

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges:

ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell
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In the Matter of	)	
	)	
U.S. DEPARTMENT OF ENERGY	)	Docket No. 63-001
	)	
(High Level Waste Repository)	)	May 4, 2010

**STATE OF NEVADA'S ANSWER TO THE NATIONAL ASSOCIATION OF  
REGULATORY UTILITY COMMISSIONERS' PETITION TO INTERVENE**

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**STATE OF NEVADA'S ANSWER TO THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS' PETITION TO INTERVENE**

On March 15, 2010, the National Association of Regulatory Utility Commissioners (NARUC) petitioned for leave to intervene in this proceeding. For the reasons set forth below, the State of Nevada (Nevada) opposes NARUC's petition. The Native Community Action Council (NCAC) joins in this Answer.

**I. STANDING**

As explained below, NARUC has not established its standing to intervene in this proceeding as a matter of right.

**A. NARUC Has Not Established Representational Standing**

NARUC's standing argument is premised on a claim, supported by an affidavit, that it represents the interests of all 50 State public utility commission members who would be affected by DOE's withdrawal of its license application for the Yucca Mountain repository (Petition at 5-8). NARUC recognizes, however, that established NRC case-law on representational standing requires it to identify one of its members by name and address, demonstrate that this member has an interest that may be affected by the proceeding, and show that the member authorizes NARUC to request a hearing on its behalf (Petition at 8). To satisfy these requirements, NARUC chose the Honorable David Wright, who is both the current Chairman of NARUC's Nuclear Issues-Waste Management Disposal Subcommittee and a member of the South Carolina Public Service Commission.

As discussed above, Mr. Wright's standing must be established in order for NARUC's representational standing argument to succeed. *Private Fuel Storage (Independent Spent Fuel Storage Installation)*, CLI-99-10, 49 NRC 318, 323 (1999). NARUC argues that Mr. Wright has standing to intervene because of his official duty to represent and protect the health,

safety, and economic welfare of South Carolina's citizens (Petition at 10). Unfortunately for NARUC, the State of South Carolina is also seeking to intervene in this proceeding as a matter of right in order to represent and protect those very same interests (*see* Petition of the State of South Carolina to Intervene, February 26, 2010, at 10). Under 10 C.F.R. § 2.309 (d)(2)(ii), only a "single designated representative of the State" may be admitted as a party. Nevada does not in any way question the good faith of either NARUC or Commissioner Wright, but Nevada cannot understand how Commissioner Wright could represent the interests of South Carolina and its citizens when South Carolina's Attorney General is already doing so. Clearly, some choice of representation by South Carolina was required. If Commissioner Wright cannot represent the interests of South Carolina and its citizens because the South Carolina Attorney General represents them, then he has no individual standing to intervene and, because NARUC relies exclusively on Commissioner Wright's standing as a member, its case for standing fails as well.<sup>1</sup>

**B. NARUC Has No Concrete Interest Because It Has No Substantive Claims**

NARUC's members' interests here are unusually narrow. NARUC 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.<sup>2</sup> For example, in *Electric Power Supply Ass'n v. FERC*,

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<sup>1</sup> Mr. Wright cannot base his standing on 10 C.F.R. § 2.309 (d)(2) (as argued in Petition at 10, note 10) because this paragraph applies only to standing with respect to "a facility located within its [South Carolina's] borders." Yucca Mountain is not located in South Carolina.

<sup>2</sup> If this is not treated as a procedural rights case, NARUC would be required to satisfy the redressability element of standing. Because NARUC's injuries would appear to be of a type that will be redressed only if Yucca Mountain is licensed, NARUC 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.

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 NARUC had established some concrete interests that would be affected if Yucca Mountain is not licensed, it has not sought to advance any of those interests by filing substantive contentions. NARUC is not seeking to intervene to support any aspect of the license application on its merits. If NARUC's procedural right is vindicated, the proceeding will continue, but NARUC will disappear from the scene and, as NARUC states elsewhere, the remaining parties cannot represent its interests (Petition at 20). NARUC's interests (if any) 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, NARUC 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 without more is not sufficient for standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572-73 (1992).

