

**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

**REPLY OF THE**  
**PRAIRIE ISLAND INDIAN COMMUNITY**  
**TO ANSWERS TO PETITION TO INTERVENE**

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## **I. INTRODUCTION**

The Prairie Island Indian Community (PIIC) files this Reply to the Answers to PIIC's March 15, 2010 Petition to Intervene filed by the Nuclear Regulatory Commission Staff (Staff), the State of Nevada (Nevada), and Clark County.<sup>1</sup>

## **II. STANDING AS A MATTER OF RIGHT [10 C.F.R. § 2.309(d)]**

PIIC's Petition (pp 1-9) describes PIIC's "concrete and particularized interests" and why these interests fall within "the zone of interests" to be protected by the Nuclear Waste Policy Act (NWPA), 42 USC § 10101 *et seq.*, The Natural Environmental Policy Act (NEPA), 42 USC § 4321, and the Atomic Energy Act, 42 USC § 2011 *et seq.* PIIC's Petition demonstrates PIIC's standing to intervene as a matter of right, and also to support discretionary intervention. PIIC incorporates this discussion herein by reference.

In its Answer, the Staff (p 1) asserts that PIIC's Petition to Intervene ("Petition") pursuant to 10 C.F.R. § 2.309 "requires a showing of standing and the proffering of an admissible contention" and that PIIC's Petition should be denied because "PIIC did not submit an admissible contention."<sup>2</sup>

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<sup>1</sup> Several parties either support, do not oppose, or do not oppose (subject to compliance with License Support Network requirements), PIIC's Intervention. For example, Applicant Department of Energy (DOE) does not oppose the Petition to Intervene; Nye County, the host county for the proposed Yucca Mountain Repository also does not object, and supports the grant of the intervention; the four Nevada Counties also support the interventions; the county of Inyo and Eureka County take no position; in contrast the Joint Timbisha Shoshone Tribal Group joins in Nevada's Answer to PIIC's intervention, "except that portion of Nevada's Answer relating to Prairie Island's Licensing Support Network compliance".

<sup>2</sup> The Staff does not object to PIIC's participation under 10 C.F.R. § 2.315(c) provided it certifies pursuant to 10 C.F.R. § 2.1003 and 2.1009 that "it has made its documentary material available via that Licensing Support Network (LSN), or that it does not have any documentary material."

The Staff's Answer (pp 2-4) provides certain historical background regarding this case, which includes reference to DOE's June 3, 2008 Application, and certain Notices of this proceeding issued by the Department of Energy ("DOE") and this Commission.<sup>3</sup>

The Staff (p 5) refers to some of the PIIC's allegations in its Petition to support of PIIC's standing, including (fn10) that:

PIIC also alleges it has standing (1) because it represents energy users in its community, who have paid into the Nuclear Waste Fund, and (2) based on the "proximity presumption". Petition at 2, 4. However, at least one circuit has found that nuclear utilities, and not individual ratepayers, are the intended beneficiaries of the Nuclear Waste Policy Act (NWPA). *Roedler v. U.S. Dep't of Energy*, 255 F.3d 1347, 1352 (Fed. Cir. 2001). Therefore, the interests of the ratepayers in the Nuclear Waste Fund are not within the zone of interests protected by the NWPA and cannot be used to demonstrate standing.

Notably, however, the Staff (p 5), after referencing the interests and concerns raised in PIIC's Petition (pp 3-7). states:

The Staff does not oppose PIIC's standing to intervene in this proceeding. PIIC is a Federally-recognized Indian Tribe, and the Prairie Island Indian Reservation is adjacent to the Prairie Island Nuclear Generating Plant and its Independent Spent Fuel Storage Installation (ISFSI). Petition at 3-4.

\* \* \*

Because the Staff does not oppose PIIC's standing to intervene, the Staff does not address PIIC's argument in the alternative for discretionary intervention. *See id.* at 8.

At the same time, the Staff (p 6, fn 10, cont'd) asserts, that:

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<sup>3</sup> Yucca Mountain; Notice of Receipt and Availability of Application, 73 Fed. Reg. 34,348 (June 17, 2008; corrected 73 Fed. Reg. 40,883 (July 16, 2008)); the Commission's October 17, 2008, "Notice of Hearing and Opportunity to Petition for Leave to Intervene". *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-08-25, 68 NRC 497 (2008); *see also In the Matter of U.S. Department of Energy* (High Level Waste Repository); Notice of Hearing and Opportunity to Petition for Leave to Intervene on an Application for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, 73 Fed. Reg. 63,029 (October 22, 2008).

The "proximity presumption" does not give PIIC standing in this proceeding concerning a high-level waste repository at Yucca Mountain. PIIC is located near the Prairie Island Nuclear Generating Plant, not Yucca Mountain. *See* Petition at 4. Furthermore, the "proximity presumption" is used in proceedings for power reactor construction permits, power reactor operating licenses, and significant amendments thereto. . . (citations omitted). In situations without such obvious potential for offsite consequences, the proximity presumption does not apply, and the petitioner must allege some specific injury in fact flowing from the action. *Id.* at 329-30.

As stated in its Petition, PIIC meets the tests for standing under applicable authority.

PIIC will be directly impacted if DOE's motion is granted in this case. The result will be the indefinite or permanent stranding of SNF immediately adjacent to the PIIC, and also greater long term risks to public health, safety, and the environment, and also the destruction of the purposes and objectives of Congress under the NWSA to address these risks and impacts. PIIC will be proximate to a nuclear waste site by default, not by either design or study.

The Staff has also misinterpreted PIIC's standing argument concerning its ratepayer interests. PIIC's assertion is that users of nuclear energy, through their rates, have paid billions into the Nuclear Waste Fund under the Nuclear Waste Policy Act, 42 U.S.C. § 10101, *et seq.*, (NWSA) expressly for the SNF repository program, so as to meet the purposes and objectives of the NWSA (Section 111, 42 USC §10131).<sup>4</sup> Ratepayers have an interest in achieving the benefits envisioned by the NWSA, in exchange for the sizeable costs financed by ratepayers. DOE's abandonment of the LA in this case, as attempted by its Motion, directly impacts energy users in this fashion.

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<sup>4</sup> Any failure or delay in the repository program also increases the costs of energy due to utility expenditures for more SNF storage sites, and associated security, decommissioning, and other costs.

