

UNITED STATES DISTRICT COURT

for the

District of New Mexico

THE GENERAL ELECTRIC COMPANY and UNITED NUCLEAR CORPORATION,

Plaintiff

v.

UNITED STATES OF AMERICA, U.S. D.O.I., U.S. B.I.A., U.S. D.O.E., and THE U.S.N.R.C.,

Defendant

Civil Action No. 1:10-cv-00404-KBM-RHS

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) GREGORY B. JACZKO, CHAIRMAN THE UNITED STATES NUCLEAR REGULATORY COMMISSION MAIL STOP O-16G4 WASHINGTON, DC. 20555-0001 (301) 415-7000 Main Switchboard

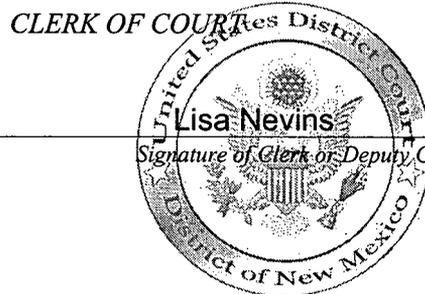
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Michael Campbell, Holland & Hart, LLP, P.O. Box 2208, Santa Fe, NM 87504-2208 R. Timothy McCrum, 1001 Pennsylvania Ave., NW, Washington, D.C. 20002-2595 Jane W. Gardner, Senior Counsel, General Electric Company, 844 Racquet Lane, Boulder, CO 80303

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: Tuesday, April 27, 2010



Signature of Clerk or Deputy Clerk

Civil Action No. 1:10-cv-00404-KBM-RHS

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE GENERAL ELECTRIC COMPANY and
UNITED NUCLEAR CORPORATION,

Plaintiff(s),

-vs-

Civil No. 1:10-cv-00404-KBM-RHS

UNITED STATES OF AMERICA, U.S.DOI,
U.S. B.I.A., U.S.D.O.E., and the U.S.N.R.C

Defendant(s).

**CONSENT TO PROCEED / REFUSAL TO CONSENT TO PROCEED
BEFORE A UNITED STATES MAGISTRATE JUDGE**

In accordance with 28 U.S.C. § 636(c) and Rule 73(b) of the Federal Rules of Civil Procedure, the above-entitled action has been assigned to United States Magistrate Judge:

KAREN B. MOLZEN

to conduct all proceedings in this case, including trial, entry of final judgment, and all post-judgment proceedings. Exercise of this jurisdiction by a U. S. Magistrate Judge is permitted only if all parties consent. Indicate below if you consent to the assignment or if you refuse to consent:

Consent

Refuse

Party(s)

Party(s)

Signature

Date

Signature

Date

Return this form to the Clerk's Office within 21 days of receipt if you are a *pro se* litigant. If you are an attorney/e-filer, please visit our Web site at www.nmcourt.fed.us for e-filing instructions. If consent by each party is not received within 21 days, the matter will be reassigned to a district judge who will serve as the presiding judge.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**THE GENERAL ELECTRIC COMPANY and
UNITED NUCLEAR CORPORATION,**

Plaintiffs,

v.

Civil Action No. 6:10-CV-00404

**UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
THE INTERIOR, UNITED STATES
BUREAU OF INDIAN AFFAIRS, UNITED
STATES DEPARTMENT OF ENERGY,
and THE UNITED STATES NUCLEAR
REGULATORY COMMISSION,**

Defendants.

COMPLAINT

NATURE OF THE ACTION

1. This civil action is brought pursuant to sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613.

2. The General Electric Company and United Nuclear Corporation (collectively, "Plaintiffs"), by and through their undersigned counsel, bring this action to recover past, present, and future environmental response costs, as well as for equitable contribution, declaratory judgment, and other relief against defendants United States of America, United States Department of the Interior, United States Bureau of Indian Affairs, United States Department of Energy, and the United States Nuclear Regulatory Commission (collectively, "the United States"), alleging as follows:

3. The Plaintiffs have incurred, and continue to incur, necessary costs of environmental response consistent with the National Contingency Plan (“NCP”), 40 C.F.R. Part 300, concerning the Northeast Church Rock Mine Site, a closed uranium mine located near Gallup, New Mexico, in McKinley County, located in Section 35, Township 17 North, Range 16 West, with minor portions located in Section 3, Township 16 North, Range 16 West, and Section 34, Township 17 North, Range 16 West, areas on the adjacent Navajo Reservation where hazardous substances associated with the Northeast Church Rock Mine have been deposited or otherwise came to be located (hereafter “NECR Site” or “NECR Mine”), and other potential locations.

4. The United States has neither contributed to nor reimbursed the Plaintiffs for any environmental response costs incurred at the NECR Site, nor contributed to or agreed to reimburse the Plaintiffs for any such costs, and is requiring the Plaintiffs to carry out response actions at and for the NECR Site.

5. This civil action also seeks a declaratory judgment under 28 U.S.C. § 2201 and CERCLA section 113(g), 42 U.S.C. § 9613(g), that the United States is liable under CERCLA for past, present, and future environmental response costs at the NECR Site.

