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)	**)**	**March 29, 2010**

ANSWER OF THE STATE OF NEVADA TO AIKEN COUNTY'S PETITION TO INTERVENE

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On March 4, 2010, Aiken County, South Carolina ("Aiken County") petitioned for leave to intervene pursuant to 10 C.F.R. § 2.309 and, in the alternative, requested participation pursuant to 10 C.F.R. § 2.315 (c). For the reasons set forth below, the State of Nevada ("Nevada") opposes both requests. This Answer by Nevada is adopted in its entirety by the Native Community Action Council ("NCAC").

I. AIKEN COUNTY LACKS STANDING TO INTERVENE

Aiken County has not established its standing to intervene for the reasons set forth below.

First, Aiken County's petition only states that it owns real property in close proximity to DOE's Savannah River Site (not to Yucca Mountain), which is one of the referenced sites in DOE's Final Environmental Impact Statement. Petition at 2-3. DOE statements regarding the effect of a failure to go forward with Yucca Mountain on **its** Savannah River Site do not suffice to demonstrate **Aiken County's** interest in Yucca Mountain. Although Aiken County's petition references the Affidavit of Clay Killian, likewise Mr. Killian only discusses lands and a facility owned by Aiken County in close proximity to the Savannah River Site (not to Yucca Mountain), and does not address Aiken County's interest in Yucca Mountain or this NRC licensing proceeding. Petition at 2.

Second, Aiken County seeks to intervene in order to assert an alleged procedural right that the Yucca Mountain license application be considered fully on its merits. In such a procedural right case, a petitioner must establish that the procedural right at stake is designed to protect its concrete interests in the outcome of the agency proceedings. For example, in *Electric Power Supply Ass'n v. FERC*, 391 F.3d 1255 (D.C. Cir. 2004), the Court held that an association of energy marketers had standing to challenge an agency rule permitting illegal *ex parte*

communications in its hearings because the association's members had concrete financial interests at stake and were participating as parties in hearings where the rule applied.

Even if Aiken County had demonstrated a concrete interest that would be affected if Yucca Mountain is not licensed, it has not sought to advance any concrete interest in this proceeding by filing substantive contentions. Aiken County is not seeking to intervene to support any aspect of the license application on its merits. If Aiken County's procedural right is vindicated, the proceeding will continue, but Aiken County will disappear from the scene and its concrete interests (if any) will be entirely at the mercy of other parties. Aiken County's interests may still exist but, insofar as the NRC proceeding is concerned, its interests will exist only in the abstract, subject to rejection or redefinition at the discretion of the NRC and the remaining parties. In short, Aiken County will no longer have the "concrete interest in the outcome of the proceeding" that the law on standing requires. Its injury is purely a procedural one, and the assertion of a pure procedural interest is not sufficient for standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572-73 (1992). *See also, Guerrero v. Clinton*, 157 F.3d 1190, 1194 (9th Cir. 1998).

II. TIMELINESS

The Notice of Hearing in this proceeding, 73 Fed. Reg. 63029 (October 22, 2008), required that all petitions to intervene in this proceeding be filed no later than December 22, 2008, almost one and one-half years ago. Aiken County's petition is therefore extremely untimely. It stood by for almost one and one-half years and did nothing. Moreover, Aiken County specifically declined to provide any analysis to support acceptance of an untimely petition pursuant to 10 C.F.R. § 2.309 (c). Petition at 3, n. 1. The petition must be denied for

these reasons alone. [1]

III. AIKEN COUNTY'S REQUEST TO PARTICIPATE IN THIS PROCEEDING AS A LOCAL GOVERNMENTAL BODY MUST BE DENIED FOR FAILURE TO COMPLY WITH 10 C.F.R. § 2.315(C)

Aiken County signaled its intention to participate in this proceeding pursuant to the requirements of 10 C.F.R. § 2.315(c), *see* Petition at 1; however, the only substantive argument advanced in support of its request is the following one-sentence statement:

> Additionally or alternatively, Aiken County seeks to appear in these proceedings pursuant to 10 C.F.R. § 2.315(c) as an interested government body, with the below-signed as its designated representative.

Petition at 2. Although Aiken County's Petition also incorporates by reference the Petition to Intervene of the State of South Carolina (filed February 26, 2010), nowhere in that petition does the State of South Carolina request to participate in this proceeding pursuant to Section 2.315(c). Accordingly, the sole basis and support for Aiken County's request to participate under Section 2.315(c) is found in the foregoing one-sentence statement. For the three reasons that follow, Aiken County's request to participate in this proceeding as a local governmental body pursuant to 10 C.F.R. § 2.315(c) must be denied.

