The stay requested by NRC Staff (Staff) in its June 20, 2011 Motion is partial, only requesting the Commission to stay the effectiveness of two particular orders of the Yucca Mountain Construction Authorization Board (CAB). For the reasons stated below, the State of Nevada (Nevada) is opposed to the limited stay requested by Staff and is also opposed to the “housekeeping” stay which Staff requests in the alternative.

As has been frequently observed by the parties and by CAB (e.g., in its May 20, 2011 Order Granting Motion to Quash), the continuation of this proceeding is much in doubt. Uncertainties exist that may ultimately terminate the proceeding in its entirety. Examples of these uncertainties are the related cases pending before the U.S. Court of Appeals for the District of Columbia Circuit and the pending decision of the U.S. Congress regarding the FY2012 budget. Based on these very uncertainties, CAB’s May 20, 2011 Order suspended all deposition discovery in this proceeding. Nevada did not oppose such suspension and believes that the licensing proceeding as a whole should be temporarily suspended or stayed until the uncertainties about the YMP are resolved, one way or the other. Staff’s request for only a partial stay, however, does not accomplish this purpose.
Staff’s request for stay would apply **only** to the implementation of CAB’s April 11 and June 9, 2011 Orders. The remainder of this licensing proceeding would otherwise proceed forward, under Staff’s proposal. Such an approach would guarantee an unacceptable outcome – the loss of some or all of the parties’ LSN document collections. The two CAB Orders challenged by Staff’s Motion would (1) require all the parties to deliver their Yucca Mountain LSN document collections to the NRC’s Office of the Secretary (SECY) and (2) require SECY to establish a publicly accessible database on ADAMS, comprised of all those collections. Staff’s proposed stay of the two CAB Orders, if adopted, would nullify the CAB’s orchestration of continued public accessibility of the Yucca Mountain databases. Specifically, the stay requested by Staff would effectively eliminate both (1) the delivery to SECY of all parties’ LSN documents, and (2) their placement (and public accessibility) on ADAMS. The premise of the CAB’s two Orders was the likelihood that the LSN itself will disappear on or before September 30, 2011, due to lack of funding. Without the existence of **either** the LSN or the ADAMS Yucca Mountain document library contemplated by CAB as LSN’s successor document repository, public access to those document collections could wholly disappear. If granted, the limited stay sought by Staff could effectuate this result.

While Nevada would support a **temporary** stay of the entire proceeding until the uncertainties surrounding its continuation are resolved, it cannot support a partial stay such as that requested by Staff¹ – one which could serve to destroy public access to the LSN document collections comprising some four million documents. For these reasons, Nevada is opposed to the limited stay requested by Staff. Nevada is also opposed to the “housekeeping” stay proposed

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¹ While Nevada urges rescission of CAB’s June 10 Order (Answer filed today to DOE’s Motion for Reconsideration), it cannot assume such rescission will be granted. Accordingly, Nevada must here articulate its opposition to the Staff’s limited request for stay of CAB’s April 11 and June 9 Orders; this is because if CAB does not rescind its June 10 Order, the limited stay requested by Staff could have an unacceptable effect. Specifically, such a stay could result in a period of public inaccessibility to the parties’ Yucca Mountain document collections (should the LSN terminate September 30, and the parties’ own planned exchange of documents be delayed).
by Staff, to give time to the Commission to decide its associated Petition. Given the Commission’s recent record in deciding issues presented to it from this proceeding (e.g., its one full year not deciding the issue of DOE’s withdrawal), there is no reason to believe a “housekeeping” stay would turn out to be short term in nature. Moreover, since Nevada is opposed to the requested partial stay, it stands to reason that a housekeeping stay would effectively achieve the same result, particularly if the Commission is unable or unwilling to decide the Staff’s Petition in a timely manner.

Respectfully submitted,

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Dated: June 30, 2011
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 State of Nevada Answer to NRC Staff Request for Stay of the April 11 and June 9, 2011 Board Orders has been served upon the following persons by the Electronic Information Exchange:

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