### **III. NONTIMELY INTERVENTION**

PIIC's Petition (pp 9-14) sets forth reasons why PIIC's non-timely intervention should be granted in accordance with the multi-factor analysis utilized for ruling upon late interventions, which PIIC hereby incorporates by reference.

#### **A. Good Cause [1- C.F.R. § 2.309(c)(1)(i)]**

The Staff (pp 6-7) notes the multi-factor balancing test used "to determine whether a non-timely filing should be entertained," and the most important consideration ("whether there is good cause for failure to file on time"). The Staff notes PIIC's assertions that, "when the notice of hearing was issued, it believed the LA (license application) would be consistently supported by DOE until the NRC issued a decision on the merits," and further, that PIIC promptly filed its intervention upon DOE's filing of its unforeseen March 3, 2010 Motion to Withdraw its license application. The Staff then states in part (p 7):

Because PIIC's nontimely contentions relate to DOE's motion to withdraw its license application, the Staff agrees that PIIC could not have filed a petition proffering [sic] these contentions at the outset of the proceeding.... The Staff does not dispute that PIIC filed its petition promptly after the new information became available inasmuch as PIIC filed within 30 days of that new information.

Nevada (pp 1-2) notes portions of PIIC's petition describing its interests, and PIIC's proximity to the Prairie Island Nuclear Generating Plant (PINGP) and the associated Spent Fuel Storage Installation ("ISFSI"), but asserts that the key question is how PIIC's interests would be affected by DOE's proposed withdrawal of its LA for Yucca Mountain, located some 1700 miles away. The answer to this key question is clear from the facts, and the interests and positions asserted by PIIC in its petition. DOE's Motion in this case seeks to precipitously withdraw the Yucca Mountain repository LA and to end the project after decades of effort, and the undisputed need for a repository for both HLW and SNF. The clear and direct result of DOE's proposed

course is to strand such waste indefinitely or permanently at present sites that are not suitable for such waste retention or disposal purposes, and which have never been studied for said purpose. This result directly impacts PIIC, and the public health, safety, and environment where PIIC is located, and also destroys the objectives and purposes of the NWPA and its enforcement vehicle, the Standard Contracts between the DOE and the nation's nuclear utilities, and the nation's reliance thereon.

Nevada (pp 2-3) also mischaracterizes PIIC's interests as mere interests of generalized concerns, which are not distinct and palpable. This myopic view wholly ignores PIIC's strong interests and unique situation as fully explained in PIIC's petition. Nevada also asserts that DOE's Motion will not lead to stranded SNF at or near PIIC merely because DOE's motion "reaffirms its obligation to take possession and dispose of the nation's spent nuclear fuel and high-level nuclear waste", and that PIIC's concerns and injuries to the contrary involves "speculation". The problem with this assertion is that Nevada is relying on a fantasy. DOE has already demonstrated several times that it is incapable of, or refuses to, dispose of SNF or to comply with the NWPA and Standard Contracts requiring same, as amply demonstrated by its own Final Interpretation issued in 1995,<sup>5</sup> the Court cases reversing same, and the numerous Court of Claims damage cases brought against DOE since, and by DOE's many failed promises spanning several decades. One more promise made by an outside DOE counsel in its Motion hardly comprises any authorized basis to believe that DOE will ever dispose of SNF if its Motion is granted, although we are certain that DOE will continue to collect billions of dollars in SNF contract fees as if it were complying with its disposal duties under the NWPA and the Standard Contract.

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<sup>5</sup> Final Interpretation of Nuclear Waste Acceptance Issues, 60 Fed. Reg. 21, 793 (1995).

Nevada (p 4) asserts that PIIC's concerns regarding stranded SNF in its locality, and the resulting risks to public health, safety, the environment, and the financial and other livability concerns of PIIC for its community are "conjectural" or "hypothetical", and not "actual or imminent" based upon the mere assumption that SNF can be retained at its present locations for "decades, if not a century from now". Nevada's statements are purely speculative and theoretical, and are not based upon any studies applicable to PIIC's situation, or any other locality where SNF and HLW are presently retained. The fact that such wastes can be stored for a time does not support the abrupt destruction of the repository program, which will be needed under any known scenario. DOE's Motion and its proposed abandonment of the Yucca Mountain repository program serves to increase the clear and direct risks that the harms articulated by PIIC will occur, to the severe detriment of PIIC as noted. Nevada's assertion (p 4) that PIIC should carry the burden of demonstrating "the approximate times when contamination and exposures may occur" at PIIC is absurd. It is the DOE that has been assigned by the NWPA to dispose SNF on a timely basis, and via a repository, and it is the NRC that is assigned the duty and resources to ensure the protection of public health and safety, and of the environment and public interest, with respect to nuclear waste.

Nevada (pp 5-6) also asserts that PIIC is asserting only a "procedural right" and that PIIC as a petitioner must show that "the procedural right at stake is designed to protect its concrete interests in the outcome of the agency proceeding". Unlike perhaps any other case faced by the NRC, this case now involves the unforeseen situation whereby DOE's Motion, if granted, will become the de facto permanent decision on the LA and the Yucca Mountain repository, and a clever but unlawful destruction of the purposes and objectives of the NWPA and the Standard Contracts, and an end to the program but without any substantive review and rulings on the

merits of the science and other factors covered within the LA. PIIC asserts that DOE's Motion is not just another pedestrian motion in a routine NRC case. The motion goes to the very purpose of the NWPA and of the nation's need for a suitable repository. Moreover, PIIC has shown the direct nexus between DOE's Motion and PIIC's direct and substantial interests, all of which provide the grounds for finding that PIIC has the requisite standing to intervene as a party to this proceeding.

Nevada (p 5) also makes the unsubstantiated statement that "If PIIC'S procedural right is vindicated, the proceeding will continue, but PIIC will disappear from the scene, and any interests it may otherwise have possessed will be entirely at the mercy of the other parties who PIIC claims cannot represent its interests". Nevada thus appears to suggest or imply that PIIC's interests, if concrete at this time, will erode at some future point. There is no basis for Nevada's erosion theory. Given what has happened, it is clear that affected parties must be more diligent than ever. There is no basis for Nevada's "disappearance" theory.

