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
(License Application for Geologic Repository at Yucca Mountain)	)	February 26, 2010

PETITION OF THE STATE OF SOUTH CAROLINA TO INTERVENE

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1. Introduction

A. Request and Party Identity

The State of South Carolina hereby petitions to intervene as a full party to this proceeding. The purpose of the requested intervention is to oppose, as a matter of law, the anticipated motion of the Department of Energy to withdraw, with prejudice, the application in this case. Because this Petition is being filed after the normal deadline for such petitions, although not untimely under the circumstances set forth herein, South Carolina also requests that this Petition be granted as timely for the reasons set forth herein, or if it is deemed untimely, that it be permitted to be filed untimely, also for the reasons set forth herein. Those reasons, in summary, are that only within the past thirty days or less has the Department of Energy made it clear that it would seek to withdraw the application in this matter with prejudice.

South Carolina also requests that no action be taken by this tribunal on DOE's anticipated motion to withdraw until the present Petition for Intervention is ruled on.

The name of the party and its address (and related contact information) are as follows:

Name of Party: State of South Carolina

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The State of South Carolina designates Henry Dargan McMaster, or such legal counsel as he designates, including the counsel listed immediately above, as its single representative for any hearings.

B. Basis for assertion of standing.

As the Commission has held in its Memorandum and Order dated May 11, 2009, at p. 9,

> [A] petition to intervene must provide information supporting the petitioner's claim to standing, including: (1) the nature of the petitioner's right under the governing statutes to be made a party; (2) the nature of the petitioner's interest in the proceeding; and (3) the possible effect of any decision or order on the petitioner's interest. In determining whether an individual or organization should be granted party status "as of right," the NRC applies judicial standing concepts that require a participant to establish: (1) it has suffered or will suffer "a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute[s]" (e.g., the Atomic Energy Act of 1954 (AEA), the National Environmental Policy Act of 1969 (NEPA); (2) the injury is fairly traceable to the challenged action; and (3) the injury is "likely to be redressed by a favorable decision."

(Footnotes omitted.)

While South Carolina's standing will be discussed in more detail below, it can be summarized as follows, in connection with the situation that would exist if DOE's anticipated motion to withdraw were to be granted.

First, if the Commission were to dismiss this proceeding, South Carolina would suffer a distinct and palpable harm, constituting injury-in-fact within the zone of interests sought to be protected by the applicable statutes, particularly the Nuclear Waste Policy Act of 1982.[1] The abandonment of the Yucca Mountain site would place South Carolina on the list of

[1] In general, references herein to the Commission or to the ASLB should be regarded as interchangeable, as the context may require.

candidate states for a waste disposal or storage facility, and more so than many other states, because South Carolina has the Savannah River Site (SRS) within its boundaries, as well as seven commercial reactors with onsite storage of spent nuclear fuel. The NWPA provides for extensive participation by states in the site selection and characterization process, a process that would be reopened for the first time since 1987 if the application in this matter is permitted to be withdrawn. *See e.g.,* 42 U.S.C. §§ 10131(a)(6) and 10134(a)(1)(F), discussed more fully herein. The NWPA therefore places South Carolina firmly within the zone of interests to be protected if the nation's nuclear waste disposal efforts revert back to their pre-1987 status as a result of dismissal of the license application in this matter. South Carolina would also suffer harm by the continuing delay of the opening of a repository, now already more than a decade behind schedule, including the continuing potential hazard of the onsite storage at the seven commercial reactors, the storage of foreign spent nuclear fuel at SRS, and the need to have emergency preparedness and transportation plans in place in connection with that spent fuel.

Secondly, the aforementioned potential harm is obviously traceable to the challenged action. DOE's motion to withdraw the license application with prejudice, and any decision of the Commission to grant that motion, would have the effect of causing the site selection process to revert back to the situation that existed prior to the 1987 amendments to the NWPA that limited site characterization activities to the Yucca Mountain site.

Thirdly and finally, the injury is capable of being redressed by a favorable decision on the issues presented by the instant Petition, because if South Carolina is successful with respect to those issues, the present proceeding will continue, and South Carolina would not be back on the list of potential disposal or storage sites.

2. Timeliness

DOE's application was noticed for hearing on October 22, 2008 (73 F.R. 63029, 10/22/2008). South Carolina's Petition to Intervene was not filed within 60 days of publication of that notice, but nevertheless should be granted for the reasons set forth herein. As indicated in that notice, the issues to be considered at the time involved only:

> [W]hether the application satisfies the applicable safety, security, and technical standards of the AEA and NWPA and the NRC's standards in 10 CFR Part 63 for a construction authorization for a high-level waste geologic repository, and also whether the applicable requirements of the National Environmental Policy Act (NEPA) and NRC's NEPA regulations, 10 CFR Part 51, have been met.

Id. The issue of whether this proceeding should continue at all, or instead be dismissed with prejudice, is obviously a new and unanticipated issue that was not part of the original set of issues set forth above.

A. The Petition is timely under 10 C.F.R. § 2.309(f)(2).

This Petition is timely submitted in accordance with 10 C.F.R. § 2.309(f)(2) because it is submitted within 30 days of the date on which new and material information on which the contentions set forth herein are based became available. *See* CAB Case Management Order #1, at 3-4 (January 29, 2009). The information on which the State's contentions are based includes:

(a) The Administration decision, announced as early as January 29, 2010, that the Department would seek to withdraw the application in this matter. Attachment 1 hereto

(b) In addition, on February 1, 2010, the Department filed a motion with this Board announcing that it would soon seek to withdraw the application.[2]

(c) Also on February 1, 2010, the Administration's budget was announced, in which the President directed the Department to discontinue the present application. Pertinent parts of the executive budget document were attached to the Department's February 1, 2010 motion.

The regulation at 10 C.F.R. § 2.309(f)(2), and CAB Case Management Order #1, at 3-4 (January 29, 2009) both provide that new contentions may be filed upon a showing that:

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion based on the availability of the subsequent information.

