IN OPPOSITION  
TO SUPPLEMENT/AMENDMENT TO PETITION OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS  
TO INTERVENE**

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The State of Nevada (Nevada) hereby answers in opposition to the unlawful Supplement/Amendment filed by National Association of Regulatory Utility Commissioners (NARUC) on May 11, 2010. As explained below, NARUC's filing is prohibited by NRC regulations, case law, and CAB orders and was premised on a flawed "consultation" with the other parties.

**I. THE SUPPLEMENT/AMENDMENT PROPOSED BY NARUC IS LEGALLY PROHIBITED.**

The Supplement/Amendment proffered by NARUC, and the Reply (to Nevada's Answer) underpinned in part by that Supplement/Amendment, are prohibited by NRC regulation, by CAB order, and by NRC case law.

NARUC filed its Petition to Intervene in this proceeding under 10 C.F.R. § 2.309. Subsection (h) of that regulation specifically addresses the filings and filing deadlines pertaining to such petitions to intervene. Specifically, the applicant, the NRC Staff, or any other party to a proceeding may file an answer to the petition, and must do so within 25 days after service of the petition. Subsection (h) then provides that a petitioner may file a reply to any answer within seven days after service of that answer. No provision in any NRC regulation contemplates that a party may supplement or amend their petition to intervene after receiving the answer filed by another party and before filing their own reply. Likewise, the same regulatory protocol was contemplated by CAB04 which entered an order on April 27, 2010, in which it provided that "Answers to the petitions to intervene of the Prairie Island Indian Community (PIIC) and the National Association of Regulatory Utility Commissioners (NARUC) shall be filed by May 4, 2010" (Apr. 27, 2010 CAB Order at 2); and CAB then provided "PIIC's and NARUC's replies shall be filed by May 11, 2010." *Id.* Thus, the seven-day reply provision established by 10 C.F.R. 2.309(h) was embraced by the CAB's April 27 Order.

The NRC has steadfastly rejected efforts by parties to bolster their position by adding new arguments or evidence in time for a reply, which was not contained in their original Petition to Intervene. (In this instance, the NARUC bolstering effort took place the very **same day** that its Reply was due, May 11, 2010.)

The Commission, in *Louisiana Energy Service, L.P.(National Enrichment Facility)*, CLI-04-25, 60 NRC 223 ( 2004), declined to consider newly submitted supporting evidence from a petitioner holding "as the Commission has stressed, our contention admissibility and timeliness requirements 'demand a level of discipline and preparedness on the part of petitioners' who must examine the publicly available material and set forth their claims and the support for their claims at the outset." *Id.* at 225. The Commission explained "there simply would be 'no end to NRC licensing proceedings if petitioners could disregard our timeliness requirements' and add new bases or new issues that 'simply did not occur to them at the outset.'" *Id.* The Commission concluded that in Commission practice "new arguments may not be raised for the first time in a reply brief." *Id.* Obviously, the purpose of the reply is to try to explain why the answer of another party is incorrect, and not to "fix" the errors identified by such answer.

Where, as here, it is stunningly obvious that the entire and only purpose of the proffered Supplement/Amendment by NARUC was to supply an additional Affidavit in support of its Petition to Intervene, and rely on it in its Reply, such a Supplement/Amendment (as well as the portion of the Reply for which the new Affidavit forms the underpinning) must be rejected.

## **II. THE PROCEDURE FOLLOWED BY NARUC IN "CONSULTING" THE OTHER PARTIES IS FLAWED.**

NARUC professes uncertainty with respect to whether its Supplement/Amendment proffer is a "motion." However, NARUC treats it as a motion, and Nevada files this Answer accordingly. While NARUC says its filing "may or may not" be a motion, the old cliché

regarding "what walks like a duck and quacks like a duck" should apply. For example, NARUC concludes its filing by stating "NARUC respectfully requests that the forgoing supplement/amendment to its March 15, 2010 intervention be allowed," promising that it will later file a version of the intervention incorporating the proposed Amendment "pending a board ruling on this proposed supplement/amendment." In addition, there is the fact that, as required in connection with the filing of a motion under 10 C.F.R. Part 2, NARUC asserts compliance with 10 C.F.R. § 2.323(b) – the required pre-motion consultation with the other parties. It is here that NARUC's Supplement/Amendment motion utterly runs aground. NARUC's Supplement/Amendment rotely recites the required verbiage: "The undersigned certifies that he has made a sincere effort to contact other parties and resolve the issues raised in this document." However, the reality is that no consultation took place which bears any resemblance to that which is required by 10 C.F.R. § 2.323(b).