A. Aiken County Fails to Identify Any Interest Sufficient to Warrant Participation

When a governmental body from the state in which a proposed nuclear facility is located (*i.e.*, the host state) seeks to participate in an NRC licensing proceeding pursuant to 10 C.F.R. § 2.315(c), generally such requests are not opposed by the applicant or the NRC Staff, and generally such requests are granted by the Licensing Board without much, if any, analysis or

[1] While Aiken County appears to premise the filing of its petition to intervene on DOE's filing of its motion to withdraw, *see* Petition at 3, the timing of DOE's motion does not relieve Aiken County from addressing the untimely requirements of Section 2.309(c) because Aiken County's petition is clearly untimely as measured from the date mandated in the Notice of Hearing. In other words, although Aiken County moved quickly after DOE filed its motion to withdraw, its petition is nevertheless untimely from the Notice of Hearing, and therefore Aiken was required to address Section 2.309(c) but specifically choose not to do so.

commentary. Similarly, applicants and the NRC Staff typically do not oppose requests for Section 2.315(c) status from a governmental body in a neighboring state when the proposed nuclear facility is situated near the border of two states. But on those rare occasions when a governmental body from other than a host state seeks to participate in a licensing proceeding under Section 2.315(c) for a proposed nuclear facility that is not situated in close proximity, challenges are made and Licensing Boards must consider whether to grant such requests. In those situations, case law (discussed below) clearly demonstrates that the petitioning governmental body must make a persuasive showing of "interest" to warrant the grant of status in the proceeding under Section 2.315(c). (The provisions contained in 10 C.F.R. § 2.315(c) that are relevant here were formerly located in 10 C.F.R. § 2.715(c). *See* 69 Fed. Reg. 2236 (Jan. 14, 2004)).

In the NRC proceeding for a combined operating license for the North Anna Unit 3 nuclear power plant, which is to be located in the State of Virginia, the NRC Staff challenged the request of an agency of the State of North Carolina for interested state status under Section 2.315(c) because the agency "has not provided sufficient detail concerning its interest in this proceeding, noting that the North Anna site is approximately one hundred miles from North Carolina." *Virginia Electric & Power Co. (Combined License Application for North Anna Unit 3)*, 68 NRC 294, 304, n.44 (2008). The Licensing Board granted interested state status after reviewing and concluding that the North Carolina state agency "provides sufficient information to make the lesser showing necessary under 10 C.F.R. § 2.315(c) . . . ." *Ibid*. Although it did not articulate what "lesser showing" was required, *Virginia Electric* makes clear that a showing of interest is required when a non-host state seeks Section 2.315(c) status in a proceeding for a facility in another state located 100 miles away. Aiken County, South Carolina is located

approximately 2200 miles from Yucca Mountain, Nevada.

The required "interest" showing for status under Section 2.715(c) (the predecessor of Section 2.315(c)) when the distance between the facility and the state is quite large was perhaps best articulated by the divided three-judge NRC Appeals Board in *Exxon Nuclear Co., Inc. (Nuclear Fuel Recovery and Recycling Center)*, ALAB-447, 6 NRC 873, 1977 NRC LEXIS 15 (1977). At issue was whether the California Energy Resources Conservation and Development Commission was allowed to participate as an interested state in an NRC licensing proceeding to consider an applicant's request to construct a facility for the storage and reprocessing of spent nuclear fuel in the State of Tennessee.[2] Judge Sharfman's opinion acknowledged "the Commission's [NRC's] longstanding practice of permitting states whose borders are close to the site of a proposed nuclear facility to participate in its licensing proceeding under § 2.715(c)," and then went one step further (based on a reading of the regulation and relevant legislation) and concluded that interested state status was not reserved "merely to a state in which a reactor will be located" but could apply much more broadly. 1977 NRC LEXIS 15, at *4-5. Importantly, however, Judge Sharfman determined "that the [California] Energy Commission's interest in this proceeding is sufficient to give it the right to participate under § 2.715(c)" specifically because of several California State statutes that required the California Energy Commission to make