Nevada's suggestion (p 6) that "NRC practice also requires an organization to demonstrate that at least one of its members has authorized it to represent the member's interests" is not a proper ground for denying PIIC's intervention in the circumstances here. As set forth in PIIC's Petition (p 3), the Tribal Council is the governing body for the PIIC with the authority to act or speak on behalf of the PIIC, and the Tribal Council specifically authorized PIIC's General Counsel to file the Petition on behalf of the PIIC. PIIC's intervention is signed and thereby certified as authorized by its counsel representing PIIC, just like all other parties to this case.<sup>6</sup>

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<sup>6</sup> See *In the Matter of Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2)*, ASLBP No. 08-871-01-LR, 68 N.R.C. 905, 912-13 (Dec. 5, 2008) (stating

Nevada (p 6) also asserts that PIIC's proximity to the PINGP and its ISFSI is not sufficient to confer PIIC's standing in this case, given that Yucca Mountain is far distant. Nevada asserts that a petitioner "must demonstrate a distinct and palpable harm that is fairly traceable to the challenged activity". This assertion has already been rebutted. It is now DOE's Motion that creates the stated harm to PIIC's interests. DOE's motion, if granted, and the associated abandonment of the repository program, makes PIIC's proximity to the PINGP and its ISFSI highly relevant. DOE seeks to moot out and make irrelevant the LA related to the Yucca Mountain location, which action then makes relevant the resulting harms and impacts for localities where SNF and HLW will be indefinitely or permanently stranded without the modicum of any study, or concern for the resulting consequences. For the very same reasons, PIIC has standing in this case as a host community, given its extremely close proximity to the PINGP and its ISFSI.

Unlike the Staff, Nevada (pp 7-8) also seeks to deny PIIC intervention pursuant to 10 C.F.R. 2.315(c) on the basis that PIIC has not made any showing of interest that is sufficient, that PIIC has not designated a single representative, and has not identified any admitted contentions upon which it seeks to participate, or that its contentions satisfy timeliness requirements. To avoid duplication, PIIC asserts that Nevada's points have already been covered by PIIC in its petition and in this reply.

Nevada (pp 8-9) also asserts that PIIC should not be granted discretionary intervention, for the same reasons as Nevada opposes intervention as of right. Nevada's repeated assertions

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that an attorney's notice of appearance is sufficient under 10 C.F.R. § 2.314 for attorney to represent tribe in NRC proceedings).

should be rejected for the same reasons PIIC has already articulated. PIIC requests intervention as of right and on a discretionary basis.

Nevada (pp 9-12) disputes PIIC's assertions of good cause for its non-timely intervention. Nevada (p 10) asserts that PIIC's reliance on the belief that DOE would follow through on its legal duties to support and seek approval of the LA is not enough as it comprises a claim that PIIC may justify intervention because it was "lulled" into non-action. PIIC asserts in response that its reliance was fully justified given DOE's duties and the filing of the exhaustive LA. Moreover, Nevada ignores the fact that DOE's Motion wholly reverses these duties and this proceeding, in a manner that never could be foreseen or even fantasized. DOE's motion represents a sudden, unforeseen, and complete change in circumstances that justifies late intervention. Also, PIIC has responded to these events by promptly filing its intervention petition. Nevada also cites no "emergency" or "harm or prejudice", or even any inconvenience, if the Board grants the interventions of the petitioners including PIIC, and to provide for a fair and reasoned approach to deciding DOE's Motion.

Nevada (pp 10-12) also asserts that PIIC also failed to carry out an obligation to "uncover and apply publicly available information in a timely manner" given candidate Obama's campaign position on Yucca Mountain in the fall of 2008 or later, and that "It is not relevant that DOE's motion to withdraw was not actually filed until many months after the President's position became generally known". This Nevada argument is really a stretch. Nevada is asserting that PIIC should have offered purely speculative grounds for intervening on the basis that political statements during a campaign equated to a basis for PIIC to assert standing in this case, and to predict the unfathomable—namely, that the Administration starting on February 1, 2010, would act to undertake a precipitous and unnecessary action—to start to close down the

repository program, and to move to withdraw the LA. This action was wholly unforeseen as the LA case could have continued until a final resolution on the merits, which would still have taken years, but would have been an orderly and non-political way of proceeding in accordance with the long-standing requirements of the NWPA and the Standard Contracts.

Clark County also challenges PIIC's Petition on "timeliness" grounds. Clark County (pp 2-3) asserts that both Petitions PIIC and NARUC:

"wrongly presumed that the only outcome of this proceeding would be the ultimate approval of the License Application. This presumption reveals an unreasonably narrow construction of the NRC's authority and ignores the possibility of denial of the License Application on the merits - an outcome not unlike that which will result if the DOE's motion to withdraw is granted.

The DOE's filing and prosecution of the license Application was always subject to potential rejection or dismissal by the NRC.

...

Only now, after Petitioners' presumptions that the filing of the DOE's License Application equates to construction approval have proven false, do Petitioners complain that each will be affected by an NRC decision that will constitute a concrete and particularized injury and a distinct and palpable harm that they will suffer if the DOE's motion withdraw is granted.

Clark County's "straw man" construct regarding Petitioner's presumptions do not support Clark County's argument on timeliness. As noted, PIIC and others justifiable relied on the NWPA, and the belief (in accordance with DOE's actions through 2009) that DOE would fully support and prosecute its LA to a final decision on the merits. Certainly, the result was not guaranteed - but the likelihood of some approval, perhaps with reasonable conditions would occur - and the purposes of the NWPA and need for a repository would be furthered. In contrast, DOE's motion, if granted, would ensure with certainty that the purpose of the NWPA and Standard Contract would be destroyed, and that localities where waste now is located will become repositories for the stranded waste by default, all without any plan, policy, strategy, etc.

to assure proper disposal. The DOE motion thus gives rise to the immediacy of the concrete and particularized injury and harm to Petitioners that now justifies the grant of their interventions.

**B. Remaining 10 C.F.R. § 2.309(c) Factors**

The Staff (p 7), in discussing the other factors found in 10 C.F.R. § 2.309(c)(i) ii through viii, states overall that:

A balancing of the remaining factors in 10 C.F.R. § 2.309(c), along with PIIC's good cause, favors the Board's allowing the late filing.