## **II. DISCRETIONARY INTERVENTION**

NARUC also argues that it should be granted discretionary intervention pursuant to 10 C.F.R. § 2.309 (e) (Petition at 16). Discretionary intervention is an "extraordinarily procedure" that cannot not be granted "unless there are compelling factors in favor of such intervention." 69 Fed. Reg. 2182, 2201 (January 14, 2004). NARUC's case falls far short of a compelling one.

Under the six-factor test, an ability to contribute to a sound record (10 C.F.R. § 2.309 (e)(1)(i)) is the primary consideration. *Portland General Electric (Pebble Springs Nuclear Plant, Units 1 and 2)*, CLI-76-27, 4 NRC 610, 617 (1976). However, NARUC cannot make a

favorable showing on this critical factor because its participation would be limited to legal issues associated with DOE's motion to withdraw its application (Petition at pp. 22, 27, 31, 35, 38). If the licensing proceeding continues, NARUC will be long gone when the time arrives for any evidence to be admitted. Yet, 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).

NARUC's showing on the other two factors weighing in favor of intervention (10 C.F.R. § 2.309 (e)(1)(ii) and (iii)) also fails. This is because both relate to a petitioner's interests and, as indicated above, NARUC has no cognizable interest in this proceeding unless the State of South Carolina agrees that Mr. Wright and NARUC, as opposed to its Attorney General, should represent its interests.

All of the factors weighing against intervention in 10 C.F.R. § 2.309 (e)(2) apply to NARUC's request, with the possible exception of factor (ii) (the extent to which petitioner's interests will be represented by existing parties). Factor (i) (other means to protect petitioner's interests) weighs against NARUC's intervention because NARUC seeks only to raise legal issues and, accordingly, its interests will be protected by participating as an amicus. *See Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2)*, CLI-10-12, \_\_ NRC \_\_ (March 26, 2010) (slip op. at 11, note 50). Factor (iii) (the extent to which petitioner's intervention will inappropriately broaden the issues or delay the proceeding) weighs against NARUC because, as explained below in Nevada's discussion of NARUC's contentions, NARUC seeks to raise at least two contentions (NAR-03 and NAR-04) that appear to be outside of the scope of the proceeding

and therefore inappropriate. Finally, even factor (ii) will count against intervention if South Carolina is admitted as a party because Mr. Wright's interests (and, therefore, NARUC's interests) will be protected by South Carolina's participation through its Attorney General.

In sum, NARUC's case for discretionary intervention cannot be a compelling one because it fails on the most important factor (an ability to contribute to a sound record on technical issues) and it also fails on every other factor with the possible exception of factor (2)(ii) (the extent to which petitioner's interests will be represented by existing parties). It will fail on factor (2)(ii) as well if South Carolina is allowed to intervene.

### **III. NON-TIMELY INTERVENTION**

NARUC concedes that its petition is untimely (Petition at 17), but it argues that its late petition should be accepted based on a balancing of factors in 10 C.F.R. § 2.309 (c) (Petition at 17-22). The Commission addressed the subject of late intervention petitions in a recent decision, *Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2)*, CLI-10-12, \_\_ NRC \_\_ (March 26, 2010). In this decision the Commission summarized its practice as follows:

The first factor – good cause – is accorded the greatest weight. Absent a showing of good cause, a non-timely petition will not be excused unless the petitioner makes a compelling showing on the remaining factors. A petitioner's showing must be highly persuasive; it would be a rare case where we would excuse a non-timely petition absent good cause.

Id. (slip op. at 4). As indicated below, NARUC has not shown good cause to its failure to file on time and has made no compelling showing on the remaining factors.

#### **A. Good Cause For Failure To File On Time (Factor (i))**

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. Nevertheless, NARUC argues that its standing by and doing nothing for almost one and one-half years was justified because "[t]his DOE motion to

withdraw was not just unpredictable, but highly improbable" when the deadline for timely petitions passed (Petition at 17). Also according to NARUC, DOE's application was "a high-quality license application that, on its face, provides the Board reasonable assurance that the facility can be built and operated in accordance with the legal and regulatory requirements" and "[a]s a result, there was no reason for NARUC to intervene" ( Petition at 18). In other words, NARUC completely ignored the possibility that parties, such as Nevada, might offer convincing evidence that disposal of high-level radioactive waste in Yucca Mountain would be unsafe, and assumed not only that DOE would march forward but also that the NRC licensing boards and the Commission would protect NARUC's interests by granting DOE's application.