10 C.F.R. § 2.309(f)(2)(i) through –(iii). All three of these criteria are satisfied in this matter. First, the recently-announced Administration decision to withdraw the application "was not previously available." 10 C.F.R. § 2.309(f)(2)(i). Instead, it is a completely new and unanticipated development. Secondly, the information on which South Carolina's contention is based is "materially different than the information previously available," 10 C.F.R. § 2.309(f)(2)(ii), because previously the Department had intended to pursue the application, and now it does not. Finally, this Petition is being submitted in a timely fashion, 10 C.F.R. § 2.309(f)(2)(iii) and CAB Case Management Order #1, Paragraph B(1), because it is being

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[2] As of the time of this filing, DOE has not yet filed such a motion, but has advised that it will file on or before March 3.

"filed within 30 days of the date when the new and material information on which it is based first became available."

For all of these reasons, South Carolina therefore respectfully submits that its Petition to Intervene should be granted pursuant to 10 C.F.R. § 2.309(f)(2).

B. Alternatively, the Amended Petition should be granted based on the factors in 10 C.F.R. § 2.309(c).

In the alternative, if South Carolina's Petition is deemed to be non-timely, then it should be granted in accordance with 10 C.F.R. § 2.309(c) for the reasons set forth below.

1. There is "good cause" to grant the Petition (10 C.F.R. § 2.309(c)(i)).

10 C.F.R. § 2.309(c)(i) provides that an untimely Petition to Intervene may be granted where "[g]ood cause, if any, for the failure to file on time" is shown. Here, as already set forth above, the Administration's decision to withdraw the application was announced less than thirty days ago. Prior to that announcement, South Carolina had no specific reason to seek to participate in the Yucca Mountain licensing application proceeding, because its general interests in public health and safety, and other matters under review by the Board, were being adequately protected by the existing parties. The Administration's recent announcement of its intent to abandon the application is a new and unexpected development that gives rise, for the first time, to a reason for South Carolina to have an interest in participating in this matter. As a result, there is good cause for South Carolina to seek to intervene at this time, and not earlier.

2. The nature of South Carolina's right to be made a party (10 C.F.R. § 2.309(c)(ii)).

10 C.F.R. § 2.309(c)(ii) requires consideration of "[t]he nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding." The

interest of South Carolina and other states, even those in which no repository has been proposed for siting, has been recognized by a number of provisions in the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101, et seq. These provisions include the following:

a. 42 U.S.C. §10131(a)(6), the legislative findings section, contains a finding that "State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel. . . ."

b. 42 U.S.C. § 10134(a)(1)(F) provides that at the pre-site selection phase of the process, the Department must consider "the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views. . . ."

c. As noted above and as discussed more fully elsewhere herein in discussions of standing, the Nuclear Waste Policy Act provides for broad and full participation by states and others in the siting process. The Department's proposal to withdraw the application, if it were to be granted, would have the effect of taking the site selection process back to the situation that existed prior to 1987, when the Act was amended to make Nevada the only state in which site characterization would occur. 42 U.S.C. §10133. The pre-1987 situation would be restored because no one state would be the identified likely disposal site, and all states would be potential candidates for a storage or disposal site. This would especially be true for South Carolina, which houses the Savannah River Site, a location that has received at least some consideration in the past, that is, in the early 1980's, as a potential storage or disposal site for spent nuclear fuel or high level nuclear waste, or both.

d. The Supreme Court has held that States have standing to challenge federal agency action that presents a risk of harm to the State that is both actual and imminent, and where there is substantial likelihood that the judicial relief requested will prompt the federal agency to take steps to reduce that risk. *Massachusetts v. EPA,* 549 U.S. 497, 518-519 (2007) (stating that in its capacity of "quasi-sovereign" "the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.")(quoting *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907)); *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 602 & 607 (1982) ("[A] State has a quasi-sovereign interest in the health and economic well-being – both physical and economic – of its residents in general.") In addition, with respect to this licensing decision, Congress and NRC have granted states the procedural opportunity to protect their rights. 42 U.S.C. § 2239; 10 C.F.R. § 2.309(d)(2). The provision of this procedural right and South Carolina's stake in protecting its quasi-sovereign interests entitles South Carolina to "special solicitude" in standing analysis. *See Massachusetts v. EPA*, 549 U.S. at 519-521. The continuing presence of large quantities of spent fuel and high level nuclear waste in South Carolina also requires the State to regulate the transportation of nuclear materials and, among other things, to maintain certain emergency preparedness plans that would not be necessary in the absence of such quantities of nuclear material.

In addition, the Fourth Circuit has held, in a somewhat similar context, that the Governor of South Carolina (and by extension the State itself) is essentially a neighboring landowner to the Savannah River Site, whose property is at risk of environmental damage from the DOE's activities at SRS. The State "therefore has a concrete interest that NEPA

[and the NWPA] [were] designed to protect; as such, [the State] possesses the requisite standing to enforce [its] procedural rights under NEPA." *Hodges v. Abraham*, 300 F.3d 432, 445 (4th Cir. 2002)

e. The citizens of South Carolina have paid approximately $1.2 billion in fees levied pursuant to the NWPA for the development of a permanent storage site. In addition, the citizens of South Carolina have a substantial interest in the proper and permanent disposal of spent nuclear fuel and high level nuclear waste now being temporarily stored in the state. The citizens of South Carolina also derive economic, health, safety, professional, recreational, conservation and aesthetic benefits from the existence of the natural environment of the region.

For all of these reasons, as well as those set forth elsewhere in the discussion of standing, South Carolina has an interest in insuring that the Yucca Mountain license application remains under active consideration. That interest entitles South Carolina to intervene in the present proceeding.

3. The nature of South Carolina's interest in the proceeding (10 C.F.R. § 2.309(c)(iii)).

10 C.F.R. § 2.309(c)(iii) requires consideration of the "nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding."

DOE issued a Final Environmental Impact Statement with the conclusion that not building the Yucca Mountain geologic repository could result in "widespread contamination at the seventy-two commercial and five DOE sites across the United States, with resulting human health impacts." (DOE/EIS -- 0250, Section S.12). The five DOE sites include the Savannah River Site near Aiken, South Carolina, which houses foreign spent fuel as well as defense high level nuclear waste. Further, there are seven nuclear power plants in South

Carolina, under licenses which invoke a Waste Confidence Ruling by the Commission, based on the fact that Yucca Mountain is being developed as a final resting place for spent nuclear fuel from the reactors. *See* Attachment 2 (Second National Report on Safety, DOE/EM0654, Rev. 1, October 2005, Annexes D-1, D-2.) South Carolina has an interest in this matter in insuring that the Yucca Mountain licensing proceedings continue, so that the spent fuel and other nuclear material now being temporarily stored in South Carolina will be safely placed in the Yucca Mountain repository.

4. Effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest (10 C.F.R. § 2.309(c)(iv)).

10 C.F.R. § 2.309(c)(iv) provides that consideration should be given to "[t]he possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest."

South Carolina's concern is that if the Department files its anticipated motion to withdraw its application with prejudice, and if the Commission were to grant that motion, then South Carolina, unless made a party to this proceeding, might be held not to have a right to petition for review of such a decision by a Court of Appeals. Because of the uncertain state of the law on this point, South Carolina does not necessarily believe that it will be entirely without a remedy if not permitted to intervene in this proceeding. However, it is a certainty that if South Carolina is afforded intervenor status in this case, such status will render unnecessary the argument of a number of procedural objections that others might later raise to any effort by South Carolina to seek review of such Commission action.

The Hobbs Act, 28 U.S.C. § 2342(4), applies to certain final orders of the Nuclear Regulatory Commission, and presumably would apply to any final order in the present proceeding as well. *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985). It has been

held generally under the Hobbs Act that nonparties to an agency proceeding do not, at least for certain types of challenges, have standing to seek review of the final agency action. *See, e.g., Professional Reactor Operator Soc. v. U.S. Nuclear Regulatory Com'n*, 939 F.2d 1047, 1049 n.1 (D.C. Cir. 1991). At the same time, however, there is also a general rule that agency action may be challenged on appeal even by a party to the agency action where, as here, the contention is that the agency action exceeded the agency's statutory authority. *American Trucking Associations, Inc. v. I. C. C.*, 673 F.2d 82, 85 n. 4 (5th Cir. 1982); Wright and Miller, *Federal Practice and Procedure,* § 8302.[3] Finally, it is possible, and perhaps even likely, that the NWPA, 42 U.S.C. § 10139(a), would permit review of a Commission action by a nonparty. That section provides that courts of appeals have original jurisdiction over "any civil action" for review of any final decision or action of the Secretary, the President or the Commission alleging the failure of any of them "to make any decision, or take any action, required under this part." It is just such a failure that South Carolina alleges in this matter with respect to the announced action of the Department of Energy to withdraw the application.

Accordingly, assuming without conceding that South Carolina's right to review of Commission action in this proceeding is best preserved by South Carolina being made a party to this proceeding, then South Carolina should be made a party in order to preserve its interests with respect to the new issues that have arisen only very recently.

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[3] On the other hand, the Seventh Circuit has held that the Hobbs Act "limits review to petitions filed by parties, and that is that." *Matter of Chicago, Milwaukee, St. Paul and Pacific R. Co.*, 799 F.2d 317, 335 (7th Cir. 1986)

5. The availability of other means whereby the petitioner's interest will be protected (10 C.F.R. § 2.309(c)(v)).

10 C.F.R. § 2.309(c)(v) provides that consideration should be given to "[t]he availability of other means whereby the requestor's/petitioner's interest will be protected."

This issue has been discussed in the preceding section. It is possible that South Carolina would be able to challenge a dismissal of this action by the Commission either via Petition for Review, on the ground that the agency acted beyond its statutory authority, or via a civil action in a Court of Appeals as permitted by 42 U.S.C. § 10139(a). While either or both of these remedies might be available to seek review of any Commission action, it cannot be disputed that intervention in the present case would be the most conventional way in which to proceed. It would also permit this Board to hear and rule upon South Carolina's contentions on the merits, rather than not being given such an opportunity, as would be the case where review of Commission action is sought initially in a Court of Appeals.[4]

As already noted above, this Petition for Intervention is being filed within less than thirty days after the Administration's announcement that it would seek to withdraw its application with prejudice. As will be shown below, there is no reason why granting intervention to South Carolina should slow down the present case in any substantial way.

6. The extent to which the Petitioner's interests will be represented by existing parties (10 C.F.R. § 2.309(c)(vi)).

10 C.F.R. § 2.309(c)(vi) provides for consideration of "[t]he extent to which the requestor's/petitioner's interests will be represented by existing parties."

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[4] South Carolina, in fact, in order to preserve all rights, is today planning to file a petition in the Fourth Circuit under 42 U.S.C. § 10139(a). Two other petitions have already been filed by other persons or entities in the D.C. Circuit.

South Carolina is not aware of any party to this proceeding whose interest is similar or identical to that of South Carolina. Many of the parties, of course, are persons or entities whose interest in the proceeding is directly tied to the repository being licensed at Yucca Mountain. Presumably, many, if not most, of the existing parties are more interested in having the facility sited somewhere other than Yucca Mountain than they are in having the present proceeding continue. As far as can be discerned, there is no state or other governmental unit that is a party to this proceeding that is not either in Nevada or in the adjacent state of California. South Carolina therefore submits that it is not aware of any other party that will protect its interest in this matter.

7. The extent to which the Petitioner's participation will broaden the issues or delay the proceeding; (10 C.F.R. § 2.309(c)(vii)).

10 C.F.R. § 2.309(c)(vii) provides for consideration of "[t]he extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding. . . ."

South Carolina submits that if permitted to intervene, it would be able to file its objections to the Department's anticipated motion to withdraw its application within ten days of such motion being filed, or within ten days of being granted intervenor status, if the latter event were to occur after the Department's motion was filed.[5] Under 10 C.F.R. § 2.309(h)(1), the parties to this proceeding have twenty-five days in which to respond to this Petition for Intervention, but any delay as a result of this Petition would be minimal, and would not outweigh the desirability of permitting at least one party to the case to present argument against the anticipated motion to withdraw. As stated at the outset of this Petition, South Carolina also requests that no action be taken by this tribunal on DOE's anticipated motion to

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[5] However, if DOE's motion presents complex issues of fact or law, it is hoped that the Commission would be amenable to permitting all parties adequate time in which to respond.

withdraw until the present Petition for Intervention is ruled on. Any such minor delay would also be nonprejudicial, this proceeding already having been stayed.

