

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
THE STATE OF WASHINGTON'S PETITION TO INTERVENE**

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TABLE OF CONTENTS

I.	WASHINGTON LACKS STANDING TO INTERVENE	1
II.	DISCRETIONARY INTERVENTION	2
III.	TIMELINESS	3
	A. Factor (i) (Good Cause for Failure to File On Time).	3
	B. Factor (ii) (Nature of Petitioner’s Right to Be Made a Party).	6
	C. Factor (iii) (Nature and Extent of Petitioner’s Other Interests).	7
	D. Factor (iv) (Effect on Petitioner’s Interests).	7
	E. Factor (v) (Availability of Other Means to Protect Petitioner’s Interests).	7
	F. Factor (vi) (Extent to Which Petitioner’s Interests Will Be Represented By Existing Parties).	7
	G. Factor (vii) (Extent to Which Petitioner’s Participation Will Broaden the Issues or Delay the Proceeding).	7
	H. Factor (viii) (Extent to Which Petitioner’s Participation May Assist in Developing a Sound Record).	8
	I. Summary.	8
IV.	WASHINGTON’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	9
	A. The Regulatory Framework and the Licensing Board’s Application Thereof.	9
	B. Inadequacy of Washington LSN Compliance.	10
V.	CONTENTIONS	12
	A. WAS-MISC-001 – UNDER THE NWPA, NEITHER DOE NOR THE NRC HAVE THE DISCRETION TO TERMINATE THE YUCCA MOUNTAIN LICENSING PROCESS WITH PREJUDICE	13
	B. WAS-MISC-002 – IF THE NWPA DOES NOT PRECLUDE DOE FROM MOVING TO DISMISS ITS APPLICATION WITH PREJUDICE, DOE CANNOT MEET THE BOARD’S REQUIREMENTS FOR DISMISSAL WITH PREJUDICE	14

C. WAS-MISC-003 – DOE DID NOT COMPLY WITH NEPA BEFORE DECIDING TO IRREVOCABLY TERMINATE THE YUCCA MOUNTAIN PROJECT 15

D. WAS-MISC-004 – DOE’S DECISION TO IRREVOCABLY TERMINATE THE YUCCA MOUNTAIN PROJECT IS ARBITRARY AND CAPRICIOUS IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT 17

VI. CONCLUSION 18

**ANSWER OF THE STATE OF NEVADA TO
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On March 3, 2010, the State of Washington (“Washington”) filed a petition for leave to intervene in this proceeding. For the reasons set forth below, the State of Nevada (“Nevada”) opposes Washington’s petition. This Answer by Nevada is adopted in its entirety by the Native Community Action Council (“NCAC”).

I. WASHINGTON LACKS STANDING TO INTERVENE

Washington has not established standing to intervene for the reason set forth below.

Washington 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.¹ 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.

While Washington may well have concrete interests that will be affected if Yucca Mountain is not licensed, it has not sought to advance any of those interests by filing substantive contentions. Washington is not seeking to intervene to support any aspect of the license application on its merits, for example to press its case before the NRC that the Department of Energy’s (“DOE”) discussion of the no-action alternative understates impacts to Washington or

¹ If this is not treated as a procedural rights case, Washington would be required to satisfy the redressability element of standing. Because Washington’s injuries will be redressed only if Yucca Mountain is licensed, Washington would be required to show that if the application proceeds, there is a substantial likelihood the outcome will be favorable and the license will be issued. *See Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 78 (1978). Such a showing would be impossible to make.

to support waste acceptance criteria compatible with wastes stored at Hanford. If Washington's procedural right is vindicated, the proceeding will continue, but Washington will disappear from the scene and, as Washington observes elsewhere, the remaining parties cannot represent its interests. Petition at 13. Washington'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, Washington 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. DISCRETIONARY INTERVENTION

Washington argues that it should be granted discretionary intervention pursuant to 10 C.F.R. § 2.309 (e). Petition at 8. Discretionary intervention is an "extraordinary procedure" that cannot not be granted "unless there are compelling factors in favor of such intervention." 69 Fed. Reg. 2182, 2201 (January 14, 2004). Washington's weak case falls far short. It fails to address any of the factors in 10 C.F.R. § 2.309 (e) against allowing intervention, contrary to the requirement in that subsection that "a petitioner who wishes to seek intervention as a matter of discretion ... shall address the following factors." Then, in selectively addressing only those factors favoring discretionary intervention, Washington simply incorporates its insufficient arguments for standing, addressed above, and adds that it will assist in the development of a sound record.