On the Sunday evening prior to the Monday deadline for NARUC's filing of its Reply (to the answers opposing its intervention), NARUC sent an email giving the recipients three choices with respect to replying and stating their position on NARUC's proposed Supplement/Amendment (copy of email attached as Exhibit 1). The recipients were given the choice of responding that they oppose, do not oppose, or have no position. Indeed, NARUC's draft Supplement/Amendment was incorporated in the email, and the final paragraph of that draft was entitled "Consultation." Therein, NARUC indicated its plan to "line up" the responding parties under one of those three headings (oppose, do not oppose, or have no position). That was all the parties received: the draft filing on a "take-it-or-leave-it" basis. Because NARUC's Reply and the Supplement/Amendment (which forms the underpinning of part of that Reply) were both filed on Monday, May 11, it is apparent that NARUC had already planned to (and did) file the

Supplement/Amendment in the form circulated the evening before. Its so-called "consultation" was nothing more than a tabulation of who did or did not oppose that filing. Much more is required by 10 C.F.R. § 2.323(b), as quoted above.

Nevada responded to NARUC's email "consultation," articulating the same reasons explained in this Answer for opposing NARUC's filing. Nevada advised that NARUC was not entitled to file an "amended" intervention Petition to try to remedy the deficiencies which were pointed out to NARUC in an answer and that NARUC's Reply may not contain new evidence, such as the Affidavit NARUC proposed. But NARUC really did not care about "resolving the issues" and did not make "a sincere effort" to do so. NARUC simply circulated what it had already decided to file, recited in its filing the responses it received, and filed precisely what it planned to file all along, without regard to any disagreement by any party. NARUC had seemingly already crafted its Reply which depends upon the content of the Supplement/Amendment and had no intention of altering either document before filing them less than 24 hours after circulating a draft under the false premise of a "good faith consultation."

For the reasons stated in the prior section of this Answer, NARUC's Supplement/Amendment and its Reply incorporating the content thereof are not allowed by either NRC's regulations or the CAB's orders. In addition, what was clearly a motion by NARUC for leave to file the Supplement/Amendment should be denied for the reason that "a motion must be rejected if the movant has not complied with the requirements of 10 C.F.R. § 2.323." NARUC utterly failed to do so.

**III. THE CONTENT OF NARUC'S SUPPLEMENT/AMENDMENT CONFIRMS ITS FILING WAS INTENDED TO EFFECT AN UNLAWFUL INTRODUCTION OF ADDITIONAL EVIDENCE IN ITS REPLY.**

NARUC's Supplement/Amendment to its Petition to Intervene is nothing more than an effort to fix a defect in its Petition identified by Nevada in its Answer filed May 4, 2010. Thus, a

comparison of Nevada's Answer, NARUC's proposed Supplement/Amendment, and NARUC's Reply is appropriate, to expose the obvious and prohibited intent of NARUC's action:

**A. Nevada's Answer.**

Nevada's Answer focused in part upon the failure of NARUC to establish representational standing. NARUC's argument in that regard, in its original Petition, was supported by an Affidavit of the Honorable David Wright. Nevada pointed out that Mr. Wright's standing must be established in order for NARUC's representational standing argument to succeed (Answer at 1). As Nevada pointed out, the individual relied upon for representational standing by NARUC (Mr. Wright) is a member of the South Carolina Public Service Commission. Nevada pointed out that under 10 C.F.R. § 2.309(d)(2)(ii) only a "single designated representative of the State" may be admitted as a party. *Id.* at 2.