8. 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)(vii)).

Finally, 10 C.F.R. § 2.309(c)(vii) provides for consideration of "[t]he extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record."

For the reasons already mentioned above, South Carolina's participation in the case could be expected to assist with the development of a sound record, because such participation would provide for full, contested consideration by this tribunal of the issue of whether the Commission can order the withdrawal of an application with prejudice in light of the provisions of 42 U.S.C. § 10134(d)("[t]he Commission shall consider an application for a construction authorization of all or part of a repository. . . ." (Emphasis added.)

3. Standing.[6]

A. South Carolina has standing under the Nuclear Waste Policy Act to challenge the efforts of DOE to have the high level waste management program revert to its pre-1987 status.

As noted earlier, the NWPA was intended to create a process in which DOE's actions in siting and developing a repository would be open to full public participation, particularly including participation by states. Congress recognized that states have special interests in the waste management program. DOE's anticipated attempt to have this proceeding dismissed with prejudice would have the effect of reverting the waste management program to its status

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[6] Because the issue of standing arises in several different sections of this Petition, and in order to avoid undue repetition, South Carolina incorporates by reference herein all arguments made elsewhere in this Petition with regard to standing.

prior to Congress's 1987 identification of Yucca Mountain as the only site that would be studied. As a result, the role of the states other than Nevada in the process should be evaluated as if, as the Administration desires, the Nevada site had never been chosen by Congress to be the sole site for further studies, as the 1987 amendments to the Act provided. The role of the states, and their rights to participate in the site selection process prior to the 1987 amendments were very broad. With specific reference to South Carolina, moreover, the Administration's proposal would have the effect of making South Carolina more vulnerable than most states to being studied as a potential disposal or storage site, simply because of the existence of the Savannah River Site in South Carolina as a disposal or storage site for spent nuclear fuel and for high level nuclear waste.

An example of the participatory powers granted to the states by the Act is found in 42 U.S.C. §10131(a)(6), the legislative findings section, which contains a finding that "State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel. . . ."

In addition, 42 U.S.C. § 10134(a)(1)(F) provides that at the pre-site selection phase of the process, the Department must consider "the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views. . . ." As noted above, the Administration proposal would, in practical effect, cause the site selection process to revert back to its pre-1987, pre-Yucca Mountain status.

The legislative history of the Act provides further evidence of the intent of Congress to permit the states full participation in the siting process. In the House Report, H.R. Rep. 97-491, the following was stated:

> During repository site studies, prior to such time as a site has been approved for licensing and repository construction, states and tribes have rights to receive all relevant information from investigations, to participate in planning of environmental assessments and site characterization activities and to make recommendations regarding other aspects of conduct of the investigations which affect the social and economic well-being of citizens of the state or tribe.

H.R. Rep. 97-491 at 46 (emphasis added). Again, while this language pertains to activities prior to site selection, the Administration proposal, if granted, would cause the reopening of the site selection process, and the Act clearly gives the states a role in that process. Such a role clearly should include the right to participate in the present proceeding in order to argue that the site selection activities of the past fourteen or more years should not be undone by unauthorized executive action. In particular, a state such as South Carolina, which could once again be a candidate state for a storage or disposal facility under the Administration's proposal, should by analogy be held to possess the same standing as Nevada, the candidate state which was given automatic standing by 10 C.F.R. § 2.309(d)(2).

It is a long-settled principle that "Congress may enact statutes creating legal rights, the invasion of which creates standing. . . ." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973). For these reasons, it is clear that the Act creates standing in states, and especially in South Carolina, to contest an action that would have the effect of reopening the site selection process.

B. Standing requirements under 10 C.F.R. § 2.309(d)(2).

In addition to the reasons set forth above, South Carolina has standing under more general principles as well. These are measured by the tests set forth in 10 C.F.R. § 2.309(d)(2)(i) through –(d)(iv). Except for the test in Section 2.309(d)(2)(i), which is met by Part I(A) of this Petition, the other three tests have already been discussed above in

connection with Section 2.309(c)(ii) through –(iv), and the above discussion is incorporated by reference herein.

C. Standing through discretionary intervention under 10 C.F.R. § 2.309(e).

Even if for some reason South Carolina is not permitted to intervene as a party in this proceeding as a matter of right for the reasons set forth above, South Carolina would urge that it be permitted to intervene as a matter of discretion under Section 2.309(e). Each of the requirements of Section 2.309(e) is met, for reasons discussed above in connection with Section 2.309(c)(ii) through –(c)(viii). The above discussion is incorporated by reference herein. A section-by-section comparison table is set forth in the footnote.[7]

4. Hearing Requested

In the event that DOE files its anticipated motion to withdraw the application, South Carolina, if granted intervenor status, hereby formally requests a formal adjudicatory hearing on the merits of its contentions herein submitted. Those contentions are not anticipated to involve any contested issue as to any material fact, and would involve only legal argument.

5. Subpart J

Because South Carolina seeks to intervene solely to argue the legal issues presented herein, which are based on undisputed facts, South Carolina is not in the possession of any "documentary material," as defined in 10 C.F.R. § 2.1001, as modified by 10 C.F.R. § 2.1005

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Section No. in 2.309(c)	Section No. in 2.309(e)
2.309(c)(iii)	2.309(e)(1)(ii)
2.309(c)(iv)	2.309(e)(1)(iii)
2.309(c)(v)	2.309(e)(2)(i)
2.309(c)(vi)	2.309(e)(2)(ii)
2.309(c)(vii)	2.309(e)(2)(iii)
2.309(c)(viii	2.309(e)(1)(i)

(excluding noticeable materials and standard reference material). However, if this tribunal believes that South Carolina might have such material that would require compliance with the requirements of 10 C.F.R. § 2.1003, then South Carolina is committed to making such material available via the Licensing Support Network, and has conferred briefly with NRC technical staff (Daniel J. Graser) to discuss how that should be accomplished if it should be required.

6. Joint Contentions.

At this time, South Carolina is not aware of any other party that would have the same contentions as are being presented by South Carolina.

7. Contentions

In accordance with the Pre-License Application Presiding Officer Board's June 20, 2008 Memorandum and Order (LBP-08-10), South Carolina submits the following contentions.