However, were Washington's intervention to be accepted, its participation will be limited to legal issues associated with DOE's motion to withdraw. Petition at 13-14. It is a petitioner's ability to contribute sound evidence rather than its asserted legal skills that is of significance in

evaluating and balancing this particular factor. *Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1)*, ALAB-671, 15 NRC 508, 513 n. 14 (1982); *Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1)*, LBP-84-17, 19 NRC 878, 888 (1984).

Under the six-factor test, ability to contribute to a sound technical record is the primary consideration. *Portland General Electric (Pebble Springs Nuclear Plant, Units 1 and 2)*, CLI-76-27, 4 NRC 610, 617 (1976). If this proceeding continues, Washington will be long gone when the time arrives for any evidence to be received.

III. TIMELINESS

Washington concedes that its petition is untimely, but argues that its late petition should be accepted based on a balancing of factors in 10 C.F.R. § 2.309 (c). Petition at 8-14. As explained below, a balancing of factors does not favor Washington's late intervention.

A. Factor (i) (Good Cause for Failure to File On Time).

Washington concedes, as it must, that its demonstration on the other factors must be compelling if it cannot establish good cause for its late filing. Petition at 9.

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.² Nevertheless, Washington claims that its standing by and doing nothing for almost one and one-half years was justified because "Washington was satisfied that DOE's application in this matter would be fully and fairly litigated without Washington's participation." Petition at 9. In other words, Washington relied on other parties to

² Case Management Order No. 2, January 29, 2009, provides for a 30-day standard rather than a 10-day standard for judging the timeliness of motions under 10 C.F.R. § 3.323. It does not change the due date for petitions for leave to intervene under 10 C.F.R. § 2.309.

represent its interests and, when one of those parties (DOE) changed course, Washington now feels justified in stepping in.

However, long-standing and well-settled Commission precedent clearly holds that a petitioner may not justify intervening after the established deadline by claiming it was lulled into inaction by the participation of other parties. *Citizens for Fair Utility Regulation v. NRC*, 898 F.2d 51 (5th Cir. 1990), *affirming Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Units 1 and 2)*, CLI-88-12, 28 NRC 605, 609 (1988); *Gulf States Utilities Company (River Bend Station, Units 1 and 2)*, ALAB-444, 6 NRC 760, 795-98, 1977 NRC LEXIS 25 (1977). In the latter case, the Union of Concerned Scientists attempted to replace the State of Louisiana after the State decided to withdraw from the proceeding, arguing that the organization and its members had been "lulled into inaction" by the State's previous participation. 6 NRC at 796, *81. The Appeal Board rejected that argument, holding that the belated petitioners assumed the risk that the previous litigant's degree of involvement would not fulfill their expectations and that "a foreseeable consequence of the materialization of that risk was that it would then no longer be possible to undertake [themselves] the vindication of [their] interests." *Id.* at *82. *See also Easton Utilities Commission v. AEC*, 424 F.2d 847, 852 (D.C. Cir. 1970).

Washington also claims that its late petition was justified because of "new regulatory developments and the availability of new information." Petition at 9-11. Specifically, Washington argues that it filed its petition within thirty days of DOE Secretary Chu's February 1, 2010, announcement that DOE would discontinue its Yucca Mountain licensing effort, and DOE's parallel notice to NRC that it would be withdrawing its license application. Petition at 10.