Nevada then questioned the circumstance that Commissioner Wright could represent the interests of South Carolina and its citizens when South Carolina's Attorney General is already doing so (*see* Petition of the State of South Carolina to Intervene, Feb. 26, 2010, at 10). Nevada argued: "If Commissioner Wright cannot represent the interests of South Carolina and its citizens because the South Carolina Attorney General represents them, then he has no individual standing to intervene and, because NARUC relies exclusively on Commissioner Wright's standing as a member, its case for standing fails as well" (Answer at 2).

**B. NARUC's Supplement/Amendment.**

In its Supplement/Amendment, NARUC first identifies numerous changes to its original Petition, by which all references to Mr. Wright and his Affidavit are to be changed, and instead refer to both his Affidavit and the Affidavit of Commissioner Phyllis Reha of the Minnesota Public Utilities Commission. In addition, NARUC's Supplement/Amendment attaches a lengthy

Affidavit by Ms. Reha, with respect to which NARUC states: "this amendment closely tracks the affidavit filed by Commissioner Wright with NARUC's original intervention. There are some changes. The biggest changes are the state law citations and the name address and experience of the affiant" (Supplement at 4). The changes in verbiage between the original Petition and the Supplement/Amendment to it relate entirely to the addition of Ms. Reha's Affidavit and the word changes by which NARUC proposes to refer to the two Affidavits. No other topics are discussed in the Supplement/Amendment. Obviously, then, the proposed Supplement/Amendment is geared to accomplish no purpose other than to fix the defect identified in Nevada's "representational standing" argument referred to above.

**C. NARUC's Reply.**

Predictably, NARUC devotes a significant part of its Reply (a Reply to all of the different answers filed by various parties to the Yucca licensing proceeding) in addressing the representational standing argument made in its Answer by Nevada. In its Reply (at 15), NARUC discussed Nevada's argument that because of NARUC's reliance on the Affidavit of a South Carolina Commissioner (while the South Carolina Attorney General is also seeking party status) "NARUC's intervention must necessarily fail." NARUC even goes so far as to acknowledge that "if NARUC had chosen another member from a different state, this Nevada argument fails." *Id.* Then, NARUC attempts to correct the very deficiency in its intervention identified by Nevada stating, with respect to the Nevada argument: "it is clear by its own terms it must fail if NARUC amends its intervention to attach an affidavit making basically the same claims – but using a Commissioner from another State. We have done so" (*id.* at 18); adding "NARUC is filing contemporaneously an amendment to its intervention appending an affidavit from a Commissioner from the State of Minnesota."

It is clear what NARUC has done (attempt to amend its Petition on the very day its Reply was due in order to supply new evidence to support its position); it is likewise clear **why** NARUC makes this attempt (in order to address what it deemed to be a substantial argument defeating its claim of representational standing). What is also clear is the fact that by regulation, by CAB order, and by NRC case law, NARUC is prohibited from belatedly adding evidence to try to prop up an insufficient Petition to Intervene.

### CONCLUSION

For the reasons stated above, NARUC's purported Supplement/Amendment of its Petition to Intervene should be rejected, and the portion of the Reply NARUC filed the same day, which addressed representational standing and which incorporated the Supplement/Amendment as though it were valid and as though it had been granted, should be struck.

Respectfully submitted,

*(signed electronically)*

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Dated: May 19, 2010

# Exhibit 1

**PRIVILEGED & CONFIDENTIAL**

TO: The Parties to Docket No. 63-001-HLW/ASLBP No. 09-892-HLW-CAB04

FROM: J. Bradford Ramsay – NARUC’s GENERAL COUNSEL

SUBJECT: REQUEST FOR A RESPONSE TO NARUC’s PROPOSED SUPPLEMENT TO ITS INTERVENTION

I have pasted in below – a rough draft of an amendment/supplementation to NARUC’s March 15, 2010 Petition to Intervene late tomorrow afternoon. Please respond to this e-mail at your earliest convenience and indicate if you:

- [1] Do not oppose amendment/supplement:
- [2] Have no position at this time, but reserve the right to file a response:
- [3] Oppose the amendment/supplementation, and reserve the right to file a response:

Thanks

Brad Ramsay

**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)	( May 11, 2010
	(

**SUPPLEMENT/AMENDMENT TO PETITION OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS  
TO INTERVENE**

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National Association of Regulatory  
Utility Commissioners

The National Association of Regulatory Utility Commissioners, in an abundance of caution, hereby supplements and amends its Petition to Intervene by adding the following text (which is underlined and bolded below) and the attached affidavit Commissioner Phyllis Reha of the Minnesota Public Utilities Commission.