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[2] Although in *Pacific Gas & Electric Co. (Humboldt Bay Power Plant Unit No. 3)*, LBP-81-20, 14 NRC 101, 1981 NRC LEXIS 94 (July 14, 1981), the State of California was granted interested state status under 10 C.F.R. § 2.715(c) and challenged the licensee's motion to withdraw its pending license application, that case is distinguishable here because the nuclear facility under consideration in that proceeding was located within the State of California and none of the parties to that proceeding opposed the entry of the State of California under Section 2.715(c). The State of Nevada opposes the participation of Aiken County under Section 2.315(c), in part, because Aiken County is located approximately 2200 miles from Yucca Mountain and has not expressed an interest sufficient to support participation under Section 2.315(c). The mere existence of nuclear waste in Aiken County simply places it in common with scores of other locations across the country. In contrast, both Lincoln County and Eureka County are participating in this proceeding pursuant to Section 2.315(c) because of their close proximity to Yucca Mountain, which establishes the requisite interest.

detailed findings regarding the availability of facilities of the very type at issue in the NRC licensing proceeding. *Id*., at *6-7. Judge Salzman agreed based upon a similar finding of "interest" and the same California State statutes. *Id.*, at *11. Although Judge Johnson did not concur in the decision of the Appeals Board, he too acknowledged that the key to determining whether participation under Section 2.715(c) was warranted is the nature of the petitioner's "interest" in the proceeding. *Id*., at *14.

Nowhere in its Petition does Aiken County even attempt to articulate **any** "interest" sufficient to warrant participation in the Yucca Mountain licensing proceeding pursuant to 10 C.F.R. § 2.315(c). Moreover, unlike *Exxon Nuclear*, there has not been cited any South Carolina State statute (or any Aiken County ordinance) that somehow directs Aiken County to participate in NRC proceedings to license geologic waste repositories. Rather, Aiken County's Petition only states that it owns real property in close proximity to DOE's Savannah River Site (not to Yucca Mountain), which is one of the referenced sites in DOE's Final Environmental Impact Statement. Petition at 2-3. Statements made by **DOE** in **its** documents regarding **its** Savannah River Site do not suffice to demonstrate **Aiken County's** interest in Yucca Mountain or to support Aiken County's request to participate in this NRC licensing proceeding. Although Aiken County's Petition references the Affidavit of Clay Killian, likewise Mr. Killian only discusses lands and a facility owned by Aiken County in close proximity to the Savannah River Site (not to Yucca Mountain), and does not address Aiken County's interest in Yucca Mountain or this NRC licensing proceeding. Petition at 2. Finally, to the degree that the Aiken County Petition seeks to rely upon the arguments for intervention made by the State of South Carolina in its petition, nowhere in that petition does the State of South Carolina seek participatory rights under Section 2.315(c) much less articulate the interests of **Aiken County** in the Yucca

Mountain licensing proceeding. Thus, Aiken County has failed to demonstrate **any** interest sufficient to warrant granting its request to participate in this proceeding as a local governmental body pursuant to 10 C.F.R. § 2.315(c), and thus its request should be denied.

B. Aiken County Fails to Properly Identify Its Representative for this Proceeding

A local governmental body seeking to participate in an NRC licensing proceeding pursuant to 10 C.F.R. § 2.315(c) "shall, in its request to participate in a hearing, each designate a single representative for the hearing." The precise contours of this required designation was recently made clear:

> It involves the designation of a single officer or individual who is the State's decision-maker. Notice of appearance by counsel under 10 C.F.R. § 2.314 does not satisfy the requirement that a State designate a single representative under 10 C.F.R. § 2.315(c).

Entergy Nuclear Vermont Yankee LLC (Vermont Yankee Nuclear Power Station), 2008 NRC LEXIS 45, at *1, n.2 (May 12, 2008). These requirements have not been satisfied because Aiken County identifies "the below-signed as its designated representative," and the "below-signed" is the private attorney that Aiken County hired for this proceeding; thus, he cannot be an Aiken County "decision-maker." Petition at 4. Accordingly, Aiken County's request to participate in this proceeding as a local governmental body pursuant to 10 C.F.R. § 2.315(c) should be denied for failure to properly identify its representative.

