UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges:

ASLBP BOARD 09-876-HLW-CAB01 William J. Froehlich, Chairman Thomas S. Moore Richard E. Wardwell	ASLBP BOARD 09-877-HLW-CAB02 Michael M. Gibson, Chairman Alan S. Rosenthal Nicholas G. Trikouros
ASLBP BOARD 09-878-HLW-CAB03 Paul S. Ryerson, Chairman Michael C. Farrar Mark O. Barnett	ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell

In the Matter of	)	
	)	
U.S. DEPARTMENT OF ENERGY	)	**Docket No. 63-001-HLW**
	)	
(High Level Waste Repository)	)	**June 19, 2009**

STATE OF NEVADA REQUEST FOR
EXTENSION OF TIME TO FILE REPLY

On May 12, 2009, the State of Nevada ("Nevada") timely filed two new contentions (designated as NEV-SAFETY-202 and NEV-SAFETY-203) addressed to "fresh grounds" in the Nuclear Regulation Commission's ("NRC") amendments to 10 C.F.R. Part 63 published on March 13, 2009 (*see* 74 Fed. Reg. 10811). NRC's Part 63 amendments implemented the Environmental Protection Agency's ("EPA") rule regarding the conduct of the performance assessment for Yucca Mountain in the period after 10,000 years.

Paragraph B.3 of the Construction Authorization Board ("CAB") Case Management Order #1, dated January 29, 2009, required all answers to any new contentions addressed to NRC's Part 63 amendments to be filed within 50 days after service, or by July 2, 2009 (after

adding one day, as provided in 10 C.F.R. § 2.1017). The CAB's same Order required replies to be filed within 14 days after service of the answers, or by July 17, 2009.

NRC Staff filed its Answer to Nevada's new contentions on June 11, 2009, which is 21 days early. Nevada's Reply to NRC Staff's Answer is now due on or before June 25, 2009, which is seven days before the Department of Energy ("DOE") is required to file its Answer if it chooses to do so. The early NRC Staff filing enables DOE to take account of Nevada's Reply to NRC Staff's Answer in drafting its own Answer. Therefore, NRC Staff has, in effect, given DOE an opportunity to file a surreply that would not otherwise be authorized. To avoid this potential undue advantage, Nevada requests that its Reply to NRC Staff's Answer be filed in accordance with the following schedule:

- If DOE files an Answer to Nevada's contentions on or before June 24, 2009, then Nevada's Reply to NRC Staff's answer is due June 25, 2009 – the current due date.
- If DOE files an Answer to Nevada's contentions on June 25, 2009, or any date thereafter up to and including the deadline for DOE's filing of July 2, 2009, then Nevada's Reply to NRC Staff's Answer is due the next business day.
- If DOE does not file an Answer to Nevada's contention by the deadline of July 2, 2009, then Nevada's Reply to NRC Staff's Answer is due July 3, 2009.

Pursuant to the requirements of 10 C.F.R. § 2.323(b), the undersigned counsel hereby certifies that counsel for the NRC Staff, DOE, the State of California, the County of Inyo, California, Clark County, Nevada, Nye County, Nevada, the Four Counties of Nevada (Churchill, Esmeralda, Lander and Mineral), White Pine County, Nevada, the Joint Timbisha Shoshone Tribal Group, and the Native Community Action Council do not object to or do not oppose this motion. Counsel for the Nuclear Energy Institute takes no position on this motion and reserves the right to take a position after its filing.

Respectfully submitted,

(*signed electronically*)
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Dated: June 19, 2009

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NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

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U.S. DEPARTMENT OF ENERGY	)	**Docket No. 63-001-HLW**
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada Request for Extension of Time to File Reply has been served upon the following persons by the Electronic Information Exchange:

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