**I. Amendments to page 9 of NARUC's March 15<sup>th</sup> Intervention:**

The affidavit of Commissioners Wright, the current Chairman of NARUC's Nuclear Issues-Waste Management Disposal Subcommittee, and Commissioner Phyllis Reha a member of NARUC's Committee on Energy Resources and the Environment is attached to discuss the particularized injuries suffered by NARUC members as a result of the continuing lack of a licensed high level waste repository, and provide evidence that demonstrate that NARUC is authorized by members to petition to intervene and represent their interests in this matter. In brief:

*[a] Name and address of a two NARUC Member State Commissioner:*

The Honorable David Wright is a Commissioner with the South Carolina Public Service Commission and a NARUC member who receives his official mail at South Carolina Public Service Commission, 101 Executive Center Drive, Columbia, SC 29210. The Honorable Phyllis Reha is a Commissioner with the Minnesota Public Utilities Commission and a NARUC member who receives her official mail at Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147. They are two ~~He is just one~~ of over 250 NARUC member State commissioners from across the United States, but his their experiences and obligations are representative of his their colleagues.

*[b] NARUC's authorization to participate for its members:*

Specifically, the both affidavits, appended as attachment one and two, cites a February 2010 resolution passed by NARUC at its recent winter meetings in Washington, D.C., instructing NARUC to oppose withdrawal of the application and to appear before the NRC.

## II. Amendments to page 10 of NARUC's March 15<sup>th</sup> Intervention:

*[c] Standing:*

The affidavits also outlines the general scope of the South Carolina's **and the Minnesota Public Utilities Commission's** interests in this proceedings, citing **its their** obvious concerns about a successful review of Yucca Mountain, and how DOE's withdrawal of the application undermines **both** Commissioner ~~Wright's~~, and many of **his their** NARUC colleagues', ability to fulfill their respective parens patriae statutory duties to protect, the health, safety, and economic welfare of electric ratepayers. DOE, in its Final Environmental Impact Statement for the Yucca Mountain Geological Repository, concludes that not building the repository, assuming that no effective institutional controls in place after 100 years, would lead to a situation where, "the spent nuclear fuel and high-level radioactive storage facilities in at 72 commercial and 5 DOE sites would begin to deteriorate and that radioactive material would be released into the environment, contaminating the local atmosphere, soil, surface water, and groundwater." FEIS Section 7.2.2, at p. 7-33.<sup>11</sup> Those sites are all

<sup>11</sup> See, generally, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105-6 (1976) (Zone of interests created by the AEA is avoidance of a threat to health and safety of the public). Cf. The attached Affidavits of The Honorable David Wright at pages 4-5 and of The Honorable Phyllis Reha at pages ?-? of the attached Affidavit of the Honorable David Wright, NARUC Member Commissioner, in Support of the Standing of the National Association of Regulatory Utility Commissioners.

## III. Amendments to page 11 of NARUC's March 15<sup>th</sup> Intervention:

within the geographic boundaries of NARUC's State commission members. The attached ~~Mr. Wright's~~ affidavits references those in South Carolina **and Minnesota** as well as, via a webpage citation, the locations of others. See also map of locations at FEIS Figures 7-7, at 7-36.

As is discussed in **the both** affidavits, NARUC's member State commission interests will be adversely affected by the continuing unavailability of a repository.