C. Aiken County Fails to Identify Any Contention in Which it Would Participate

A local governmental body seeking to participate in an NRC licensing proceeding pursuant to 10 C.F.R. § 2.315(c) also "shall identify those contentions on which it will participate in advance of any hearing held." In ruling on a request by Lincoln and Eureka Counties in this proceeding for clarification of this requirement, the Commission made clear that

"each entity participating in this proceeding pursuant to 10 C.F.R. § 2.315(c) shall identify those **admitted contentions** on which it will participate no later than 45 days after issuance of the First Prehearing Conference Order." *U.S. Department of Energy (High-Level Waste Repository)*, Order dated January 15, 2009 (emphasis added).[3] Currently there are some 300 contentions admitted in this proceeding, and Aiken County failed to identify any of them on which it will participate in order to secure rights under Section 2.315(c). Thus, Aiken County's request to participate in this proceeding as a local governmental body pursuant to 10 C.F.R. § 2.315(c) should be denied for failure to identify any contentions on which it will participate in this proceeding.

To the degree that Aiken County seeks to demonstrate compliance with Section 2.315(c) by adopting the **proposed** contentions proffered by the State of South Carolina or by addressing the **new issues** contained therein (*i.e.*, of whether federal law allegedly precludes DOE from seeking to withdraw its pending Yucca Mountain license application or allegedly precludes this Licensing Board from granting DOE's pending motion to withdraw its license application), Aiken County must demonstrate that those contentions or issues comply with the timeliness requirements of 10 C.F.R. § 2.309(b). *See Pacific Gas & Electric Co. (Diablo Canyon Power*

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[3] Once a licensing proceeding is underway, subsequent attempts by new entities to participate in the proceeding under Section 2.315(c) require their intervention pleadings to identify the **admitted** contentions on which the new entity seeks to participate. *See Crow Butte Resources (North Trend Expansion Project)*, LBP-08-06, 67 NRC 241, 344-345 (2008) ("We request that any other interested State, local governmental body, and affected, Federally-recognized Indian Tribe that wishes to participate in the hearing pursuant to 10 C.F.R. § 2.315(c) file a Request and Notice of such intent … [and] [a]ny such notice shall, as required at § 2.315(c), contain a designation of a single representative for the hearing, and an identification of the contention or contentions on which it will participate."); *Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station)*, LBP-06-23, 64 N.R.C. 257, 349, ("Any other interested State, local governmental body, and affected, Federally-recognized Indian Tribe that wishes to participate in the hearing pursuant to 10 C.F.R. § 2.315(c) shall file a Request and Notice of such intent … [and] [a]ny such notice shall, as required at § 2.315(c), contain a designation of a single representative for the hearing, and an identification of the contention or contentions on which it will participate.")

Plant Independent Spent Fuel Storage Installation), LBP-02-23, 56 NRC 413, 2002 NRC LEXIS 218, *97 (December 2, 2002) ("For any new issues these interested governmental entities wish to raise on their own, however, they must satisfy the standards for contentions set forth in section 2.714(b) [now 2.309(b)]"); *Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1)*, LBP-83-30, 17 NRC 1132, 1983 NRC LEXIS 118, *9-10 (June 22, 1983) ("… the County, even under Section 2.715(c) [now 2.315(c)], could not raise new issues in the case not already embraced within the scope of admitted contentions without satisfying the test for late-filed contentions."); *Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2)*, LBP-81-5, 13 NRC 226, 1981 NRC LEXIS 153, *43 (February 13, 1981) ("if the Governor wishes to raise specific issues not otherwise accepted by the Board he must comply with the requirements of 10 CFR 2.714(b) for acceptable contentions, just as any other party must."); *Project Management Corp. (Clinch River Breeder Reactor Plant)*, ALAB-354, 4 NRC 383, 1976 NRC LEXIS 29, *23, n.14 (October 29, 1976) ("[A] State wishing to 'advise' the Commission on an issue not otherwise before the Licensing Board would be required to raise that issue itself by way of a contention meeting the pleading requirements of Section 2.714(a)"); *Gulf States Utilities Co. (River Bend Station, Units 1 and 2)*, ALAB-444, 6 NRC 760, 1977 NRC LEXIS 25, *14-15 (November 23, 1977) ("an "interested state" must observe the procedural requirements applicable to other participants"). Although Aiken County's Petition incorporates by reference the arguments made by the State of South Carolina in its petition to intervene, including assumedly the proposed contentions proffered by the State of South Carolina, Aiken County expressly "does not incorporate by reference timeliness arguments made by the State of South Carolina Attorney General in its Petition to Intervene . . . ." Petition at 3, n.1. While specifically disavowing the application of South Carolina's timeliness argument, Aiken County failed to

make any timeliness arguments of its own. Accordingly, Aiken County's request to participate in this proceeding as a local governmental body pursuant to 10 C.F.R. § 2.315(c) should be denied because Aiken County has failed demonstrate that any of the proposed contentions identified by the State of South Carolina, or the issues embodied within them, are timely for consideration in this proceeding.

