

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001
)	
(High Level Waste Repository))	January 16, 2009

**STATE OF NEVADA'S MOTION TO AMEND
PETITION TO INTERVENE AS A FULL PARTY**

The State of Nevada ("Nevada") moves, pursuant to 10 C.F.R. 2.309(f)(2) to amend contention "NEV-SAFETY-03 – Quality Assurance Implementation." Nevada would show that the information on which the amendment to its contention is based was not previously available, having been posted by DOE on its LSN database within the last few weeks; the information upon which the amendment to its contention is based is materially different from information previously available; and the amended contention is being submitted in a timely fashion. The movant has contacted the United States Department of Energy ("DOE") to whose License Application ("LA") the amended contention is directed in an effort to resolve the issue raised in the motion. DOE indicated that it would review the motion upon receipt and respond after such review.

Nevada filed its Petition to Intervene as a Full Party on December 19, 2008. Its contention "NEV-SAFETY-03 – Quality Assurance Implementation" begins at page 45 of its Petition. Beginning at page 58, Nevada discussed the **current** status of DOE's deficient quality assurance program, continuing **after** the time it filed its LA on June 3, 2008. DOE recently made available the close-out information regarding its Condition Report CR-6330 at LSN# DEN001606280. CR-6330 and its closure illustrate a current, profound lack of competence by

DOE in implementing its QA program and constitutes persuasive evidence that there exists no basis for accepting DOE representations with respect to the soundness of its future QA program, should it receive a license to construct and operate a repository at Yucca Mountain. Nevada accordingly requests leave to amend its contention "NEV-SAFETY-03 – Quality Assurance Implementation" by adding the following language, to be inserted in that contention's discussion of current quality assurance problems, which occupies from page 58 through 71 of Nevada's Petition. The following information was not previously available and it is materially different from that which was available and is set out in the current contentions, in that it conclusively demonstrates DOE's total abdication of a QA program (the Augmented Quality Assurance Program) not previously relied upon by movant:

As early as May 2004, DOE drafted an Augmented Quality Assurance Program (AQAP) whose import was addressed by then-OCRWM Director Margaret Chu:

Implementation of applicable AQAP requirements, responsibilities, and authorities is mandatory for all OCRWM personnel. In support of this policy statement, all OCRWM personnel are expected to demonstrate their personal commitment to the achievement of quality through diligent implementation of the requirements of this AQAP.

LSN# DN2001279442 at 2. The AQAP's initial issuance and effective date was August 13, 2004. LSN# DN2001622219 at 2.

Two years later, OCRWM's Office of Quality Assurance issued a report on Audit OCRWMC-OQA-05-14 (LSN# DN2002213251) finding the implementation of AQAP unsatisfactory and concluding that due to the limited implementation of the program, the effectiveness of the program was "indeterminate." The OCRWM audit found that an "extent of condition" evaluation of work commencing August 2004 to evaluate the impact "has not been performed"; that a formal training program "has neither been developed nor provided to affected

personnel"; that a transition plan had not been deployed; and that interviews with personnel indicated confusion as to the AQAP's applicability. This contradicted Ms. Chu's vow in 2004 that "all OCRWM personnel" will demonstrate their personal commitment to the achievement of quality "through diligent implementation of the requirements of this AQAP." This utter failure to implement AQAP was documented in Condition Report CR-6215.

Revision 1 of the AQAP was published in 2006 with an effective date of July 17. Acting OCRWM Director Paul Golan asserted at the time that the AQAP "provides for both the achievement and verification of quality." He explained that line organizations were responsible for meeting the AQAP requirements within their areas of responsibility and said that "work shall not proceed unless the work can be accomplished as described in approved procedures, instructions, and drawings." He ordered that organizations performing work affecting quality for OCRWM "shall comply with the applicable AQAP requirements at every level of every organization." LSN# DN2002405144 at 2.

Condition Report CR-6330 (the newly available close-out documentation of which triggered this amendment) resulted from an OCRWM audit of its own implementation of the AQAP, which concluded that its implementation status was "unable to be determined" (LSN# DEN001606280 at 1): the audit team was unable to locate specific documentation including plans, procedures, standards, or documents for determining the attainment of quality, measuring the achievement of quality, evaluating quality of items, procedures, processes, and activities governed by the AQAP; it concluded that a needs assessment for AQAP training was not found; no evidence was found that personnel knew the expected scope, applicability and rigor for implementation of AQAP in ORD (*id.* at 2). CR-6330 was not closed until October 30, 2008, months after the LA was submitted, but even then, it was not closed due to completed corrective

action. Rather, DOE implemented its Quality Assurance Requirements Documents (QARD) Rev. 20 on October 1, 2008, and simply tied a new evaluation of AQAP to that event, deciding on June 11, 2008 (just after the LA was submitted): "At today's MRC, the management team approved a suggestion from OQA to close the CR upon implementation of QARD Rev. 20 on 10-01-08. Further, the QARD Rev. 20 action for QA, to perform a separate audit and surveillance to assure CR-6330 problem resolution, will occur independently of the CR closure, and the effectiveness review will support both of these actions." *Id.* at 2.

CR-6330 had been pending in OCRWM for more than three years, and responsibility for its resolution had been revised or reassigned no less than a dozen times without success. A remarkable indication of DOE's ineptitude with respect to resolving its QA failures is illustrated by its effort as recently as October 14, 2008, to identify any previous issues that were the same or similar as the issue described in CR-6330. Instead of simply making inquiry of anyone who had worked in the Office of Quality Assurance for a substantial period, DOE elected to conduct its search for similar problems by probing its Corrective Action Program (CAP) database using a variety of search criteria. DOE selected seven different search terms, which yielded over 800 "hits." Then, DOE simplistically reviewed the "summary description" of all those Condition Reports and reached the conclusion: "No other CR was identified with the same or similar issue of failing to implement the entire QA program (AQAP or QARD). Based on this search, this event is considered a one-time issue." *Id.* at 7-8. Aside from the fact that CR-6330 continued for years without resolution, DOE's search for a similar CR was equally ineffective. CR-6215 had documented that "the implementation of AQAP is unsatisfactory" and that "due to the limited implementation of the program, the effectiveness of the program is indeterminate." LSN#

DN2002213251 at 9. DOE's conclusion that the identical conclusion of CR-6330 was a "one-time issue" is unfathomable.

The AQAP saga demonstrates convincingly that DOE's QA shortcomings have persisted to the present day, well beyond submission of its LA, and provide no basis for any anticipation that its promises of future improvement will be successful.

Respectfully submitted,

(signed electronically)

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Dated: January 16, 2009

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada's Motion to Amend Petition to Intervene as a Full Party has been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (*)).

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