The Staff concludes (pp 8-9) that the first five of the other factors (listed next) "weigh in favor of PIIC." The Staff (pp 8-9) states:

With respect to PIIC's right to be made a party to the proceeding, 10 C.F.R. § 2.309(c)(1)(ii), as discussed above, the Staff does not dispute that PIIC has standing as a matter of right in this proceeding. PIIC asserts that an order granting DOE's Motion to Withdraw gives rise to significant environmental, safety, and financial risks and costs because it creates the possibility that spent nuclear fuel will remain in PIIC's community. Petition at 6-7 (citing 10 C.F.R. § 2.309(c)(1)(iii), (iv)). PIIC claims that because it is not clear the courts could provide timely relief on a matter before the Board and the Commission, DOE's Motion to Withdraw, there are no other means to protect its interests. Petition at 11-12 (citing 10 C.F.R. § 2.309(c)(1)(v)). Finally, with respect to 10 C.F.R. § 2.309(c)(1)(vi), PIIC notes that it is a Federally-recognized Indian Tribe that is a host community for spent nuclear fuel and, as such, has unique interests that cannot be represented by existing parties. Petition at 12.

Weighing the factors listed in 10 C.F.R. § 2.309(c)(1), with the consideration that the good cause factor is most important, leads the Staff to conclude that the balancing test favors allowing PIIC's nontimely filing.

**1. The Nature and Extent of the Petitioner's Rights Under the Act to be Made Parties to the Proceeding [10 C.F.R. § 2.309(c)(1)(ii)]**

The Staff's position on this factor is stated above.

**2. The Nature and Extent of the Petitioner's Interest in the Proceeding [10 C.F.R. § 2.309(c)(1)(iii)]**

The Staff's position on this factor is stated above.

**3. The Possible Effect of a Decision or Order by the NRC Affecting the Petitioner's Interest [10 C.F.R. § 2.309(c)(1)(iv)]**

The Staff's position on this factor is stated above.

**4. The Availability of Other Means Whereby the Petitioner's Interests will be protected [10 C.F.R. § 2309(c)(1)(v)]**

The Staff's position on this factor is stated above. Nevada (p 12) agrees that this proceeding is an appropriate forum for deciding DOE's Motion, but claims that PIIC may "participate effectively before NRC by filing an amicus brief". Nevada does not forthrightly admit its reasons for asserting this, and in any event, this argument should not justify a denial of PIIC's intervention which is supportable on the grounds stated earlier. Moreover, it is for PIIC, not Nevada, to determine how PIIC may best protect itself and its significant interests in this case.

**5. The Extent to Which Petitioner's Interests will be Represented by Existing Parties [10 C.F.R. § 2309(c)(1)(vi)]**

The Staff's position on this factor is stated above. Nevada (p 13) also claims that PIIC's "abstract interest" is shared by millions of citizens living near nuclear facilities and whose rates include charges for the Nuclear Waste Fund created under the NWPA, and that such interests are represented here by such organizations as the Nuclear Energy Institute(NEI). The NEI, as an organization made up of nuclear utilities and other industry members, cannot represent the interest of PIIC, as such would be a direct conflict of interest.

**6. The Extent to Which Petitioner's Participation will Broaden the Issues or Delay the Proceeding [10 C.F.R. § 2.309(c)(1)(vii)]**

The Staff (p 8) notes PIIC's assertions that it is the DOE, not PIIC, that has changed or broadened the issues in this case, and which has delayed discovery and the hearings on the LA, by filing its withdrawal motion. The Staff then asserts (p 8):

While PIIC's contentions do broaden the issues before the Board because no existing party has raised the legal issues contained in PIIC's contentions at this time, any potential delay may not be significant given that (1) PIIC seeks to raise legal issues that can be handled by briefing and (2) DOE wishes to withdraw its application and end the proceeding. Therefore, 10 C.F.R. § 2.309(c)(1)(vii) does not weigh for or against PIIC.

Nevada (p 13) asserts that PIIC will broaden the issues in this case because PIIC raises legal issues relating to DOE's (and NRC's) failure to comply with the NWPA, NEPA, and the APA. However, PIIC did not create the genesis for these issues in this case, the DOE did by filing its Motion. As a result, the issues must now be faced.

**7. The Extent to Which The Petitioner's Participation May Reasonably be Expected to Assist in Developing a Sound Record [10 C.F.R. § 2.309(c)(1)(viii)]**

The Staff (p 8), without explanation, asserts that "this factor weighs against PIIC" because "PIIC has not shown that it will substantially assist in developing a sound record, as it does not proffer any admissible contentions."

Nevada (p 13) asserts that PIIC's intervention will not assist in developing a sound record because the sound record relates to technical issues, not legal issues which PIIC raises, and that "PIIC will be long gone when the time arrives for any evidence to be received". Nevada ignore the fact that the DOE motion seeks to moot out the need for a record on technical issues concerning the LA because DOE seeks to withdraw the LA and close the Yucca program.

DOE's Motion has thus intrinsically created the legal issues which now must be developed based upon full arguments, given the record. As noted PIIC will not be "long gone" if DOE's motion is denied. However, if DOE's motion is granted, PIIC may not even exist or be habitable in the coming centuries before the DOE or anyone else properly disposes of the SNF situated in PIIC's locality.

#### **IV. PIIC'S CONTENTIONS**

The Staff (pp 10-12) discusses the nature and requirements of contentions, and states (pp 11-12) that "long-standing Commission precedent establishes that contentions may only be admitted in an NRC licensing proceeding if they fall within the scope of issues that may be contested as set forth in the *Federal Register* notice of hearing and comply with the requirements of former § 2.714(b) (subsequently restated in § 2.309(f)) and applicable Commission case law".

The Staff (p 12) then asserts that "PIIC has not submitted an admissible contention," but further that:

[T]he Staff would not object to its participation as an interested Indian Tribe pursuant to 10 C.F.R. § 2.315(c). If permitted to participate as an interested Indian Tribe, PIIC could raise the arguments in its contentions in a brief in response to DOE's Motion to Withdraw.<sup>7</sup>

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<sup>7</sup> The Staff does not or reveal why it would not object to PIIC's arguments on DOE's Motion to Withdraw if made pursuant to 10 C.F.R. § 2.315(c), in contrast to making the arguments as a party intervenor under 10 C.F.R. § 2.309. Notably, the Applicant DOE itself does not object to the grant of PIIC's Petition to Intervene.

**A. PIIC<sup>8</sup> - MISC-01 - The DOE Secretary's Action in Filing The Motion to Withdraw is Unlawful Under the NWPA and the Standard Contract.**

PIIC's Petition (pp 14-21) presents and discusses this contention, and is incorporated herein by reference.