NARUC utterly fails to account for the possibility that a hearing process, presided over by expert and impartial NRC tribunals, would lead to decision that rejected DOE's application. NARUC's argument that it had good cause for late intervention is not only presumptuous, but it also flies in the face of long-standing and well-settled Commission precedent clearly holding 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). 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. 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 no longer be possible to undertake [themselves] the vindication of [their] interests." *See also Easton Utilities Commission v. AEC*, 424 F.2d 847, 852 (D.C. Cir. 1970).

NARUC also claims that its late intervention was justified since it filed "immediately upon learning that DOE filed a motion to withdraw the license application." Petition at 19. This is a bit of a stretch because NARUC filed its Petition almost two weeks after DOE filed its motion. However, what is more important in this regard is that NARUC failed to act upon earlier, public information. 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" (Exhibit 1). NARUC itself, in a recent April 2, 2010 media release (Exhibit 2), admitted that "since taking office in January 2009, the Obama Administration made clear their intent to shutter the project." Thus, NARUC failed to uncover and apply information, publicly available before December 22, 2008, or shortly thereafter, that the Administration (which necessarily includes DOE) would seek to abandon Yucca Mountain, which necessarily implies that DOE would move to withdraw the license application. This information was more than sufficient to put NARUC 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.

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 earlier emergency plan the applicant had prepared for the local government and the local government's subsequent announcement that it would not prepare its own substitute 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*, NARUC'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. Nature Of Petitioner's Right To Be Made A Party (Factor (ii))**

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

**C. Nature Of Petitioner's Interest (Factor (iii))**

NARUC does not identify any interests other than those offered to establish standing (Petition at 19). As noted above, NARUC has not established standing as a matter of right and its interests are purely procedural in any event.

**D. Effect On Petitioner's Interests (Factor (iv))**

NARUC argues here that a withdrawal with prejudice will mean that billions of dollars of utility charges will have been wasted (Petition at 15, 19). However, if DOE's motion to withdraw is denied, or DOE's application is re-filed after a withdrawal without prejudice, but the application is ultimately denied on its merits after years of hearing litigation, many more ratepayer dollars will have been wasted. Thus NARUC's argument assumes that the application will be granted if it is not withdrawn. This assumption has no basis, especially at this early stage of the proceeding. NARUC's further argument that withdrawal "necessarily exacerbates NARUC's member commission's ability to carry out their [sic] fiduciary responsibilities to protect the health, safety, and economic welfare of its State electric ratepayers "is hopelessly vague and unsupported (Petition at 15).

**E. Availability Of Other Means To Protect Petitioner's Interests (Factor (v))**

Nevada does not dispute that the precise relief NARUC seeks, a denial of DOE's motion to withdraw, may be obtained only in this proceeding (Petition at 20). However, inasmuch as NARUC seeks only to raise legal issues, it may participate effectively before NRC by filing an *amicus* brief, and this factor cuts against allowing late intervention. The

Commission considered the availability of *amicus* participation as relevant in applying factor (v) in a very recent decision, *Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2)*, CLI-10-12, \_\_\_ NRC \_\_\_ (March 26, 2010) (slip op. at 11, note 50).

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

NARUC argues that there is no admitted party that will protect its interests (Petition at 10-16, 20). But, because NARUC's representational standing argument refers to the interests of South Carolina's utility commission and South Carolina's ratepayers, this argument cannot be accepted unless South Carolina's intervention petition is denied. If South Carolina's intervention petition is granted, it will represent South Carolina's commission and ratepayers.

**G. Extent To Which Petitioner's Participation Will Broaden The Issues Or Delay The Proceeding (Factor (vii))**

NARUC argues that granting its petition will not delay the proceeding (Petition at pg. 21). However, this factor weighs against NARUC because, as explained below in Nevada's discussion of NARUC's contentions, NARUC seeks to raise issues not discussed in DOE's motion to withdraw, including at least two contentions (NAR-03 and NAR-04) that appear to be outside of the scope of the proceeding and inappropriate. This will delay the proceeding.