However, a petitioner has an obligation to uncover and apply publicly available information in a timely manner. *Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Unit 2)*, CLI-93-4, 37 NRC 156, 164-65 (1993); *Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Units 1 and 2)*, CLI-92-12, 36 NRC 62, 69-73 (1992); *Kansas Gas & Electric Company (Wolf Creek Generating Station, Unit 1)*, LBP-84-17, 19 NRC 878, 886 (1984). Even before petitions were due on December 22, 2008, it was well known that President Obama was committed to abandoning the repository at Yucca Mountain. See e.g., a September 25, 2008 New York Times article quoting then-candidate Obama as saying that “the nuclear waste disposal efforts at Yucca Mountain have been an expensive failure and should be abandoned,” and a December 12, 2008 article in the Tacoma Times Tribune criticizing President Obama’s decision to pursue an alternative to Yucca Mountain. See exhibits 1 and 2. Thus, Washington failed to uncover and apply information, publicly available before December 22, 2008, that the Administration (which necessarily includes DOE) would seek to abandon Yucca Mountain, which necessarily requires that it would move to withdraw the license application. This information was more than sufficient to put Washington on notice that it should seek to participate in the proceeding in order to protect its interests if not within the established deadline, then at least as soon as possible thereafter.³

³ Washington also refers to Secretary Chu’s testimony before Congress in May, 2009, to the effect that DOE wanted “minimal funding” to “continue participation in the Nuclear Regulatory Commission (NRC) license application process, consistent with the provisions of the Nuclear Policy Act,” and argues that this signaled DOE’s plan to continue prosecuting its application through a final NRC merits decision notwithstanding what President Obama said earlier in 2008. Therefore, according to Washington, the February 1 announcements caught Washington by surprise. This cannot be so. Secretary Chu did not testify that President Obama had changed his position that Yucca Mountain should be abandoned, and it would be pure folly to suggest that, by his testimony, Secretary Chu was dissenting from the President’s position. Secretary Chu’s request for “minimal funding” is perfectly in accord with an Administration position that DOE would continue as a party before NRC, spending “minimal” federal funds, pending an orderly shutdown of the Project and the filing of a motion to withdraw.

It is not relevant that DOE's motion to withdraw was not actually filed until many months after the President's position became generally known. The Commission held in *Duke Power Co. (Catawba Nuclear Station, Units 1 and 2)*, CLI-83-19, 17 NRC 1041, 1045 (1983) that "the institutional unavailability of a licensing related document does not establish good cause for filing a contention late if information was available early enough to provide the basis for the timely filing of that contention." *Catawba* was followed in *Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1)*, LBP-83-42, 18 NRC 112 (1983), *affirmed*, ALAB-743, 18 NRC 387 (1983). The analysis in *Shoreham* is instructive. In *Shoreham* an organization filed an untimely petition to intervene to support the application and the applicant's emergency plan, which had been prepared and filed following the local government's repudiation of an emergency plan prepared by the applicant on its behalf and subsequent announcement that it would not prepare a new government plan. The petitioner argued that its duty to file promptly upon receipt of new and material information arose only with the filing of the applicant's plan, the actual licensing document. The Licensing Board and Appeal Board both disagreed and denied the late petition, holding that the event triggering the petitioner's duty was the local government's earlier announcement that it would not prepare its own plan. That announcement signaled that the applicant would be filing its own plan and provided adequate information to support petitioner's intervention and contentions. As in *Shoreham*, Washington's duty to file within a reasonable time was triggered not by the formal filing of licensing related documents (DOE's formal filing of the motion and its earlier formal notice that such a motion would be filed), but rather by earlier public announcements that clearly signaled what would follow.

B. Factor (ii) (Nature of Petitioner's Right to Be Made a Party).

As indicated above, Washington has not established any right to be made a party.

C. Factor (iii) (Nature and Extent of Petitioner's Other Interests).

Washington does not identify any interests other than those offered to establish standing. As noted above, its interests are purely procedural.

D. Factor (iv) (Effect on Petitioner's Interests).

Washington's injuries will not actually be redressed if the relief it seeks is granted and the motion to withdraw is denied. Washington's injuries will be redressed only when and if the application is granted with the precise terms and conditions (including waste acceptance criteria) advocated by DOE. DOE's application may be denied on its merits or granted only on terms and conditions unfavorable to Washington's interests. And, because Washington declined to intervene on a timely basis to support the license application on its merits, its interests will be entirely at the mercy of the other parties even if DOE's motion to withdraw is denied.

E. Factor (v) (Availability of Other Means to Protect Petitioner's Interests).

Nevada does not dispute that the precise relief Washington seeks, a denial of DOE's motion to withdraw, may be obtained only in this proceeding.

