ANSWER OF THE STATE OF NEVADA TO THE MOTION FOR
A COMMISSION ORDER RESTORING THE TECHNICAL REVIEW
OF THE YUCCA MOUNTAIN LICENSE APPLICATION

On October 7, 2010, Aiken County, South Carolina, joined by the states of South Carolina and Washington, moved for a Commission order allegedly necessary to restore the NRC Staff’s required review of the Yucca Mountain license application. The State of Nevada ("Nevada") opposes the motion. The Native Action Community Council ("NCAC") concurs and joins Nevada in this Answer.

The motion relies on “published news reports” that NRC Chairman Jaczko “has unilaterally directed NRC Staff to stop its review of DOE’s Yucca Mountain license application…..” Motion at 2. That is it. The “published news reports” are not identified, quoted, or described in any further detail. Such a motion based on unidentified authority is impossible to evaluate on its face and must fail for the simple reason that the moving parties have failed to meet their burden of proof. 10 C.F.R. § 2.325 (“Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof”). In fact, the Commission has been unwilling to grant relief based on newspaper articles even when the articles are identified.

See Amergen Energy Co., LLC (License Renewal for Oyster Creek Nuclear Generating Station),
Moreover, a letter to Andrew A. Fitz, Senior Counsel for the State of Washington, from NRC Solicitor John Cordes, dated October 13, 2010, further undercuts the moving parties’ case for relief. This letter, responding to Mr. Fitz’s request for a copy of written communications to the NRC Staff from Chairman Jaczko (or from other NRC Commissioners) “concerning the cessation of [Yucca Mountain] license application review,” states simply that “I [Mr. Cordes] have inquired and identified no such documents” (Attachment A at 2).

The October 13, 2010 letter from Mr. Cordes does identify and supply a memorandum to NRC office directors and regional administrators, dated October 4, 2010, providing guidance on budget execution under the Continuing Resolution enacted into law on September 30, 2010. The memorandum is from the NRC’s Chief Financial Officer and Executive Director for Operations, not the NRC Chairman or any NRC Commissioner. This guidance does address, in a general fashion, NRC budget execution for the NRC High Level Waste Program. It says nothing specific about Staff’s Safety Evaluation Report for Yucca Mountain. Nevertheless, Nevada is aware that two NRC Commissioners have stated a disagreement with the guidance memorandum based on their understanding that it calls for a halt to Staff SER work under the Continuing Resolution. However, the memorandum is within the delegated authority of the Executive Director for Operations and the Chief Financial Officer.1 The memorandum is therefore effective as an instruction to NRC Staff working on the Yucca Mountain application unless the Commission itself overrides it by majority vote. It appears from an October 14, 2010

---

1 The Commission’s OMB-approved regulation for the administrative control of federal funds, dated December 22, 1998, provides (in section 5.b.) that “[t]he Chief Financial Officer (CFO) of the NRC is authorized and directed to discharge all financial management activities and functions, which includes the responsibility for the administrative control of the NRC’s funds.”
memorandum from the Secretary to Commissioner Ostendorff, and from related memoranda from Commissioners Ostendorff and Svinicki to the Chairman and fellow Commissioners, that a proposal to override the memorandum did not garner the necessary three votes.

Finally, the moving parties have also failed to certify that they made a sincere effort to contact the other parties to resolve the issue. 10 C.F.R. § 2.323 (b) is quite clear that a motion “must be rejected” if it does not include this certification.

For the reasons given above, the motion should be denied.

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
Email: madams@ag.nv.gov

(signed electronically)
Charles J. Fitzpatrick *
Martin G. Malsch *
John W. Lawrence *
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Tel: 210.496.5001
Fax: 210.496.5011
cfitzpatrick@nuclearlawyer.com
mmalsch@nuclearlawyer.com
jlawrence@nuclearlawyer.com
*Special Deputy Attorneys General

Dated: October 18, 2010
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer of the State of Nevada to the Motion for a Commission Order Restoring the Technical Review of the Yucca Mountain License Application has been served upon the following persons by the Electronic Information Exchange:

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
CAB 01
wif1@nrc.gov
axw5@nrc.gov
jgw@nrc.gov
tsm2@nrc.gov
rew@nrc.gov
mmg3@nrc.gov
axr@nrc.gov
mmg3@nrc.gov
axr@nrc.gov
NGT@NRC.GOV
psr1@nrc.gov
psr1@nrc.gov
rew@nrc.gov
mcf@nrc.gov
mob1@nrc.gov
mark.barnett@nrc.gov
CAB 03
mcf@nrc.gov
mob1@nrc.gov
mark.barnett@nrc.gov
CAB 04
tsm2@nrc.gov
psr1@nrc.gov
rew@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
hearingdocket@nrc.gov
alb@nrc.gov
atb1@nrc.gov
elj@nrc.gov
esn@nrc.gov
rll@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Comm Appellate Adjudication
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
may@nrc.gov
mlz@nrc.gov
alc1@nrc.gov
dwl2@nrc.gov