**H. Extent To Which Petitioner's Participation May Reasonably Be Expected To Assist In Developing A Sound Record (Factor (viii))**

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

**I. Summary**

As indicated above, NARUC 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. Of the seven factors, NARUC succeeds at the very most on only one –

factor (vi) (extent to which NARUC's interests will be represented by existing parties) and, as explained above, this factor does not count in NARUC's favor if South Carolina intervenes. The other factors either count against NARUC or are at best neutral. 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), petitioner's governmental status (NARUC refers to South Carolina's Utility Commission's interests) cannot 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. CONTENTIONS**

NARUC submits four contentions. Nevada does not object to the admission of NAR-MISC-01 or NAR-MISC-02. However, Nevada objects to NAR-MISC-03 and NAR-MISC-04 as follows.

A. **NAR-MISC-03 – 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 (c) 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 (c) above.

**B. NAR-MISC-04 – 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.

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 NAR-MISC-04 raises

material issues that are within the scope of the proceeding apply here as well.



V. **CONCLUSION**

NARUC's Petition should be denied.

Respectfully submitted,

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\*Special Deputy Attorneys General

Dated: May 4, 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

## **State Regulators Go to Court with DOE over Nuclear Waste Fees**

WASHINGTON--The nation's State utility regulators are taking the U.S. Department of Energy to court over its decision last year to continue charging fees associated with moving and disposing of spent-nuclear fuel.

The National Association of Regulatory Utility Commissioners (NARUC) filed a petition for review today at the U.S. Court of Appeals for the District of Columbia Circuit. NARUC is the national association representing the State Public Service Commissioners who regulate essential utility services, such as energy, telecommunications, and water.

At issue is DOE's October 2009 rejection of a request from NARUC to suspend payments into the Nuclear Waste Fund (NWF), a fund Congress established in 1982 to pay for the transportation and permanent disposal of commercial nuclear waste. The fees are assessed to nuclear utility companies and passed through to ratepayers by NARUC's Public Service Commission members based upon the federal government's explicit promise that the waste would be moved and safely disposed by DOE, most likely at the Yucca Mountain repository in Nevada. To date, ratepayers have paid approximately \$17 billion into the fund over the last 27 years. Further, the fund has earned an additional \$13.5 billion in interest, bringing it to about \$30 billion.

Although the Yucca project has been oft delayed, DOE in 2008 filed an application with the Nuclear Regulatory Commission for a license to operate the repository. But since taking office in January 2009, the Obama Administration made clear their intent to shutter the project and convene the Blue Ribbon Commission on America's Nuclear Future to recommend a new disposal strategy.

With the Administration effectively zeroing out funding for the project in its budget proposals, NARUC last July asked the Energy Department to suspend payments into the NWF, determining that since the project was stalled, ratepayers shouldn't be charged for it. In response, DOE rejected the request, asserting that all fee payments to the fund are essential.

NARUC, in its petition, said DOE's rejection is an actionable determination that can be challenged in court.

"Since 1983, the nation's nuclear-utility consumers have faithfully contributed almost \$20 billion into the Nuclear Waste Fund, with the expectation that the spent-nuclear fuel would be safely moved and stored," said NARUC President David Coen of Vermont. "Unfortunately, the federal government has failed to live up to its end of the bargain. We do not take this action lightly; we are hopeful that the newly appointed Blue Ribbon Commission on America's Nuclear Future will chart a workable path. But until that time, there is no need to assess these fees on our consumers, particularly when we have no idea what solutions the Commission will suggest, and whether they will be implemented."

\* \* \* \* \*

*NARUC is a non-profit organization founded in 1889 whose members include the governmental agencies that are engaged in the regulation of utilities and carriers in the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands. NARUC's member agencies regulate telecommunications, energy, and water utilities. NARUC represents the interests of State public utility commissions before the three branches of the Federal government.*

####

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Atomic Safety and Licensing Board**

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

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing State of Nevada's Answer to National Association of Regulatory Utility Commissioners' Petition to Intervene has been served upon the following persons by the Electronic Information Exchange:

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CAB 01

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