**IV. Attachment II – Affidavit of the Honorable Phyllis Reha (note the affidavit mirrors closely the affidavit attached to NARUC's original pleading – except for the**

**background/address of Commissioner Reha and the specific state statutes and rules cited in her affidavit.**

**Attachment 2**

**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	(	ASLBP NO. 09-892-HLW-CAB04
ENERGY		
(High Level Waste	(	May 11, 2010
Repository)		
	(	

**AFFIDAVIT OF THE HONORABLE PHYLLIS REHA,  
NARUC MEMBER COMMISSIONER,  
IN SUPPORT OF THE STANDING OF  
THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

Phyllis Reha, being duly sworn, states as follows:

1. My name is Phyllis Reha. I have been a Commissioner on the Minnesota Public Utilities Commission and a voting member of the National Association of Regulatory Utility Commissioners (NARUC) since May 2001. I am also currently a member of the NARUC Committee on Energy Resources and the Environment and NARUC's Subcommittee on Clean Coal and Carbon Sequestration. I am also Co-Chair of the FERC/NARUC Collaborative on Demand response and a member of the leadership Group of the National Action Plan for Energy Efficiency. I serve on the Advisory Council of the National Council on Electricity Policy.
2. I receive official mail at the offices of the Minnesota Public Utilities Commission (121 7<sup>th</sup> Place East, Suite 350, Saint Paul, MN 55101), which is located approximately 31 miles from the Prairie Island Nuclear Generating Plant.

3. NARUC, founded in 1889, includes as members commissioners at regulatory agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. These State employees are charged with regulating the rates and conditions of service associated with the intrastate operations of electric, natural gas, water, and phone utilities.

4. In February 2010, at its recent winter meetings held in Washington, D.C., NARUC passed a “*Resolution on National Policy for Management and Disposal of Spent Fuel from Commercial Nuclear Power Plants.*” A copy of the resolution is attached. That resolution [1] instructs NARUC to “call upon the Secretary of Energy not to withdraw the Yucca Mountain license application from the review process underway at the NRC,” [2] points out that “NARUC and State utility commissions as stakeholders in the disposal policy on behalf of ratepayers—who continue to bear the ultimate cost of the fee payments to the Fund—should play an active role in representing their views to the Blue Ribbon Commission, drawing upon the multiple NARUC nuclear waste policy resolutions adopted over the past 25 years, and [3] specifically instructs NARUC to “convey to the (Nuclear Regulatory) Commission that any alternative that leaves the spent nuclear fuel at present storage sites indefinitely, whether managed by the owners or by the government, is inconsistent with the NWPA findings of 1982 and would break faith with the communities which host those reactors with the understanding that the spent fuel would be removed by the government.”

5. Like almost all of my fellow NARUC State Commissioners, I am charged by State statute with overseeing the operations of electric utilities operating in my State. For example, the Minnesota Public Utilities Commission has approved two separate extended power uprates at both the Prairie Island Nuclear Generating Plant and the Monticello Nuclear Generating Plant.

6. Like many of my NARUC colleagues, limiting both the expense and the risks <sup>[1]</sup> of on-

site storage of spent nuclear fuel is a part of my broader regulatory responsibilities under the laws of my State.

7. The Nuclear Waste Policy Act (NWPA), enacted in 1982, made the federal government responsible for safe and final disposal of such waste. Under the Act, utilities pay fees for disposal through the Nuclear Waste Fund (NWF). *Those fees are passed through to ratepayers.* Although utilities and their ratepayers continue to pay these charges, the United States Department of Energy (DOE), which manages the disposal program, failed to meet its statutory and contractual obligation to begin waste acceptance in 1998. Since 1981, Minnesota's ratepayers have paid over \$ 300 million dollars in fees levied pursuant to the NWPA to develop a permanent storage site and *effectively bear both the increased costs and risks of onsite storage.* Cumulatively, ratepayers across the country, protected by my fellow NARUC Commissioners in other States, have contributed about \$17 billion in fees.