The Staff (pp 13-17) asserts that [t]his contention does not demonstrate that the issue raised is within the scope [of] the proceeding, as required by 10 C.F.R. § 2.309(f)(1)(iii); does not demonstrate that the issue raised is material to the findings NRC must make to support the action that is involved in the proceeding, as required by § 2.309(f)(1)(iv); and does not show a genuine dispute with DOE on a material issue of fact or law with respect to the LA, as required by § 2.309(f)(1)(vi). The Staff also asserts (p 13, fn12), that:

PIIC has not cited any authority that would give the NRC the authority to entertain arguments related to DOE's obligations under the Standard Contract.

Nevada (p 19) objects to this PIIC contention in part, stating:

Nevada does not object to the admissibility of this contention insofar as it questions whether the Nuclear Waste Policy Act (NWPA) allows the NRC to accept a withdrawal of the license application. . . .

Contrary to Nevada's assertion, the Standard Contract was required by the NWPA, and was a vehicle to finance, enforce, and carryout the NWPA, so it is relevant to legal issues concerning the NWPA.

**1. Scope of the Proceeding**

With respect to the Scope of the Proceeding, Staff (p 13) asserts:

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<sup>8</sup> This refers to the Petitioner Prairie Island Indian Community.

The scope of the issues that may be contested in an NRC adjudicatory proceeding is defined by the Commission in its initial hearing notice and order... (cites omitted). The scope of admissible contentions in the instant proceeding is whether the LA satisfies applicable safety, security, and technical standards and whether the applicable requirements of NEPA and NRC's NEPA regulations have been met... (cites omitted). Recently, the Commission observed that a contention disputing the NWPA's mandate of geologic disposal is outside the scope of the instant proceeding... (cite omitted). High-Level Waste Repository, CLI-10-10, 71 NRC at \_\_\_ (slip op. at 5).

Staff (p 14) then essentially asserts that PIIC-MISC-01 does not comply with this requirement because PIIC does not explain how the contention relates to a "safety, security, or technical issue with the LA or NEPA," and that the Commission's hearing Notice makes clear that these are the issues to be addressed.<sup>9</sup>

The serious problem with Staff's argument is that the various Notices cited by Staff, issued by the DOE or this Commission, specifically dealt with DOE's application for a construction license for a repository at Yucca Mountain, a duty required by the NWPA and the Standard Contract, as further confirmed by federal court decisions and Congressional legislation.<sup>10</sup> The Staff cites nothing in the Notices that support Staff's new found notion that the scope of this proceeding can include the opposite function -- namely, not supporting and litigating the license application, and providing for the withdrawal of the application in violation of the above duties placed upon both the DOE and NRC. In other words, the DOE's motion itself is outside of the scope of the Notice, and therefore beyond the Notices issued in this case.<sup>11</sup>

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<sup>9</sup> The Notices are listed on page 2, *supra*.

<sup>10</sup> See fn 10, *infra*.

<sup>11</sup> This conclusion supports the suspension of this case, and the imposition of the requirement that the DOE and this Commission issue in the Federal Register a new notice comporting with the relief DOE seeks in its Motion, analogous to the approach DOE utilized to commence a proceeding leading to issuance of its *Final Interpretation* in 1995, (cite to be provided) which was later reversed by the Courts in *Indiana Michigan Power Company v DOE*, 319 US App DC

Alternatively, if DOE's motion is within the scope of this proceeding (i.e., if it is within the scope of the Notices) as Staff impliedly argues, then intervenor's contentions in opposition to DOE's sudden and unforeseen motion (which retreats from and violates its duties under the NWPA and other authority) must then also logically fall within the scope of this proceeding (i.e., the contentions are within the scope of the Notices).

The Staff (p 14) also states:

Nothing in the Commission's contention rules, however, do appears to contemplate intervention being based upon a contention that challenges a motion by a party in an ongoing proceeding. *See* 10 C.F.R. § 2.309(f)(1).

Staff provides no explanation to support this statement, which is also irrelevant given the importance of the issues that have now arisen due to DOE's Motion. Quite simply, DOE's Motion is not simply a pedestrian procedural motion that may arise in a routine NRC case. DOE's motion is a tactical step having immense national importance. DOE seeks by its motion to withdraw from and stop 30 years of efforts, after billions of dollars of expenditures, as required by the NWPA and Standard Contracts, and as funded by the nation's ratepayers, to address the proper disposal of toxic SNF. DOE seeks to violate its statutory and contractual mandate and duties, and to have this Commission participate in the same undertaking, despite the nation's long-term reliance on achieving the objectives of the NWPA and Standard Contract.

Nevada (p 19) objects also, and states:

This proceeding does not include questions regarding DOE's compliance with the Standard Contract because the NRC is not a party to that contract and compliance with the Contract is not specified as an issue in the Notice of Hearing, 73 Fed. Reg. 63029 (October 22, 2008), or in 10 C.F.R. Part 63.

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209, 88 F3d 1272 (DC Cir 1996); and in *Northern States Power Company et al v DOE*, 120 F3d 753 (1997)

Nevada's objections are rebutted by PIIC's arguments concerning the Notice and Standard Contract issues already discussed.

## **2. Materiality**

Staff's assertions (p 16) that PIIC's contention lacks "materiality" is similarly illogical and circular. Staff states that . . . "a material contention, therefore, must be linked to NRC's decision whether to grant a construction authorization based on the safety and technical merits of the LA or NRC's adoption of the DOE EISs" and that:

\* \* \*

. . . whether DOE can legally withdraw its LA under the NWPA and Standard Contract is not material to the findings NRC would be required to make to determine "whether or not [DOE] will adequately protect the health and safety of the public and the environment" if granted a construction authorization. Furthermore, PIIC cites a statute or regulation that relates to the authority of DOE to terminate this proceeding, but it does not cite any health and safety requirements that an application must meet. Therefore, PIIC-MISC-01 should not be admitted.

PIIC's contentions challenge the lawfulness of DOE's Motion to Withdraw its license application as being unlawful for several reasons, and thus seeks relief that would comport with its duties (and of this Commission) to process the license application and reach a determination on the merits as required by the NWPA. DOE's motion, if granted, would automatically short-circuit and end the review of all issues concerning the protection of public health and safety, and the environment, as it relates to the Yucca Mountain project. The Staff's assertions appear to be based upon the mythical premise that the issues in this case still involve the Yucca Mountain construction license, when in fact the DOE motion has now reversed the issues 180° in the opposite direction. Contrary to Staff's assertion, PIIC's contentions properly address the

transformational nature of DOE's motion, and its resulting impacts upon the PIIC and other similarly situated localities where NLW or SNF is located.