Adam.Gendelman@nrc.gov
jsg1@nrc.gov
kfx4@nrc.gov
Michael.dreher@nrc.gov
Jessica.Bielecki@nrc.gov
Elva.BowdenBerry@nrc.gov
OGCMailCenter@nrc.gov

sara.culler@nrc.gov
jhd@nrc.gov
patricia.harich@nrc.gov
zxk1@nrc.gov
eal1@nrc.gov
matthew.rotman@nrc.gov
Hunton & Williams LLP
kfaglioni@hunton.com
dirwin@hunton.com
mshebelskie@hunton.com
pslayton@hunton.com

tpoindexter@morganlewis.com
apolonsky@morganlewis.com
tschmutz@morganlewis.com
dsilverman@morganlewis.com
c@morganlewis.com
pzaffuts@morganlewis.com
ccooper@morganlewis.com
sstaton@morganlewis.com
rkuyler@morganlewis.com

U.S. Department Of Energy
Office of General Counsel
gorge.hellstrom@ym.gov
martha.crosland@hq.doe.gov
nick.dinunziok@rw.doe.gov
ben.mcrac@hq.doe.gov
christina.pak@hq.doe.gov
scott.harris@hq.doe.gov
sean.lev@hq.doe.gov

U.S. Department of Energy
Office of Counsel
Frank.putzu@navy.mil

Carter Ledyard & Milburn, LLP
Counsel for Lincoln County
neuman@clm.com

Churchill, Esmeralda, Eureka, Mineral and Lander Counties
lpitchford@comcast.net

Armstrong Teasdale LLP
rlist@armstrongteasdale.com

U.S. Department of Energy
Office of Counsel
Naval Sea Systems Command
frank.putzu@navy.mil

City of Las Vegas
mplaster@LasVegasNevada.gov

Clark County Nuclear Waste Division
iln@co.clark.nv.us
evt@co.clark.nv.us
klevorick@co.clark.nv.us

Eureka County and Lander County
Harmon, Curran, Speilberg & Eisenberg
dcurran@harmoncurran.com

U.S. Department of Energy
USA Repository Services LLC
Yucca Mountain Project Licensing Group
jeffrey_kriner@ym.gov
stephen_cereghino@ym.gov

Nuclear Waste Project Office
breslow@nuc.state.nv.us
steve.fr@hotmail.com

U.S. Department of Energy
USA Repository Services LLC
Yucca Mountain Project Licensing Group
edward_borella@ym.gov

Eureka County and Lander County
Harmon, Curran, Speilberg & Eisenberg
dcurran@harmoncurran.com

U.S. Department of Energy
Office of Civilian Radioactive Waste Mgmt
Office of Repository Development
timothy_gunter@ym.gov

Nevada Nuclear Waste Task Force
judynwtf@aol.com

Talisman International, LLC
plarimore@talisman-intl.com

Nuclear Energy Institute
mab@nei.org
awc@nei.org
ecg@nei.org
Nye County Department of Natural Resources & Federal Facilities
dswanson@nyecounty.net

Lincoln County Nuclear Oversight Prgm
jcciac@co.lincoln.nv.us
Nye County Regulatory/Licensing Adv.
mmrury@chamberscable.com

Nye County Nuclear Waste Repository Project Office (NWRPO)
zchoate@co.nye.nv.us
sdule@co.nye.nv.us

Mineral County Board of Commissioners
yucainfo@mineralcountynv.org

State of Nevada
madams@ag.state.nv.us

White Pine County (NV) Nuclear Waste Project Office
wpnucwst1@mwpower.net

Fredericks & Peebles, L.L.P.
dhock@dndlaw.com
jpeebles@dndlaw.com
chairman@timbisha.org
dvdurbara@netscape.com
sthinelk@dndlaw.com

California Department of Justice
susan.durbin@doj.ca.gov
brian.hembacher@doj.ca.gov
timothy.sullivan@doj.ca.gov

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

California Energy Commission
kwbell@energy.state.ca.us

Jeffrey D. VanNiel
nbrjdvn@gmail.com
Carter Ledyard & Milburn LLP
strell@clm.com

Jennings, Strouss & Salmon, PLC
aro Robbins@jsslaw.com
droby@jsslaw.com

Godfrey & Kahn, S.C.
sheinzen@gklaw.com
dpoland@gklaw.com
aharring@gklaw.com

Gregory Barlow
lcda@lcturbonet.com

Connie Simkins
jcciac@co.lincoln.nv.us

Bret O. Whipple
bretwhipple@nomademail.com

Richard Sears
rwsears@wpcda.org

Alexander, Berkey, Williams & Weathers
cber key@abwwlaw.com
swilliams@abwwlaw.com
rleigh@abwwlaw.com

Davidson & Lindemann, P.A.
kwoodington@dml-law.com

Attorney General, State of Washington
leeo1@atg.wa.gov
michael d@atg.wa.gov
andyf@atg.wa.gov
J onaT@atg.wa.gov

Haynsworth Sinkler Boyd, PA
tgottshall@hsblawfirm.com
rshealy@hsblawfirm.com

National Association of Regulatory Utility Commissioners
jramsay@naruc.org
rlunt@naruc.org

Prairie Island Indian Community
pmahowald@piic.org

Public Law Resource Center PLLC
donkeskey@publiclawresourcecenter.com

Todd R. Bowers
toddb@atg.wa.gov

( signed electronically)
Laurie Borski, Paralegal