8. Nuclear power supplies approximately 13,000 Kwh of electricity to homes and businesses in Minnesota according to the U.S. Energy Information Administration. There are two nuclear power plants in Minnesota along with two Independent Spent Fuel Storage  
[\[2\]](#)  
Installations

9. Because nuclear power fuels about 20 percent of the nation's electricity supply, it raises both cost and safety issues for NARUC member State Commissioners across the country, especially for those where nuclear plants are located, *i.e.*, in Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. *See*, U.S. Energy Information Administration, Independent Statistics and Analysis, States with Commercial

Nuclear Industries, available online at: [http://www.eia.doe.gov/cneaf/nuclear/page/at\\_a\\_glance/reactors/states.html](http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/reactors/states.html) (Accessed March 12, 2010).

10. DOE's Final Environmental Impact Statement for the Yucca Mountain Geological Repository concludes that not building the repository could result in "widespread contamination of the seventy-two commercial and five DOE sites across the United States, with resulting human health impacts." (DOE/EIS—0250, Section 2.12). [3]

11. Continued operation of existing nuclear plants *requires* some *safe* and secure method of disposing of the high level radioactive waste and spent nuclear fuel generated. Effective management and *permanent* disposal of nuclear waste is essential to minimize the life cycle costs of these facilities. The rising expenses of expanding on-site storage while simultaneously funding reactor decommissioning accounts and the long promised DOE centralized waste repository continues to increase the costs of nuclear energy.

12. Many of NARUC's State commission members scrutinize these costs of electric utilities to ensure ratepayers pay only for expenses that are reasonable and prudent. These Commissions are responsible for assuring safe and reliable utility services. Utility plans for *interim* on-site storage involve large sums and raise significant financial issues.

13. Spent fuel continues to pile up at 73 locations in 35 States at sites that were never intended for long-term storage, and State-regulated utilities (along with numerous State commissions) expend significant resources on related protracted litigation over DOE's non-performance. Ratepayers ultimately bear not only the cost of utility payments to DOE intended to cover the cost of the disposal program *and* the costs (and risks) of the additional on-site

storage required by DOE's refusal to take that waste, but also the costs of the associated protracted litigation over DOE's refusal to take the waste, as well as litigation to block new plants exacerbated by DOE's delay in approving a repository.

Footnote – A sampling of relevant MI statutes: Safe operation of electric facilities, including nuclear plants, is a key focus of my Commission's oversight. See e.g., 2009 Minnesota Statutes, Chapter 216B.243 Certificate of Need for Large Energy Facility Subd. 3. Showing required for construction: *"No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need. In assessing need, the commission shall evaluate: ... (5) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region," ... "(7) the policies, rules, and regulations of other state and federal agencies and local governments;" ... and "(12) if the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk"* and subd. 3b (b): *"Any certificate of need for additional storage of spent nuclear fuel for a facility seeking a license extension shall address the impacts of continued operations over the period for which approval is sought."* Additionally, Minnesota Administrative Rules 7855.0650 WASTES AND EMISSIONS provides that applicants for large energy facilities: *"shall provide data on wastes and emissions associated with construction or operation of the facility, including: A. the types and estimated amounts of solid, liquid, and gaseous radioactive wastes that would be produced by the facility, and the level of radioactivity of each in curies per year;" and "B. an analysis of human exposure to ionizing radiation attributable to operation of the facility, taking account of the pathways of radioactive releases to humans;"*. Also see Minnesota Rules 7855.0660 POLLUTION CONTROL AND SAFEGUARDS EQUIPMENT: *"The applicant shall provide data regarding pollution control and safeguards equipment, including: A. the provisions that would be made for management of radioactive materials.. B. a description of contingency plans to reduce the effects of an accidental release of radioactive materials;" and ... "F. the measures that would be taken to prevent spills or leaks of pollutants, or to minimize the effects of spills or leaks on the environment."*

14. Delays in the repository program, such as the Department of Energy's (DOE) recent motion to scrap the application for the Yucca Mountain facility that sparked the need for this NARUC intervention, necessarily results in the owners and operators of nuclear power plants having to store greater quantities of used nuclear fuel for longer periods of time, increasing both costs and risks associated with interim storage and also providing additional reasons to delay construction of new plants. Ratepayers in my State (and many other NARUC member States) continue to pay for a national storage "solution", enhanced litigation costs, and the increased costs of interim storage. History suggests if the DOE withdrawal motion is successful, it will effectively set the date the Federal government can finally begin to accept waste back at least 25 years. As State Commissioners, my NARUC colleagues across the country and I have an obvious interest in this proceeding – protecting ratepayers interests in reasonable utility

practices as well as rates – an interest no other party will adequately represent. There is no question that our respective statutory duties to protect ratepayers are impacted by whatever action the NRC takes on the motion to withdraw.