I.

SOC[8]-MISC-01-WITHDRAWL OF APPLICATION WITHOUT CONGRESSIONAL AUTHORITY

1. Specific statement of the issue of law or fact to be raised or controverted.

The anticipated action by the Secretary in moving to withdraw the application with prejudice is beyond the authority of the Secretary. It is contrary to the requirement of Section 114(b) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10134(b), which requires that if the site designation is permitted to take effect (as has happened with the enactment of Public Law 107-200 (2002), then "the Secretary shall submit to the Commission an application for a

[8] As used herein, "SOC" is an abbreviation for South Carolina.

construction authorization for a repository at such site. . . ." (Emphasis added.) This statute prohibits the Secretary from unilaterally withdrawing the application in the absence of further Congressional action, and thus any motion to that effect by the Secretary should be denied as void and without authority.[9]

2. Brief explanation of the basis for the contention.

Again, the Act specifically provides that "the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site. . . ." (Emphasis added.) Conversely, no provision of the Act suggests that the Secretary may withdraw the application. Contrary to the views of the Administration, which appear to be that the mere proposal of an Executive budget excuses noncompliance with a statutory duty, the Supreme Court has held that

> In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.
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> * * *
>
> The Constitution did not subject this law-making power of Congress to presidential or military supervision or control.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952). The same case holds that the presidential order therein invalidated was beyond the power of the executive because it did "not direct that a congressional policy be executed in a manner prescribed by Congress-

---

[9] The Act imposes other related duties on the Secretary as well. For instance, it requires the Secretary to annually update Congress as to the status of such application, 42 U.S.C. § 10134(c), and to prepare and update a project decision schedule that "portrays the optimum way to attain the operation of the repository ." 42 U.S.C. § 10134(e)(1). These provisions cannot be harmonized with the announced intent of the Secretary to abandon the project.

-it directs that a presidential policy be executed in a manner prescribed by the President." *Id.* The Court then held that the presidential order in that case, like the executive actions in the present case, merely

> sets out reasons why the President believes certain policies should be adopted, [and] proclaims these policies as rules of conduct to be followed. . . .

Id.

Justice Jackson, concurring, noted that

> The example of . . . unlimited executive power that must have most impressed the forefathers was the prerogative exercised by George III, and the description of its evils in the Declaration of Independence leads me to doubt that they were creating their new Executive in his image.

Id. at 641.

Subsequently, the Court has reiterated these principles, holding, for instance, that "[w]e ordinarily presume that Congress intends the executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command." *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 681 (1986). The present case is precisely just such a case in which the Executive Branch has disobeyed the commands of Congress, and in which a court, or in this case, this tribunal, should grant relief from such refusal to carry Congressional policy into execution. As the D.C. Circuit has held, with specific reference to Congress's decision that Yucca Mountain would be the repository site, "Congress has settled the matter, and we, no less than the parties, are bound by its decision." *Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1302 (D.C. Cir. 2004).

If the Department should argue that its duty ended once it simply filed the application, such an argument would propose a result that would be not only absurd, but also

at odds with other parts of the NWPA. As held in such cases as *E.E.O.C. v. Commercial Office Products Co.* 486 U.S. 107, 120-121 (1988), a court should not countenance a reading of a statute that leads to "absurd or futile results . . . plainly at variance with the policy of the legislation as a whole. . . ." It would be absurd in the extreme to hold that after Congress had directed a fifteen-year program (1987-2002) of site study and development at Yucca Mountain costing in excess of ten billion dollars, the Department could then thwart any further action on the selected repository site simply by filing, and then later withdrawing, the license application. Such an interpretation is also at odds with the overall policy and purpose of the NWPA and with the 2002 Congressional selection of Yucca Mountain as the repository site. Congress anticipated that further action, especially action by the Commission, would be necessary before the repository could open, but such further action was clearly limited to normal license application review and subsequent approval or disapproval of the application by the Commission following a review of the application's merits. *See, e.g.,* 42 U.S.C. § 10134(d). Congress did not intend for the Department to abandon, or the Commission to dismiss, the license application.

3. Demonstration that the issue raised in the contention is within the scope of the proceeding.

It goes without saying that the question of whether this proceeding should continue is one that is "within the scope of the proceeding." DOE can hardly contend otherwise, because it plans to file a motion that will raise the issue.

4. Demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.

Likewise, it goes without saying that the issue of whether this proceeding should continue is "material to the findings the NRC must make."

5. Concise statement of the alleged facts or expert opinions supporting South Carolina's position on the issue and on which South Carolina intends to rely, and references to the specific sources and documents on which South Carolina intends to rely to support its position on the issue.

The factual underpinnings of South Carolina's position are simple, consisting of only those documents that go to show that DOE intends to withdraw the application. These consist of the announcement of the fact, Attachment 1 attached, and (so far) the February 1, 2010 motion to stay and the excerpt from the executive budget that was attached to that motion. The facts, simply put, are that Congress has mandated that the Department of Energy pursue a license application for the Yucca Mountain repository, and the Administration has announced its intention to abandon the duty imposed upon it by Congress.

6. Showing of a genuine dispute with DOE on a material issue of law or fact.

As is indicated from the discussions above, there is no disputed material issue of fact of which South Carolina is presently aware, given that DOE clearly intends to seek withdrawal of the application. Equally clear, however, is the existence of a material issue of law, that is, the question of whether DOE has the power to withdraw the application, as discussed above.

II.

SOC-MISC-02--WITHDRAWAL OF APPLICATION IN VIOLATION OF SEPARATION OF POWERS

1. Specific statement of the issue of law or fact to be raised or controverted.

For the same reasons set forth in the preceding question, the doctrine of the separation of powers provides another basis for denying DOE the power to withdraw the application. The proposed withdrawal is not only directly contrary to the governing statute, it also seeks to have the Executive Branch determine matters which have already been determined by

Congress, and thereby would constitute an executive encroachment on legislative power, as held in the authorities previously cited.

2. Brief explanation of the basis for the contention.

This contention is based on the same authorities cited under the preceding contention (SOC-MISC-01).

3. Demonstration that the issue raised in the contention is within the scope of the proceeding.

It goes without saying that the question of whether this proceeding should continue is one that is "within the scope of the proceeding." DOE can hardly contend otherwise, because it plans to file a motion that will raise the issue.

4. Demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.

Likewise, it goes without saying that the issue of whether this proceeding should continue is "material to the findings the NRC must make."

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As is indicated from the discussions above, there is no disputed material issue of fact of which South Carolina is presently aware, given that DOE clearly intends to seek withdrawal of the application. Equally clear, however, is the existence of a material issue of law, that is, the question of whether DOE has the power to withdraw the application, as discussed above.

III.

SOC-MISC-03--IF THE COMMISSION WERE TO GRANT DOE'S ANTICIPATED MOTION TO WITHDRAW THE APPLICATION, THAT GRANT WOULD EXCEED THE COMMISSION'S POWERS UNDER THE NWPA.

1. Specific statement of the issue of law or fact to be raised or controverted.

If the Commission were to grant a motion to withdraw the application, such a grant would exceed the powers of the Commission, just as much as the Department's filing of the motion would exceed the powers of the Department. Section 114(d) of the Act, 42 U.S.C. § 10134(d), provides that

> The Commission shall consider an application for a construction authorization for all or part of a repository [and] shall issue a final decision approving or disapproving the issuance of such application. . . .

2. Brief explanation of the basis for the contention.

The above-quoted provision of the statute does not vest the Commission with power to permit the abandonment of the application by the Department, in the absence of further authorization from Congress. In other words, Congress provided that the Department must apply for a license, and the Commission must render a decision that either approves or disapproves the issuance of a license. Congress did not offer the Commission the option of merely nonsuiting the case with prejudice, as the Department would have the Commission

do. The statute created a power and a duty in the Commission only to hear and determine the merits of the application. As with the federal courts, the Commission has "a strict duty to exercise the jurisdiction that is conferred upon [it] by Congress." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). There is no suggestion that this duty can be avoided in this matter, in which Congress addressed this particular license application proceeding, specifically providing that the Commission must either approve or disapprove the application, as opposed to dismissing it. As a result, any dismissal of this matter pursuant to the anticipated motion of the Department would be an action beyond the statutory power of the Commission to take, in addition to being action upon a motion that itself would be filed in excess of the authority of the Department.

3. Demonstration that the issue raised in the contention is within the scope of the proceeding.

It goes without saying that the question of whether this proceeding should continue is one that is "within the scope of the proceeding." DOE can hardly contend otherwise, because it plans to file a motion that will raise the issue.

4. Demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding.

Likewise, it goes without saying that the issue of whether this proceeding should continue is "material to the findings the NRC must make."

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6. Showing of a genuine dispute with DOE on a material issue of law or fact.

As is indicated from the discussions above, there is no disputed material issue of fact of which South Carolina is presently aware, given that DOE clearly intends to seek withdrawal of the application. Equally clear, however, is the existence of a material issue of law, that is, the question of whether DOE has the power to withdraw the application, as discussed above.

8. Consultation

Pursuant to 10 C.F.R. §2.323(b), the undersigned counsel certifies that he has made a sincere effort to contact other parties in the proceeding and resolve the issues raised in this Petition, and that those efforts to resolve the issues have been unsuccessful. Counsel circulated a copy of a draft Petition substantially similar to the version being filed, along with a cover memo, to the e-mail addresses on the most current service list. The result of that consultation is as follows:

<u>Do not oppose the Petition:</u>

White Pine County

Nuclear Energy Institute

Nye County

<u>No position at this time, reserving right to file a response</u>:

State of Nevada

Opposed:

Native Community Action Council

CONCLUSION

For the foregoing reasons, the State of South Carolina respectfully submits that the Board should grant its Petition to Intervene, and permit further argument as necessary, both in writing and at a hearing, on the legal issues presented herein.

Respectfully submitted,

Signed (electronically) by Kenneth P. Woodington

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ATTORNEYS for Proposed Intervenor, State of South Carolina

Columbia, South Carolina

February 26, 2010

ATTACHMENT 1

DOE Press Release
January 29, 2010

News Media Contact(s):
(202) 586-4940

For Immediate Release
January 29, 2010

Secretary Chu Announces Blue Ribbon Commission on America's Nuclear Future

The Commission, led by Lee Hamilton and Brent Scowcroft, will provide recommendations on managing used fuel and nuclear waste

Washington, D.C. – As part of the Obama Administration's commitment to restarting America's nuclear industry, U.S. Secretary of Energy Steven Chu today announced the formation of a Blue Ribbon Commission on America's Nuclear Future to provide recommendations for developing a safe, long-term solution to managing the Nation's used nuclear fuel and nuclear waste. The Commission is being co-chaired by former Congressman Lee Hamilton and former National Security Advisor Brent Scowcroft.

In light of the Administration's decision not to proceed with the Yucca Mountain nuclear waste repository, President Obama has directed Secretary Chu to establish the Commission to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and nuclear waste.

"Nuclear energy provides clean, safe, reliable power and has an important role to play as we build a low-carbon future. The Administration is committed to promoting nuclear power in the United States and developing a safe, long-term solution for the management of used nuclear fuel and nuclear waste. The work of the Blue Ribbon Commission will be invaluable to this process. I want to thank Congressman Hamilton and General Scowcroft for leading the Commission and I look forward to receiving their recommendations," said Secretary Chu.

"As the world moves to tackle climate change and diversify our national energy portfolio, nuclear energy will play a vital role," said Carol Browner, Assistant to the President for Energy and Climate Change. "Today, the Obama Administration has taken an important step. With the creation of the Blue Ribbon Commission, we are bringing together leading experts from around the country to ensure a safe and sustainable nuclear energy future."

"Finding an acceptable long-term solution to our used nuclear fuel and nuclear waste storage needs is vital to the economic, environmental and security interests of the United States," said Congressman Hamilton. "This will be a thorough, comprehensive review based on the best available science. I'm looking forward to working with the many distinguished experts on this panel to achieve a consensus on the best path forward."

"As the United States responds to climate change and moves forward with a long overdue expansion of nuclear energy, we also need to work together to find a responsible, long-term strategy to deal with the leftover fuel and nuclear waste," said General Scowcroft. "I'm pleased to be part of that effort along with Congressman Hamilton and such an impressive group of scientific and industry experts."