F. Factor (vi) (Extent to Which Petitioner's Interests Will Be Represented By Existing Parties).

Washington argues that there is no State or other government unit admitted as a party that will protect its interests, but recognizes that NEI has taken positions supporting DOE's application. Petition at pp. 12-13. Nevada does not dispute that that no other party can be relied upon to represent Washington's interests.

G. Factor (vii) (Extent to Which Petitioner's Participation Will Broaden the Issues or Delay the Proceeding).

Washington argues that it will not delay the proceeding, that it will comply with deadlines, and that its participation will not broaden the issues. Petition at 13. However, while it is true that DOE has put in issue its authority under the NWPA to withdraw the application, a

simple inspection of Washington's proposed contentions indicates that Washington also seeks to inject other issues into the proceeding related to compliance with NEPA and the need for NRC to judge whether DOE's decision to seek withdrawal is arbitrary and capricious. Petition at 21-25.

H. Factor (viii) (Extent to Which Petitioner's Participation May Assist in Developing a Sound Record).

As noted above, Washington's demonstration on this factor fails because it will make absolutely no contribution to any technical record.

I. Summary.

As indicated above, Washington must make a compelling showing on factors (ii) through (viii) because it does not establish any good cause for its late intervention (factor (i)). It utterly fails to do so.⁴ Of the seven factors, Washington succeeds at the very most on only two – factor (v) (availability of other means to protect petitioner's interests), and factor (vi) (extent to which Washington's interests will be represented by existing parties). These two favorable factors carry less weight than the others. *Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2)*, LBP-89-04, 29 NRC 62, 70 (1989). The other factors either count against Washington or are neutral.

Moreover, the Commission has held that a favorable showing on factor (vi) does not overcome the adverse effect of not demonstrating good cause for late intervention (factor (i)). *Westinghouse Electric Corporation (Nuclear Fuel Export License for Czech Republic)*, CLI-94-7, 39 NRC 322, 329 (1994). Moreover, in evaluating and balancing factors (i) and (vi),

⁴ The case cited by Washington on page 13 of its petition is distinguishable. The petitioner in *Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation)*, LBP-99-3, 49 NRC 40 (1999) had established good cause for its failure to file on time.

petitioner's governmental status in and of itself cannot carry the day. *Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2)*, ALAB-339, 4 NRC 20 (1976).

IV. WASHINGTON'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 Washington'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 (05/11/2009)). 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. Inadequacy of Washington LSN Compliance.

Washington acknowledges (Petition at 27) that a person seeking party status “must demonstrate ‘substantial and timely compliance with the requirements of § 2.1003 at the time it requests participation.’” Despite that concession, Washington has not filed an initial certification of LSN compliance in accordance with § 2.1009. Washington has not designated an official responsible for LSN compliance; has not established procedures for the implementation of its obligations to make documentary material publicly available pursuant to § 2.1003; has not conducted training of its staff regarding implementation of LSN procedures; and has not made publicly available on the LSN a single bit of information. Nevada challenges Washington’s LSN compliance on **each** of the foregoing grounds.

Washington has asserted that, in the future, it “has every intention of complying” with 10 C.F.R. § 2.1003. (*Id.*). However, a future promise is not compliance. Moreover, Washington

acknowledged that it was required to demonstrate LSN compliance "at the time it requests participation." Petition at 27. Washington cannot have it both ways, and should be held to the requirement of Section 2.1003, which required compliance at the time of intervention. To the degree that Washington is allowed to demonstrate compliance at a later time, and assuming all other requirements for admission as a party in this proceeding are met, Washington could then be admitted to the proceeding conditioned on accepting the status of the proceeding at the time of admission (10 C.F.R. § 2.1012(b)(2)).

Despite neither certifying LSN compliance nor making a single bit of information available on the LSN, Washington asserts and relies upon a vast array of factual information in its intervention petition. But this is precisely the information which every party is required to make publicly available via the LSN. Documentary Material (i.e., that which **must** be made publicly available on the LSN) includes all information which a party intends to cite or rely on in support of its position in the licensing proceeding. In subsection 5 of three of its proposed contentions – the section headed “Concise Statement of Supporting Facts, Expert Opinions and References” – Washington claims it will “rely on facts alleged in the attached Affidavit of Suzanne L. Dahl-Crumpler” (Petition at 20, 23 and 25). For its part, the affidavit is a massive compilation of factual information, supporting Washington’s position and comprising some 103 pages.