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Phyllis Reha

Sworn and subscribed to before me this 10<sup>th</sup> day of May, 2010

\_\_\_\_\_ Notary Public

My Commission expires:

***Resolution on National Policy for Management and Disposal of Spent Fuel from  
Commercial Nuclear Power Plants***

**WHEREAS**, The Nuclear Waste Policy Act (NWPA) of 1982 sets national policy that the federal government is responsible for safe, permanent disposal of all government and commercial high-level radioactive waste, including spent nuclear fuel, in a geologic repository beginning in 1998; *and*

**WHEREAS**, Those who have benefitted from nuclear-generated electricity—reactor owners and ratepayers—under the NWPA were to pay for the commercial share of disposal costs through fees paid to the Nuclear Waste Fund; *and*

**WHEREAS**, Reactor owners and ratepayers made fee payments since 1983 totaling over \$16 billion to the Fund, which earned another \$13.5 billion in interest, to more than meet the needs of the repository development program, which encountered numerous managerial, financial, legal and political difficulties resulting in failure to meet the 1998 date set in statute and contracts with the reactor owners; *and*

**WHEREAS**, When the Department of Energy, as disposal program manager, failed to begin waste acceptance in 1998, the reactor owners sued for partial breach of contract for which the Federal Court of Appeals found the government liable; *and*

**WHEREAS**, DOE and the Justice Department estimate the liability for court-awarded damages and settlements could be as much as \$12.3 billion—if the waste were to be accepted for disposal by 2020; *and*

**WHEREAS**, The Obama Administration declared its intent to terminate the Yucca Mountain repository development program and instead has appointed the Blue Ribbon Commission on America's Nuclear Future to evaluate alternative disposal strategies and recommend a new direction that does not involve Yucca Mountain; *and*

**WHEREAS**, NARUC believes current law regarding Yucca Mountain development must be followed, however the Association must prepare itself for the possibility that the Administration may succeed in canceling the repository project; *now, therefore be it*

**RESOLVED**, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Winter Committee Meetings in Washington, D.C., expresses its disappointment at having the federal government take 25 years and expend over \$10 billion on Yucca Mountain as the repository site only to have the repository project be proposed to be cancelled before the Nuclear Regulatory Commission made a safety and technical decision on the license application submitted in 2008; *and be it further*

**RESOLVED**, That NARUC call upon the Secretary of Energy not to withdraw the Yucca Mountain license application from the review process underway at the NRC; *and be it further*

**RESOLVED**, That NARUC and State utility commissions as stakeholders in the disposal

policy on behalf of ratepayers—who continue to bear the ultimate cost of the fee payments to the Fund—should play an active role in representing their views to the Blue Ribbon Commission, drawing upon the multiple NARUC nuclear waste policy resolutions adopted over the past 25 years; *and be it further*

**RESOLVED**, That NARUC convey to the Commission that any alternative that leaves the spent nuclear fuel at present storage sites indefinitely, whether managed by the owners or by the government, is inconsistent with the NWPA findings of 1982 and would break faith with the communities which host those reactors with the understanding that the spent fuel would be removed by the government; *and be it further*

**RESOLVED**, That the Commission should seek to determine if there is something about a geological repository generally or Yucca Mountain specifically that makes either a poor choice, suggesting a search should begin for a new repository site; *and be it further*

**RESOLVED**, That if a new repository program is to be recommended, then a new, more transparent site selection process should be considered, a new organization might be better suited for managing it and a reformed financing means be established that more reliably supports the new disposal strategy instead of subsidizing unrelated government activities; *and be it further*