The Commission is made up of 15 members who have a range of expertise and experience in nuclear issues, including scientists, industry representatives, and respected former elected officials. The Commission's co-chairs have a record of tackling tough challenges in a thoughtful, comprehensive manner and building consensus among an array of interests.

The Commission will produce an interim report within 18 months and a final report within 24 months.

The members of the Blue Ribbon Commission are:

- **Lee Hamilton, Co-Chair**
  Lee Hamilton represented Indiana's 9th congressional district from January 1965-January 1999. During his time in Congress, Hamilton served as the ranking member of the House Committee on Foreign Affairs, and chaired the Permanent Select Committee on Intelligence. He is currently president and director of the Woodrow Wilson International Center for Scholars, and director of The Center on Congress at Indiana University.

  He is a member of the President's Intelligence Advisory Board and the President's Homeland Security Advisory Council. Previously, Hamilton served as Vice Chairman of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission).
- **Brent Scowcroft, Co-Chair**
  Brent Scowcroft is President of The Scowcroft Group, an international business advisory firm. He has served as the National Security Advisor to both Presidents Gerald Ford and George H.W. Bush. From 1982 to 1989, he was Vice Chairman of Kissinger Associates, Inc., an international consulting firm.

  Scowcroft served in the military for 29 years, and concluded at the rank of Lieutenant General following service as the Deputy National Security Advisor. Out of uniform, he continued in a public policy capacity by serving on the President's Advisory Committee on Arms Control, the Commission on Strategic Forces, and the President's Special Review Board, also known as the Tower Commission.
- **Mark Ayers, President, Building and Construction Trades Department, AFL-CIO**
- **Vicky Bailey, Former Commissioner, Federal Energy Regulatory Commission; Former IN PUC Commissioner; Former Department of Energy Assistant Secretary for Policy and International Affairs**
- **Albert Carnesale, Chancellor Emeritus and Professor, UCLA**
- **Pete V. Domenici, Senior Fellow, Bipartisan Policy Center; former U.S. Senator (R-NM)**
- **Susan Eisenhower, President, Eisenhower Group, Inc.**
- **Chuck Hagel, Former U.S. Senator (R-NE)**
- **Jonathan Lash, President, World Resources Institute**
- **Allison Macfarlane, Associate Professor of Environmental Science and Policy, George Mason University**
- **Richard A. Meserve, President, Carnegie Institution for Science, and former Chairman, U.S. Nuclear Regulatory Commission**
- **Ernie Moniz, Professor of Physics and Cecil & Ida Green Distinguished Professor, Massachusetts Institute of Technology**
- **Per Peterson, Professor and Chair, Department of Nuclear Engineering, University of California - Berkeley**
- **John Rowe, Chairman and Chief Executive Officer, Exelon Corporation**
- **Phil Sharp, President, Resources for the Future**

Presidential Memorandum on the Blue Ribbon Commission (pdf - 10k)

U.S. Department of Energy, Office of Public Affairs, Washington, D.C.

Unofficial Transcript
DOE Press Conference
January 29, 2010

Blue Ribbon Press Conference, January 29, 2010

2:00-2:14	Congressman Hamilton	"I think we have a great team in place, to fully examine this difficult multifaceted issue, and to put together a plan based on today's science and technology.

3:27	Questioner	"Hello, this is for Secretary Chu. Is this panel going to look at all at how this new generation of nuclear plants will be financed?"
3:43-4:14	Sec'y Chu	"Uh, no. This panel is [unintelligible] to look at what will happen in terms of the science and technology going forward. And to give it, to anticipate what's going to be happening, and to give us a plan going forward, as we said, on ultimately, figuring out how to deal with the used fuel and, eventually the nuclear waste."

6:10	Questioner	"Thank you very much for holding this, ah, call. The previous administration had a science-based, engineering-based approach that involved various kinds of recycling that didn't seem to go very far. Could you say where perhaps they might have gone wrong or what's different in your approach?"
6:30-7:17	Sec'y Chu	"...As we said, we're asking this commission to step back and take a very broad view of what we know today and what we expect to be learning in the coming decades, and rather than, uh, comment on anything else or criticize anything else, we're not here to do that. We're actually here to say, based on what we know today and based on what we anticipate knowing, we're gonna plot the best plan forward."

8:04	Questioner	"I just was wondering to what extent will the site at Yucca Mountain still be considered as part of the mix, as I remember when the legislation was established setting up the commission, there was some interest in including Yucca Mountain as part of the mix of alternatives that the commission would be looking at. Thank you."
8:33	Congressman Hamilton	"**I think Secretary Chu has made it quite clear that the nuclear waste storage at Yucca Mountain is not an option**, and that the Blue Ribbon Commission will be looking at better alternatives for the back end of the fuel cycle."
8:49	Carol Browner	"**As the president has said many times, we're done with Yucca**, we need to be about looking at alternatives."

9:07	Questioner	"I was just wondering, I know this question has been asked a number of times but I'll try it again. What's the reason that yucca Mountain is not an option for this administration, and what scientific reviews were done by the Administration to reach that judgment?
9:23	Carol Browner	"**we work for the president, we take our directions from the president, the president has been clear that Yucca Mountain was not an option** and now we're going to go out and figure out what the options are going forward."
9:35	Cong. Hamilton	"I think it's been made clear to me that the science has advanced dramatically since Yucca site was chosen, and my recollection is that site was chosen 20 years ago or so. And we're gonna try to pull together the current information and research to develop a plan for the back end of the fuel cycle.
10:11	Gen. Scowcroft	"We're trying to look forward now, not looking back, and we have no preconceived notions and we'll look at all science has to offer us to deal with this issue."

10:30	Questioner	"I'm just curious exactly how the commission will be set up. Will it report directly to the executive branch or to Congress?"
10:40	Sec'y Chu	"This is a FACA commission on a presidential order directed to me, the Secretary of Energy to form this commission. This commission will make recommendations to me which I will take both to the President and to Congress."