### **3. Genuine dispute of law or fact**

The Staff's assertions (pp 16-17) that PIIC's contention does not involve a genuine dispute on a material issue of law or fact suffers from the same defect as above. The Staff (p 17) states:

Here, PIIC asserts that there is a genuine dispute on a material issue of law -- whether DOE has the lawful authority and discretion to withdraw its LA with prejudice. Petition at 21. PIIC, however, does not dispute any portion of the LA or claim that information was improperly omitted from it.

Staff's outdated and myopic focus upon the license application wholly ignores the dramatic and unforeseen reality that the DOE through its Motion to Withdraw (not PIIC) seeks now to disown the LA, and to obliterate its duties to defend same on the merits, for no reason relating to the adequacy of the LA or the science underlying same. What is omitted here is DOE's failure to provide any information in its Motion to support or justify such action.

Nevada (p 19) objects for the reasons stated earlier under "scope" and "because DOE's withdrawal motion does not discuss the Standard Contract", points which PIIC has rebutted above.

#### **B. PIIC - MISC - 002 - The NRC (In Addition to the DOE) Does Not Have the Discretion to Terminate the License Proceeding, or to Terminate the Licensing Process With Prejudice.**

PIIC's Petition, (pp 21-25) presents and discusses this contention, which is incorporated herein by reference.

The Staff's Answer (pp 18-21) essentially repeats the same arguments under this PIIC contention as discussed under the first contention discussed earlier.

Nevada (p 20) objects to this contention as being "impermissibly vague".

### **1. Scope of Issues**

The Staff erroneously asserts that the scope of the issues here is defined by the Commission in its initial hearing Notice and order, such as "whether the LA satisfies applicable safety, security, and technical standards and whether the applicable requirements of NEPA and NRC's NEPA regulations have been met." and (p 19) that "PIIC has not explained how PIIC-MISC-02 relates to the safety, security, and technical aspects of the LA or the satisfaction of NEPA."

PIIC reasserts its earlier reply that it is DOE's motion that is outside of the scope of the Commission's Notice (and applicable law), and that DOE's Motion seeks to make all of the issues on the LA irrelevant and moot.

The Staff's also asserts (p 18) that . . . the Commission observed that a contention disputing the NWPAs mandate of geologic disposal is outside the scope of the instant proceeding. Staff's assertion is also wholly inapplicable as a basis for challenging PIIC's contentions. PIIC is not disputing the NWPAs mandate of a geological disposal. The opposite is true. PIIC supports proper geological disposal, and its contentions are consistent with this NWPAs mandate, and with the stated objectives and purposes of the NWPAs.

Nevada (p 20) objects in part, stating:

Inssofar as this contention may question whether the Nuclear Waste Policy Act (NWPAs) allows the NRC to accept a withdrawal of the license application, it is within the scope of the proceeding. However, the contention is beyond the scope of the proceeding if it questions compliance with the Standard Contract because

the NRC is not a party to that contract and compliance with that Contract is not specified as an issue in the Notice of Hearing, 73 Fed. Reg. 63029 (October 22, 2008), or in 10 C.F.R. Part 63.

PIIC has already rebutted Nevada's claims regarding the Notice and the Standard Contract.

## **2 Materiality**

Staff (p 20) under the intention repeats the same "materiality" arguments as made by

Staff under the first PIIC contention:

[A] material contention, therefore, must be linked to NRC's decision whether to grant a construction authorization based on the safety and technical merits of the LA or NRC's adoption of the DOE EISs.

\* \* \*

However, whether NRC or DOE can terminate the licensing process at this stage is not material to the findings NRC would be required to make to determine 'whether or not [DOE] will adequately protect the health and safety of the public and the environment' if granted a construction authorization."

Staff's answer (pp 20-21) on whether PIIC's second contention raises a genuine dispute on a material issue of law or fact merely repeats the same argument Staff made on this factor under PIIC's first contention. Staff's criticisms should be rejected for the same reasons as discussed under the first contention. Similarly, Nevada (pp 20-21) repeats its arguments regarding the issues noticed and Standard Contract, rebutted by PIIC earlier.

### **C. PIIC - MISC - 003 - DOE's Motion Seeking to Irrevocably Terminate the Yucca Mountain Repository Program Constitutes a Violation of NEPA**

PIIC's Petition (pp 24-27) presents and discusses this contention, which is incorporated herein by reference.

Staff's Answer (pp 22-25) challenges PIIC's third contention with virtually the same exact assertions, language and citations (with regard to scope of proceeding, materiality, and genuine

dispute on material issue of law or fact) as discussed relative to PIIC's first and second contentions. Staff's assertions should be rejected for the same reasons as discussed above.

The Staff does, however, state (p 23) that "PIIC has not explained how PIIC-MISC-003 relates to an applicable NEPA requirement." Staff (p 25 also states:

While PIIC-MISC-003 does reference the FEIS, PIIC does so to note that studies DOE has undertaken up until this point, in preparation for a license application for Yucca Mountain, "cannot be retroactively applied on a post-hoc basis to support DOE's" decision to withdraw its license application. Petition at 25. PIIC does not challenge the adequacy of the FEIS used to support the licensing of Yucca Mountain; instead, PIIC asserts that DOE failed to address the consequences of termination of the Yucca Mountain project. Therefore, the contention does not present a genuine dispute regarding the license application or EIS at issue in this proceeding. Accordingly, the Board should not admit PIIC-MISC-003.

Staff obliquely misses the point that it is DOE's Motion that attempts to moot out and make irrelevant the FEIS to support the Yucca Mountain license, and to abandon the LA for the project in derogation of its duties under the NWSA. At the same time, DOE has no other plan for SNF or other HLW disposal, and no apparent environmental studies upon which to support its default option -- to leave SNF and HLW stranded indefinitely or forever at current locations that were never intended, studied, or designed for SNF and HLW "disposal." The DOE Motion thus violates NEPA, and the Staff has not indicated how the DOE Motion comports with NEPA.

On the Statement of this Issue, Nevada (p 22) states:

Nevada objects in part. Nevada does not object on specificity grounds to this contention insofar as it seeks to raise the pure legal question whether, to support its motion to withdraw, DOE must prepare an environmental impact statement that is separate from the statement it prepared to support its license application, regardless of the adequacy of the discussion of the no-action alternative in that statement.