**RESOLVED**, That NARUC pro-actively inform the Commission, DOE and the Congress that there are benefits in taking an initial near-term action to provide government or industry-run central interim storage of used nuclear fuel from the nine shutdown reactor sites, since it seems that whatever new disposal or reprocessing strategy is pursued, it will be unlikely to be in operation for another twenty or more years; *and be it further*

**RESOLVED**, That the federal government and owners of spent nuclear fuel should be encouraged to simplify and make equitable settlements over the ongoing litigation that provides payment for past expenses that the owners should not have to have incurred had DOE provided the “disposal services” agreed in the Standard Contracts; and to develop a regime for forecasting future payments without court-ordered judgments including suspension of Nuclear Waste Fund fee payments unless and until a revised program is agreed upon or the Yucca Mountain Project is fully restarted.

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*Sponsored by the Committees on Electricity and Energy Resources and the Environment*

*Adopted by the NARUC Board of Directors February 17, 2010*

## Consultation.

Pursuant to 10 C.F.R. §2.323(b), (which may or may not apply, given that the present document is not a motion, strictly speaking) the undersigned counsel certifies that he has made a sincere effort to contact other parties in the proceeding and resolve the issues raised in this document. While many parties have not been heard from, the result of that consultation is as follows:

Do not oppose amendment/supplementation:

No position at this time, reserving right to file a response:

Oppose the amendment/supplementation:

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[1]

Safe operation of electric facilities, including nuclear plants, is a key focus of my Commission's oversight. See e.g., 2009 Minnesota Statutes, Chapter 216B.243 Certificate of Need for Large Energy Facility Subd. 3. Showing required for construction: *"No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need. In assessing need, the commission shall evaluate: ... (5) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region," ... "(7) the policies, rules, and regulations of other state and federal agencies and local governments;" ... and "(12) if the applicant is proposing a nonrenewable generating plant, the applicant's assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs associated with that risk"* and subd. 3b (b): *"Any certificate of need for additional storage of spent nuclear fuel for a facility seeking a license extension shall address the impacts of continued operations over the period for which approval is sought."* Additionally, Minnesota Administrative Rules 7855.0650 WASTES AND EMISSIONS provides that applicants for large energy facilities: *"shall provide data on wastes and emissions associated with construction or operation of the facility, including: A. the types and estimated amounts of solid, liquid, and gaseous radioactive wastes that would be produced by the facility, and the level of radioactivity of each in curies per year;"* and *"B. an analysis of human exposure to ionizing radiation attributable to operation of the facility, taking account of the pathways of radioactive releases to humans;"*. Also see Minnesota Rules 7855.0660 POLLUTION CONTROL AND SAFEGUARDS EQUIPMENT: *"The applicant shall provide data regarding pollution control and safeguards equipment, including: A. the provisions that would be made for management of radioactive materials.. B. a description of contingency plans to reduce the effects of an accidental release of radioactive materials;"* and ... *"F. the measures that would be taken to prevent spills or leaks of pollutants, or to minimize the effects of spills or leaks on the environment."*

[2]

See, *State Profiles*, U.S. Energy Information Administration (Independent Statistics and Analysis) at: [http://www.eia.doe.gov/cneaf/nuclear/page/at\\_a\\_glance/reactors/states.html](http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/reactors/states.html) (last accessed March 15, 2010) (Lists 31 states that have commercial nuclear reactors, the generation and capacity trends, general locations, and State emissions levels. Profiles updated with 2007 emissions data on November 6, 2009.)

[3]

See, generally, *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, ALAB-342, 4 NRC 98, 105-6 (1976) (Zone of interests created by the AEA is avoidance of a threat to health and safety of the public). Cf. footnote 1 *supra*.

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Atomic Safety and Licensing Board**

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

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing State of Nevada's Answer in Opposition to Supplement/Amendment to Petition of the National Association of Regulatory Utility Commissioners to Intervene has been served upon the following persons by the Electronic Information Exchange:

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