

authorized to represent that NRC and NEI do not oppose the relief requested in this motion.

In support of this motion, Nevada states as follows:

1. This action is a petition for review filed by Nevada (“NRC Case”) that challenges an NRC final rule on dose standards for the proposed Yucca Mountain radioactive material repository (“the 2009 NRC Rule”).

2. Consolidated petitions for review also before this Court (Case Nos. 08-1237 and 08-1345, the “EPA Case”) concern a final action by EPA under section 801 of the Energy Policy Act of 1992, Pub. L. 102-486, Title VIII, § 801, 106 Stat. 2921, establishing public health and safety standards for radioactive material stored or disposed of in the proposed repository at Yucca Mountain, Nevada (“2008 EPA Rule”). The 2009 NRC Rule incorporates and implements the 2008 EPA rule.

3. Under the briefing schedule set in the EPA and NRC cases, by orders dated January 14, 2010, Nevada’s brief in both cases is presently due on March 15, 2010. Oral argument has not been scheduled in either case.

4. The EPA and NRC Cases each raise unusually complex issues that would require a heavy investment of attorney and court time to resolve. They address, *inter alia*, radiation protection standards applicable for a period in excess of 10,000 years, several federal statutes (including the

Energy Policy Act of 1992, the Atomic Energy Act, and the Nuclear Waste Policy Act), and matters with a long and substantial regulatory and procedural background dating back many years, including earlier standards promulgated in 2001.

5. Both the 2008 EPA Rule and 2009 NRC Rule would apply only to the proposed Yucca Mountain repository. The Department of Energy's (DOE's) license application for the proposed Yucca Mountain repository is pending in a proceeding before the NRC Atomic Safety and Licensing Board (*In the Matter of U.S. Department of Energy (High Level Waste Repository Construction Authorization Application)*), Docket No. 63-001, ASLBP No. 09-892-HLW-CAB04 ("NRC Yucca Mountain licensing proceeding").

6. On March 3, 2010, DOE filed in the NRC Yucca Mountain licensing proceeding the attached motion to "withdraw its pending license application for a permanent geologic repository at Yucca Mountain, Nevada." (DOE motion, p. 1.) In that pending motion, DOE requests the Atomic Safety and Licensing Board to "dismiss its application with prejudice and to impose no additional terms of withdrawal." (*Id.*)

7. In light of this development, Petitioner believes that vacating the present briefing schedule and holding the petitions for review in abeyance would promote judicial economy and substantially conserve the

resources of this Court and the parties. The disposition of DOE's motion to withdraw its Yucca Mountain license application, and any challenges to that motion, could substantively alter, narrow, or even remove entirely issues that otherwise would be raised in this action.

8. The Court should enter an order vacating the current briefing schedule, holding these petitions for review in abeyance until further order of the Court, and requiring the parties to submit a status report that appraises the Court of developments potentially affecting the litigation every 90 days following the entry of an order in response to this motion. The Court should further order that, upon 30 days' written notice and following conferral with the other parties, any party may file a motion to re-activate this litigation. If the parties agree that the abeyance should be lifted and the litigation re-activated, the Court should require them to file a status report to that effect as well as an appropriate motion to govern further proceedings.

9. Nevada is concurrently filing with this Court a similar motion in the EPA Case to hold that petition for review in abeyance. These motions have been filed at the first available opportunity after the undersigned counsel reviewed DOE's March 3, 2010 motion to withdraw the Yucca Mountain license application and related documents, conferred with co-

counsel and opposing counsel, and ascertained the positions of NRC and NEI regarding this motion.

WHEREFORE, Nevada respectfully requests that the Court issue an order vacating the briefing schedule in this action, holding the petitions for review in abeyance until further order of this Court, ordering the parties to file a status report every 90 days, and specifying that any party may move to lift the abeyance and re-activate the litigation in the manner described in paragraph 8 above.

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Respectfully submitted,

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By: _____/s/_____

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