However, if PIIC intends to challenge, either directly or indirectly, the adequacy of the discussion of the no-action alternative in that statement, then its

contention is hopelessly vague and non-specific because no specific deficiency is alleged.

PIIC welcomes Nevada's agreement in part above. However, on the second point, PIIC does assert that DOE's "no action alternative" in its EIS is not adequate or even applicable on a post-hoc basis here to support the stranding of SNF or HLW at any location by default. PIIC's assertion on this point is as specific as possible, given the vagueness and incompleteness of the EIS on this point, as the EIS did not focus on any specific site other than Yucca Mountain.

With respect to "Scope", Nevada (p 22) states:

Nevada objects in part. On NEPA issues, this proceeding like all NRC proceedings, is limited in scope to whether NRC has complied with NEPA, and questions regarding other agencies' compliance with NEPA are outside of the scope of the proceeding. Whether DOE has complied with NEPA is only relevant insofar as NRC may seek to comply with NEPA by relying on an environmental statement prepared by DOE.

PIIC reasserts its reply to this argument as stated elsewhere. However, it is important that the NRC comply with NEPA before granting a Motion that establishes a default that fails to meet NEPA requirements.

Regarding materiality, Nevada (pp 22-23) states:

Nevada objects in part. On NEPA issues, this proceeding, like all NRC proceedings is limited in scope to whether NRC has complied with NEPA, and questions regarding other agencies' compliance with NEPA are outside of the scope of the proceedings. Whether DOE has complied with NEPA is only relevant insofar as NRC may seek to comply with NEPA by replying on an environmental statement prepared by DOE.

PIIC has also responded to this assertion earlier.

**D. PIIC-MISC-004 - DOE's Decision and Motion to Withdraw the License Application, And its Decision and Motion to Withdraw**

**the License Application with Prejudice so as to Terminate the Yucca Mountain Project (and Board or NRC Approval of Said Decisions and Motion) is (or Would Be) Arbitrary and Capricious in Violation of the Administrative Procedures Act**

PIIC's Petition (pp 27-29) presents and discusses this contention, which is incorporated herein by reference.

Staff's Answer (pp 26-29) makes the same assertions under this contention (relative to scope of proceeding, materiality, and genuine dispute on a material issue of fact or law) as it makes under the first and second PIIC contentions. Staff's boilerplate answer should be rejected for the same reasons as asserted by PIIC under the earlier contentions.

Staff's answer (p 26) does assert that "PIIC does not provide any explanation of why or how NRC would violate the APA in granting DOE's Motion to Withdraw", stating:

PIIC's statement of the contention alleges that NRC, in addition to DOE, would violate the APA if it granted DOE's Motion to Withdraw. Petition at 27. However, PIIC does not provide any explanation of why or how NRC would violate the APA in granting DOE's Motion to Withdraw. *See* Petition at 27-28. Therefore, to the extent that PIIC-MISC-004 alleges NRC, as opposed to DOE, would violate the APA, the contention does not comply with 10 C.F.R. § 2.309(f)(1)(ii) and should not be admitted.

Staff (p 27, fn14) also states:

PIIC did not cite to any authority, such as the Energy Reorganization Act, Nuclear Waste Policy Act, or Atomic Energy Act, that would confer authority on the NRC to evaluate DOE's compliance with the APA.

Staff (p 29) also asserts regarding materiality:

Here, PIIC asserts that there is a genuine dispute on a material issue of law regarding whether DOE's motion is unlawful, arbitrary and capricious, and violative of procedural requirements. Petition at 29. However, PIIC does not dispute any portion of the LA or EIS, nor does it claim that information was improperly omitted from either.

Contrary to these assertions, PIIC has asserted in its contentions that the NWPA requires DOE to formulate, file, and seek approval of a LA for the Yucca Repository, and also requires the NRC to reach a determination on the LA on the merits (and within a timeframe of 3-4 years) (e.g., NWPA Sections 114(b) and (d), 42 U.S.C. §10134(b) and (d)). The entire framework of the NWPA, and the extensive studies undertaken to prepare the LA, after years of effort, and billions in expended costs, and also the period of years provided for review of the LA all combine to buttress the conclusion that the NWPA requires the DOE to forthrightly present and defend the LA, and also requires the NRC to process the LA on the merits. This NWPA requirement was not "result-driven" in terms of requiring an approval or rejection of Yucca Mountain as a repository. The NRC decision was to be based upon proper scientific determinations. In contrast, DOE's precipitous motion here is result-driven, and is aimed to halt and dismiss the LA without any NRC decision on the merits.

The DOE (and the NRC) would violate their duties under the NWPA if DOE's Motion is granted. Moreover, the whole process by which DOE has suddenly and unexpectedly reversed course after 30 years of effort is "arbitrary and capricious," as would be NRC action facilitating such a result. DOE's new found "strategy" to defy the NWPA, and to withdraw the LA, has not been explained or presented in an inquiry, with advance notice in the Federal Register. DOE's action here is inconsistent with the Notices commencing this case. No process has been provided for major affected interests in the nation to be informed of DOE's rationale, to input thereupon, and to seek appropriate remedies to ensure compliance with the NWPA, the Standard Contract, NEPA, and the APA. The NRC has similarly not re-noticed this as a new case, or a case transformed to consider the reverse of the matters and issues presented in the original LA application.

The Staff answer suggests that the NRC does not have any duty to ensure compliance with federal law not directly administered by the NRC. However, the NRC does have assigned duties with respect to the LA under the NWPA. Moreover, NRC Commissioners, and Staff, like most agencies, presumably also take an oath to uphold the Constitution and the laws of the United States -- an oath that should incorporate the duty to not simply ignore situations where an applicant violates duties and mandates of long-standing statutory law.

The Staff's answer fails to recognize that this contention incorporates a legal issue relevant to DOE's Motion, and to the entirety of this proceeding. The contention should be granted so the issue is considered by the Board and Commission.

With respect to the Statement of Issue for the contention, Nevada (p 24) states:

Nevada objects. PIIC's brief discussion of basis includes allegations of non-compliance with the NWPA, NEPA, and the Standard Contract which appear to duplicate previous contentions and, without some explanation of what this contention adds, this contention is impermissibly vague. However, Nevada does not object on specificity grounds if the contention is limited to alleging that DOE's decision to request withdrawal is arbitrary and capricious under the APA, separate from other alleged statutory violations.

PIIC has also responded to this argument earlier.