As stated by the affiant herself, the affidavit enumerates details of such diverse subjects as the Hanford site; Hanford’s high-level radioactive tank waste; Hanford’s current system for storing that tank waste; the regulatory status of that tank waste; the current plan for treating and disposing of tank waste (including that plan’s interrelationship with the Yucca Mountain project); and other spent nuclear fuel and high-level waste at Hanford and within Washington.

These details make up more than 40 separate numbered paragraphs in the affidavit. Obviously, the affiant drew these myriad facts, details and statements from a variety of source documents, studies and reports. All of these underlying source documents (some attached to the affidavit), **and** the contentions themselves, are intended to be replied upon by Washington and should be on its LSN database at such future time as it creates one.

Because Washington has made no documentary material available on an LSN database in accordance with § 2.1003; because it has not created procedures, implemented them, conducted training of its staff or filed a certification of LSN compliance, all as required by § 2.1009; and because Washington inevitably does have in its possession “information it intends to rely on in support of its position in the licensing proceeding” (i.e., documentary material) the petition of Washington to intervene in this proceeding should be denied. Should intervention be granted, Washington should be precluded from relying (in any briefing or hearing) on any information not publicly available in its LSN database.

V. **CONTENTIONS**

A. **WAS-MISC-001 – UNDER THE NWPA, NEITHER DOE NOR THE NRC
HAVE THE DISCRETION TO TERMINATE THE YUCCA MOUNTAIN
LICENSING PROCESS WITH PREJUDICE**

Nevada does not object to the admissibility of this contention.

B. WAS-MISC-002 – IF THE NWPA DOES NOT PRECLUDE DOE FROM MOVING TO DISMISS ITS APPLICATION WITH PREJUDICE, DOE CANNOT MEET THE BOARD’S REQUIREMENTS FOR DISMISSAL WITH PREJUDICE

Nevada does not object to the admissibility of this contention.

C. **WAS-MISC-003 – DOE DID NOT COMPLY WITH NEPA BEFORE DECIDING TO IRREVOCABLY TERMINATE THE YUCCA MOUNTAIN PROJECT**

Nevada objects to the admissibility of this contention as follows:

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

Nevada does not object on specificity grounds to this contention insofar as it seeks to raise the pure legal question whether, to support its motion to withdraw, DOE must prepare an environmental impact statement that is separate from the statement it prepared to support its license application, regardless of the adequacy of the discussion of the no-action alternative in that statement.

However, if Washington intends to challenge, either directly or indirectly, the adequacy of the discussion of the no-action alternative in that statement, then its contention is hopelessly vague and non-specific. Washington's reference to paragraphs 44-47 of the attached affidavit does not fully cure this problem because the contention itself does not incorporate the more specific statements in the affidavit. Petition at 23.

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))

This proceeding, like all NRC proceedings, is limited in scope to whether NRC has complied with NEPA. Whether DOE has complied with NEPA is only relevant insofar as NRC may seek to comply with NEPA by relying on an environmental statement prepared by DOE.

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

This proceeding, like all NRC proceedings, is limited in scope to whether NRC has complied with NEPA. NEPA allegations directed at DOE do not in themselves raise

material issues.

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

No objection.

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

Nevada reservations with respect to whether WA-MISC-03 raises material issues that are within the scope of the proceeding apply here as well.

D. WAS-MISC-004 – DOE’S DECISION TO IRREVOCABLY TERMINATE THE YUCCA MOUNTAIN PROJECT IS ARBITRARY AND CAPRICIOUS IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

Nevada objects to the admissibility of this contention 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))

Whether, in considering DOE’s withdrawal motion, NRC must or may consider DOE’s stated reasons for seeking withdrawal is inextricably linked to NRC’s consideration of the merits of that motion, and is best addressed in that context. However, in general, the NRC does not apply the APA to a federal agency applicant as if it were performing the function of a court on judicial review.