IV. AIKEN COUNTY'S PETITION SHOULD BE DENIED BECAUSE IT HAS FAILED TO MEET THE LICENSING SUPPORT NETWORK REQUIREMENTS OF 10 C.F.R. PART 2, SUBPART J

A. The Regulatory Framework and the Licensing Board's Application Thereof.

Despite Aiken County's failure to petition to intervene in this proceeding in December 2008 as required by the Commission's October 2008 Notice of Hearing, it is obligated nonetheless to comply with the Licensing Support Network (LSN) requirements of 10 C.F.R. Part 2, Subpart J before it can be admitted as a party. As specified in 10 C.F.R. § 2.1012(b)(1):

> A person, including a potential party given access to the Licensing Support Network under this subpart, may not be granted party status under § 2.309, or status as an interested governmental participant under § 2.315, if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 at the time it requests participation in the HLW licensing proceeding under § 2.309 or § 2.315.

For its part, § 2.1003(a)(1) requires the public availability on the LSN of "[a]n electronic file including bibliographic header for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant or party."

The regulations in 10 C.F.R. Part 2, Subpart J (§ 2.1001) define the Documentary Material each entity must include in its LSN collection, including notably any information which it intends to cite or rely upon in support of its position; contrary information; and relevant reports and studies prepared on its behalf whether the party intends to rely on them or not. Those

regulations also specify the details which must be implemented by an entity in creating its LSN collection, including (1) designation of the official responsible for compliance; (2) establishment of procedures to implement the requirements of § 2.1003; and (3) the conduct of training of staff for the implementation of those procedures (§ 2.1009(a)). Most importantly, § 2.1009(b) requires that the designated responsible official "shall certify . . .that the procedures specified . . . have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available."

In its May 11, 2009 Order (Identifying Participants and Admitted Contentions) the CAB quoted the foregoing § 2.1009 prerequisites to LSN compliance and added that the initial certification requirement referred to therein also embodied a good faith standard "that the parties or potential parties have made every reasonable effort to produce all their documentary material." *U.S. Department of Energy (High-Level Waste Repository*), LBP-09-06, 2009 NRC LEXIS 68, at *26, May 11, 2009. CAB went on to explain that the good faith standard applied as well to the establishment of procedures for the review and production, and to that review and production, as well. *Id*. at *29.

B. <u>Inadequacy of Aiken County LSN Compliance.</u>

Nevada challenges the adequacy of Aiken County's LSN compliance for several reasons. While Aiken County filed a purported LSN Certification on March 15, 2010, claiming to have implemented appropriate procedures and claiming to have made all § 2.1003 documentary material available, Nevada questions both the adequacy of those procedures and of Aiken County's document production. Nevada on March 24, 2010 requested to be provided with Aiken County's LSN procedures, but has received none to date. Nevada's basis for questioning the adequacy of Aiken County's procedures without having seen them is the non-existence of documentary material which implementation of those procedures resulted in making LSN-

available.

Aiken County has made publicly available on its LSN database a total of **one** document – a document which is clearly not documentary material (an attorney's notice of appearance does not meet any of the definitions of documentary material in 10 C.F.R. § 2.1001). Effectively then, Aiken County is taking the position it has no information on which it intends to rely in support of its position. While Aiken County has not filed a single proposed contention, it purports to incorporate in its Petition those of South Carolina. Petition at 3. But those contentions referenced by Aiken County themselves rely on information (including at least an unofficial transcript of a news conference and a budget excerpt). Any information relied upon by Aiken County in support of its position in this proceeding is documentary material (§ 2.1001) which Aiken County is required to place on its LSN (§ 2.1003).

Because Aiken County has made **no** documentary material available on its LSN database, while inevitably having in its possession "information it intends to rely on in support of its position in the licensing proceeding," Nevada challenges the adequacy of Aiken County's LSN database, as well as the correctness of any procedures of Aiken County whose implementation uncovered **no** LSN-worthy information. Should intervention be granted, Aiken County should be precluded from relying (in any briefing or hearing) on any information not publicly available in its LSN database.