With respect to the "Scope", Nevada (pp 24-25) states:

Nevada objects in part. Whether, in considering DOE's withdrawal motion, NRC must or may consider DOE's stated reasons for seeking withdrawal is inextricably linked to NRC's consideration of the merits of that motion, and is best addressed in that context. However, in general, the NRC does not apply the APA to a federal agency applicant as if it were performing the function of a court on judicial review.

To extent that this contention seeks to raise issues regarding compliance with the Standard Contract, it is outside of the scope of this proceeding. This proceeding does not include question regarding DOE's compliance with the Standard Contract because the NRC is not a party to that contract and compliance

with that Contract is not specified as an issue in the Notice of Hearing, 73 Fed. Reg. 63029 (October 22, 2008), or in 10 C.F.R. Part 63.

Nevada (p 25) adds under "Genuine dispute" that "DOE's withdrawal motion does not discuss the Standard Contract."

PIIC has also responded to these assertions earlier.

**E. PIIC-MISC-005 - The Board and NRC Should Reject DOE's Motion, and Place Conditions on any Future Consideration of DOE's Motion, to Ensure Compliance With Applicable Law.**

PIIC's Petition (pp 29-34) presents and discusses this contention, which is incorporated by reference.

Staff's Answer (pp 30-33) to this contention appears to be virtually identical to the assertion made by Staff to PIIC's first contention, and should be rejected for the reasons stated by PIIC earlier in this Reply.

Staff (p 31, fn15) does state, however, that:

PIIC suggests that the Board and NRC should hold the motion in abeyance until DOE complies with "the APA, NEPA, and the NWPA (and Standard Contracts)." Petition at 32. However, PIIC did not cite to any authority, such as the Energy Reorganization Act, Nuclear Waste Policy Act, or Atomic Energy Act, that would confer authority on the NRC to evaluate DOE's compliance with the APA or the Standard Contract.

Staff's answer disregards PIIC's contentions, and portions of its Petition. For example, PIIC has asserted that DOE has a legal duty under the NWPA (and Standard Contract) to move forward with its LA to a decision on the merits. PIIC has also asserted that DOE has not acted lawfully on a procedural basis to reverse its position and duties, and to abandon its own LA, under the NWPA and APA. PIIC has also asserted why DOE has not complied with NEPA.

This Commission under the Atomic Energy Act also has primary duties to protect and enhance public safety with respect to the use of nuclear power and the storage and disposal of nuclear waste (SNF and HLW). This Commission therefore does have a role in ensuring that these objectives are not degraded or ignored by DOE (or itself) in this proceeding..

PIIC in this contention also suggests that alternative options or remedies exist besides DOE's precipitous and fatalistic withdrawal of its LA (or worse, withdrawal of the LA "with prejudice"). Such options could include a suspension of proceedings, with conditions requiring DOE to undertake actions to comply with applicable statutes and procedures, (i.e. NEPA, the NWPA, APA, etc), to be followed by a potential resumption of proceedings based upon reasonable guidelines and timelines. The Staff ignores these points included within this contention.

Nevada (p 26) objects to this contention on vagueness grounds. As to "Scope", Nevada repeats its previous assertions that compliance with the Standard Contract is beyond the Scope of the proceeding, and states also that:

Nevada objects in part. On NEPA issues, this proceeding, like all NRC proceedings, is limited in scope to whether NRC has complied with NEPA, and questions regarding other agencies' compliance with NEPA are outside of the scope of the proceeding. Whether DOE has complied with NEPA is only relevant insofar as NRC may seek to comply with NEPA by relying on an environmental statement prepared by DOE.

Nevada (p 27) concurs, however, with PIIC's assertions concerning "the need for DOE to preserve records".

PIIC has already responded to these assertions earlier, which are incorporated by reference.

## V. COMPLIANCE WITH LSN REQUIREMENTS

Staff's Answer (pp 9-10) outlines LSN requirements for this proceeding, and as a prerequisite to being granted party status. Staff (p 10) asserts:

PIIC has not yet certified, pursuant to §§ 2.1003 and 2.1009, that it has made its documentary material available. See Petition at 35 (indicating intent to comply with 10 C.F.R. § 2.1003). Accordingly, PIIC should not be admitted to the proceeding until it has done so.

Nevada (pp 14-18) also alleges that PIIC's petition should be denied for failure to meet LSN requirements.

Staff and Nevada ignore the fact that counsel for PIIC, or his designees or contractors, have undertaken extensive efforts to implement LSN interconnections and to meet the LSN requirements. This has included numerous phone calls and e-mail contacts with NRC's contractor for the LSN program. The contractor to implement the LSN for PIIC for this case is a principal member of a technology firm, who is very knowledgeable in the field. On Friday, April 30, 2010, counsel for PIIC filed an LSN certification,<sup>12</sup> when the LSN arrangements appeared complete, except for testing. Such testing revealed a glitch in URL's or other connectivity that unexpectedly delayed the interconnection. This testing is now expected to be complete on or about now.

PIIC's contractor, and his staff on these issues, is highly trained and needs no training. He has reviewed all the technical criteria and procedures. He has informally instructed PIIC's counsel's staff on the LSN matters. Thus, all training requirements are met, and are ongoing.

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<sup>12</sup> Prairie Island Indian Community's Initial And Supplemental Certification Of Licensing Support Network, And Designation Of Responsible Person, dated April 30, 2010.

PIIC will promptly place on its LSN documents that relate to its participation as an intervenor. This primarily involves information or documents dealing with PIIC's intervention issues -- the primary scope of which involves the legal issues relevant to DOE's motion. As noted, PIIC is not challenging DOE's original LA. PIIC is challenging DOE's action in abandoning same.

PIIC also notes that the prehearing discovery in this case on the LA has been stayed indefinitely. To the degree the LSN was established to further discovery, and to conduct hearings, and Commission review of the merits of DOE's LA, this purpose for the LSN has now been stayed at least in part.

The purpose for the LSN, and the purpose for PIIC's intervention, should be considered in reasonable fashion so as to find that PIIC is undertaking all efforts to meet LSN requirements, and that PIIC's intervention should not be denied or delayed based on this factor.

## **VI. CONCLUSION AND RELIEF**

For the reasons stated in its March 15, 2010 Petition to Intervene, and in this Reply to Answers thereto, PIIC respectfully requests that its Petition to Intervene be granted.

### **PRAIRIE ISLAND INDIAN COMMUNITY**

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Dated this 11<sup>th</sup> day of May, 2010