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

See discussion in (iii) above.

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

No objection.

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

See discussion in (iii) above.

Nevada reservations with respect to whether WA-MISC-03 raises material issues that are within the scope of the proceeding apply here as well.

VI. **CONCLUSION**

Based upon the foregoing analysis of Washington's standing, timeliness, and LSN compliance, the petition of Washington to intervene should be denied.

Respectfully submitted,

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Dated: March 29, 2010

Exhibit 1

SEPTEMBER 25, 2008, 11:13 AM

Obama's Science Quiz

By *JOHN TIERNEY*

The journal Nature managed to get answers to 18 questions about science policy from Senator Barack Obama, but not from Senator John McCain. You can read [the full text of Mr. Obama's answers here](#) along with summaries of what Mr. McCain has said in the past on these issues.

One of the biggest differences that emerges in the Nature answers, as in [previous answers to ScienceDebate08](#), concerns nuclear power. While Mr. McCain has previously called for building 45 new nuclear reactors by 2030, Mr. Obama sounds much more cautious:

It is unlikely that we can meet our aggressive climate goals if we eliminate nuclear power as an option. However, before an expansion of nuclear power is considered, key issues must be addressed, including security of nuclear fuel and waste, waste storage and proliferation. The nuclear waste disposal efforts at Yucca Mountain [in Nevada] have been an expensive failure and should be abandoned. I will work with the industry and governors to develop a way to store nuclear waste safely while we pursue long-term solutions.

What does a "long-term solution" mean? If this means waiting until there's a form of storage that will be safe for thousands of years — the hope for Yucca Mountain — then when, if ever, might we expect to see new nuclear power plants?

Exhibit 2

[< Back to Regular Story Page](#)

No Yucca Mountain, no Hanford cleanup

THE NEWS TRIBUNE

Last updated: December 12th, 2008 12:23 AM (PST)

To understand how the cleanup of Hanford depends on a nuclear waste repository in Nevada, work backward.

Without the repository, there will be no permanent disposal of any of the nation's intensely radioactive reactor wastes.

Opponents of the Yucca Mountain project talk vaguely of other possibilities, but there are no other possibilities in the real world. Yucca Mountain is more dry and isolated than any realistic alternative, and it's been studied to death for more than 20 years.

Without permanent burial of reactor wastes, Hanford will be saddled with the radioactivity of 53 million gallons of waste now held in 177 steel tanks on the Eastern Washington reservation near the Tri-Cities.

But that's just the beginning. The likely alternative to a repository – an alternative now favored by President-elect Barack Obama – is "interim" storage of all commercial nuclear power plant waste at secure federal sites.

Hanford would top the list of secure federal sites. After all, it's had decades of experience storing reactor waste.

The failure to open a repository at Yucca Mountain could easily bring tens of thousands of tons of additional waste from other states to Washington.

So without Yucca Mountain, Hanford remains radioactive – probably more radioactive, probably permanently.

Obama must be told that Washingtonians wouldn't like that prospect at all. Washington's congressional delegation, now overwhelmingly Democratic, must make the Hanford-Yucca connection themselves.

They shouldn't buy into Senate Majority Leader Harry Reid's vendetta against the Nevada project. They shouldn't join those environmentalists who oppose a repository for specious reasons – in some cases simply to strangle the nuclear power industry by preventing it from disposing of its radioactive byproducts.

Any lawmaker who isn't fighting for permanent nuclear waste disposal sometime in the foreseeable future simply isn't fighting for the cleanup of Hanford.


Speaking of specious arguments, one of these is the contention that a Yucca Mountain repository wouldn't be large enough to handle the nation's reactor wastes. This claim hinges on the site's 77,000-ton limit, which indeed is inadequate.

But that's a statutory limit, not a physical one. It's a number picked out of thin air by Congress in 1987. Yucca Mountain's real capacity is more than three times that.

On Tuesday, Energy Secretary Samuel Bodman called on Congress to lift the site's artificial limit, which stands in the way of Hanford's cleanup.

Yes, it's a Republican proposal. But it's one any lawmaker from Washington ought to support.



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**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 the State of Washington's Petition to Intervene has been served upon the following persons by the Electronic Information Exchange:

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