ATTACHMENT 2

DOE/EM-0654, Rev. 1
October 2005

United States of America

Second National Report

for the

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management

United States Department of Energy

In Cooperation with the
United States Nuclear Regulatory Commission
United States Environmental Protection Agency
United States Department of State

Annex D-1. Spent Fuel Management Facilities

State	Installation	Facility	Function	Licensee	Regulator	SF Source [87]	Inventory	Estimated Activity (Bq)
	Oconee	ISFSI	Dry Storage	Duke Power Company	NRC	2	800.4 MTU	
	Oconee 1&2	Nuclear Power Plant Pool	Wet Storage				437.3 MTU *	
	Oconee 3	Nuclear Power Plant Pool	Wet Storage				228.4 MTU *	
	Robinson	ISFSI	Dry Storage	Progress Energy - Carolina	NRC	2	24.1 MTU	
	Robinson 2	Nuclear Power Plant Pool	Wet Storage				147.9 MTU *	
	Summer	Nuclear Power Plant Pool	Wet Storage	South Carolina Electric & Gas Company	NRC	2	353.9 MTU	
Tennessee	Sequoyah	ISFSI	Dry Storage	Tennessee Valley Authority	NRC	2	0	
	Sequoyah 1&2	Nuclear Power Plant Pool	Wet Storage				782.6 MTU	
	Watts Bar 1	Nuclear Power Plant Pool	Wet Storage	Tennessee Valley Authority	NRC	2	136.6 MTU	
Texas	Comanche Peak 1&2	Nuclear Power Plant Pool	Wet Storage	Texas Utilities Electric Company	NRC	2	540.7 MTU	
	South Texas 1	Nuclear Power Plant Pool	Wet Storage	STP Nuclear Operating Company	NRC	2	339.2 MTU	
	South Texas 2	Nuclear Power Plant Pool	Wet Storage				338.6 MTU	
Vermont	Vermont Yankee	Nuclear Power Plant Pool	Wet Storage	Energy Nuclear Northeast	NRC	2	488.4 MTU	
Virginia	BWX Technology, Inc.	Fuel Facility	Dry storage	BWX Technology, Inc.	NRC		43.5 kgU	
	North Anna	ISFSI	Dry Storage	Dominion Virginia Power	NRC	2	220.8 MTU	
	North Anna 1&2	Nuclear Power Plant Pool	Wet Storage				652.7 MTU	
	Surry	ISFSI	Dry Storage	Dominion Virginia Power	NRC	2	524.2 MTU	
	Surry 1&2	Nuclear Power Plant Pool	Wet Storage				365.4 MTU	
Washington	Columbia Gen. Station	ISFSI	Dry Storage	Energy Northwest	NRC	2	61.0 MTU	
	Columbia	Nuclear Power Plant Pool	Wet Storage				333.7 MTU	
Wisconsin	Kewaunee	Nuclear Power Plant Pool	Wet Storage	Nuclear Management Company	NRC	2	347.6 MTU	
	LaCrosse	Nuclear Power Plant Pool	Wet Storage	Dairyland Power Cooperative	NRC	2	38.0 MTU	
	Point Beach	ISFSI	Dry Storage	Nuclear Management Company	NRC	2	144.1 MTU	
	Point Beach 1&2	Nuclear Power Plant Pool	Wet Storage				507.4 MTU	

*Shared pools

Annex D-2. Radioactive Waste Management Facilities[89]

State	Installation	Licensee	Regulator	Facility	Function	Waste Source	Inventory (m3)	Estimated Activity (Bq)	Rad Cat
Government Facilities									
California	Lawrence Berkeley National Lab	DOE	DOE	M/LLW Waste Facilities	M/LLW Storage	2			6
		DOE	DOE	TRU Waste Facilities[90]	TRU Storage	2	2		6
	Lawrence Livermore National Lab	DOE	DOE	Various Waste Facilities	Mixed Low-Level Waste (MLLW) Storage		3		1,2,3,4,5
					TRU Storage		350		3
Colorado	Rocky Flats Environmental Technology Site	DOE	DOE/CO	M/LLW Facilities	M/LLW Storage, characterization, treatment, packaging	1	2,700		3,4
		DOE	DOE	TRU Waste Facilities	TRU Storage, characterization, packaging	1	353		3,4
Idaho	Idaho National Laboratory	DOE	DOE	HLW Calciner	HLW Treatment (evaporation and calcination)	1	0		
		DOE	DOE	Calcined Solids Storage Facility	Calcined HLW Storage in underground tanks/bins	1	4,400	1.11E+18	
		DOE	DOE	HLW Tank Farm	HLW Liquid Storage in underground tanks	1	3,400		
		DOE	DOE	Radioactive Waste Management Complex	LLW Disposal in shallow land disposal facility	1	29,758	1.22E+17	1,2,3,4,5
		DOE	DOE	Idaho CERCLA Disposal Facility	LLW Disposal in engineered surface disposal cell for D&D wastes	1	41,300[91]		
		DOE	DOE	TRU Waste Storage Facilities	TRU Storage	1	61,500		3
		DOE	DOE	Advanced Mixed Waste Treatment Plant	TRU characterization, treatment, and packaging	1	0		
		DOE	DOE/ID	MLLW Facilities	M/LLW Storage, characterization, treatment, packaging	1	508	1.27E+10	1,2,3,4,5
Kentucky	Paducah Gaseous Diffusion Plant	DOE	DOE/KY	MLLW Facilities	MLLW Storage, characterization, treatment, packaging	1	1,000		3,4
		DOE	DOE/KY	LLW Facilities	LLW Storage, characterization, treatment, packaging		9,500		3,4
		DOE	DOE	TRU Waste Facilities	TRU Storage	1	5		3,4
Missouri	Weldon Spring Site Rem. Action	DOE	DOE	On-Site Disposal Cell	11e.(2) Disposal in engineered, surface disposal cell	1	1,120,000		4

[89] See Key to Annex D-2 on last page of this table.
[90] This TRU inventory transferred to Hanford Site since the time of data collection.
[91] As of 1/31/2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
U.S. DEPARTMENT OF ENERGY	)	Docket No. 63-001-HLW
	)	ASLBP No. 09-892-HLW-CAB04
(High-Level Waste Repository)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Petition of the State of South Carolina to Intervene**, dated February 26, 2010, have been served upon the following persons by Electronic Information Exchange.

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Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Construction Authorization Board (CAB) 04

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Administrative Judge
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