V. CONTENTIONS

On page 3 of its petition, under the heading "RELIEF SOUGHT," Aiken County states that it moves to intervene "in the same manner as set forth in the [earlier] Petition to Intervene of the State of South Carolina dated February 26, 2010, which this petition incorporates by reference." If Aiken County intends to incorporate anything other than South Carolina's

contentions, for example arguments with respect to standing and discretionary intervention, then its incorporation must be rejected. *See, e.g., Crow Butte Resources, Inc. (License Renewal for an In Situ Leach Facility),* LBP-08-24, 2008 NRC LEXIS 121, *79 (2008) (Incorporation by reference is not allowed where the effect would be to "circumvent NRC-prescribed . . . specificity requirements.") It is unclear how South Carolina's arguments would apply to Aiken County, for example South Carolina's reference to the location of seven commercial reactors within its boundaries, or its concern about how some location within the State might be chosen at the next repository site. See Petition of the State of South Carolina at pp. 3-4. If incorporation were to be allowed, Nevada would be forced to rewrite Aiken County's petition by picking and modifying those arguments that appeared relevant and then, in effect, answer its own arguments. There is no excuse for such sloppy drafting. South Carolina's Petition to Intervene was available to Aiken County for almost one week before it filed, and it would have been a simple matter to copy and paste various South Carolina's arguments deemed relevant into Aiken County's petition, and then to edit them so they would be applicable to Aiken County.

If Aiken County does not seek to incorporate South Carolina's contentions by reference, then its petition must be denied for failure to set forth any contentions. 10 C.F.R. § 2.309 (f). If Aiken County does seek to incorporate South Carolina's contentions by reference, then there does not appear to be any concern about their applicability to Aiken County, but 10 C.F.R. §2.309 (f)(2) requires that Aiken County designate in its petition an authorized representative to act for both it and South Carolina on matters covered by the adopted contentions, and Aiken County has not done so.

However, if Aiken County is deemed to have effectively incorporated by reference South Carolina's contentions, than Nevada offers the following with respect to the admissibility (but

not the merits) of Aiken County's (and South Carolina's) contentions.

A. SOC-MISC-01 – WITHDRAWAL OF APPLICATION WITHOUT CONGRESSIONAL AUTHORITY

Nevada does not object to the admissibility of this contention.

B. SOC-MISC-02 – WITHDRAWAL OF APPLICATION IN VIOLATION OF SEPARATION OF POWERS

South Carolina's contention that DOE seeks to determine matters already decided by Congress may be another way of arguing that DOE's withdrawal of the application would contravene a matter decided by Congress when it enacted the NWPA. If this is what South Carolina means, Nevada does not object to the admissibility of this contention, but notes that it duplicates SOC-MISC-01.

However, if South Carolina intends here to make some sort of separation of powers argument based on the premise that DOE intends to withdraw its application notwithstanding whatever the Congress may have provided in the NWPA, then Nevada objects to its admissibility as follows.

a. Statement of Issue (10 CFR § 2.309(f)(1)(i))

No objection.

b. Brief Statement of Basis (10 CFR § 2.309(f)(1)(ii))

No objection.

c. Scope of the Proceeding (10 CFR § 2.309(f)(1)(iii))

No objection.

d. Materiality (10 CFR § 2.309(f)(1)(iv))

No objection.

e. Adequate Basis (10 CFR § 2.309(f)(1)(v))

No objection.

f. Genuine dispute (10 CFR § 2.309(f)(1)(vi))

South Carolina does not establish that there is a genuine dispute with DOE because nowhere in DOE's withdrawal motion is there even a remote suggestion that DOE seeks

to withdraw the application whatever the NWPA may provide. In fact, DOE's motion argues that withdrawal of its application is consistent with the NWPA. South Carolina may be trying to conjure up the kind of Constitutional controversy that would make dedicated members of the Federalist Society and certain Constitutional Law Professors green with envy, but before it can do so there must be a live case or controversy, and there is no such controversy here.

C. 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

Nevada does not object to the admissibility of this contention.

VI. CONCLUSION

Based upon the foregoing analysis of Aiken County's standing, timeliness, lack of any demonstrated interest under 10 C.F.R. § 2.315(c) and LSN compliance, the Petition of Aiken County to intervene should be denied.

Respectfully submitted,

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Dated: March 29, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer of the State of Nevada to Aiken County's Petition to Intervene has been served upon the following persons by the Electronic Information Exchange:

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