JURISDICTION AND VENUE

6. The Court has original, subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b). An actual, existing, and justiciable controversy exists between Plaintiffs and the United States for each and every claim in this Complaint concerning the United States’ obligation to reimburse Plaintiffs for response costs that Plaintiffs have incurred and will in the future incur at the NECR Site.

7. Venue is proper under 42 U.S.C. § 9613(b).

8. The United States has waived sovereign immunity under 42 U.S.C. § 9620(a)(1) with respect to the claims in this action.

NATURE OF ACTION

9. Plaintiffs bring this civil action pursuant to sections 107(a), 113(f), and 113(g)(2) (declaratory judgment) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(f), and 9613(g)(2), to recover response costs incurred by them and to be incurred by them in connection with a closed uranium mine located in McKinley County, New Mexico, near the Navajo Reservation, known as the NECR Site, located in Section 35, Township 17 North, Range 16 West, with minor portions located in Section 3, Township 16 North, Range 16 West, and Section 34, Township 17 North, Range 16 West.

10. The United States, through the U.S. Environmental Protection Agency (“USEPA”), and in consultation with the Navajo Nation, has ordered, directed, and otherwise overseen response actions under CERCLA at the NECR Site and has stated or indicated that it intends to require the Plaintiffs to investigate and perform further response actions at the NECR Site.

11. The United States has required Plaintiffs to investigate, pay for, and perform response actions at the NECR Site. Plaintiffs have incurred and will continue to incur CERCLA response costs in connection with the NECR Site.

12. With the exception of minor patented private land holdings at the NECR Site, the United States is the current owner of the vast majority of the surface estate of the land at the NECR Site and holds that land in trust for the Navajo Nation. The United States, through its agencies and instrumentalities, has managed the land on which the NECR Site is located since before uranium mineral exploration, development, and mining and associated waste rock and soil disposal commenced on the NECR Site in the 1950s and 1960s. The waste rock and soil disposal that occurred at the NECR Site was a certain and known result of conventional uranium

mining, which the United States expressly authorized and specifically intended to take place on the land that comprises the NECR Site.

13. From the time uranium mineral exploration and development commenced on the properties comprising and near the NECR Site in the late 1950s and 1960s, the United States was involved in promoting uranium mining activity. The United States exercised pervasive control over the entire uranium industry from the 1940s through 1970, including all aspects of uranium exploration, production, processing, and marketing. The United States was, through the late 1960s, the sole purchaser of virtually all of the uranium produced from all domestic uranium mines, including the NECR Mine.

14. UNC, or one of its predecessors-in-interest, operated the NECR Mine from the 1960s through 1982. Following extensive uranium mineral exploration in the 1950s and 1960s, mining development began at the NECR Mine in 1967 and ended when the NECR Mine was closed in 1982.

15. Since September 1997, UNC has been an indirect subsidiary corporation of GE. Prior to September 1997, GE had no affiliation with UNC.

16. GE has never operated the NECR Mine, or any other uranium mine, apart from GE's participation in response actions from 2006 to the present at the direction of USEPA under CERCLA. Throughout the period of mining at the NECR Site, GE never owned, possessed, generated, transported, accepted for transport, stored, deposited, disposed of, or treated hazardous substances at or to the NECR Site, nor did it arrange for the transportation, disposal, or treatment of hazardous substances at the NECR Site.

17. Like many other uranium mines, the NECR Mine was originally constructed as part of the United States' decades-long program to purchase uranium for its own military

purposes and to supply uranium for the emerging nuclear power industry. When the United States first developed atomic weapons in the 1940s, there was no commercial production of uranium ore in the United States. For strategic reasons, the United States decided to use private industry to mine and process uranium ore so the United States could buy it from domestic sources. To implement that policy, the United States entered into exclusive contracts with private parties, such as UNC, to buy uranium from them.

18. On March 9, 1959, the United States and the Navajo Nation executed a lease authorizing uranium mining at the NECR Site on the land owned by the United States. In reliance on an August 5, 1965 Contract with the Atomic Energy Commission (“AEC”) to sell the United States uranium concentrate, UNC developed the NECR Mine in the latter 1960s.

19. At that time, the United States knew and specifically intended that the use of the portion of the NECR Site owned by the United States by UNC to obtain uranium would result in the disposal of waste rock and soil containing radionuclides that the United States has now decided justify the cost of removal and remediation under CERCLA at the NECR Site.

PARTIES

20. Plaintiff The General Electric Company (“GE”) is a New York Corporation with its principal place of business at One River Road, Schenectady, New York.

21. Plaintiff United Nuclear Corporation (“UNC”) is a Delaware Corporation with its principal place of business in Gallup, New Mexico.

22. Defendant United States of America resides in the District of Columbia and may be found throughout the country.

23. Defendant United States of America includes the former U.S. Atomic Energy Commission, the U.S. Department of Energy, the U.S. Nuclear Regulatory Commission, and the U.S. Department of the Interior, acting through the Bureau of Indian Affairs, the Bureau of Land

Management (“BLM”), the former U.S. Bureau of Mines, and the U.S. Geological Survey (“USGS”), and other current and former departments, agencies and instrumentalities of the United States government.

24. Defendant U.S. Department of the Interior (“Interior Department”) is a federal executive department with general responsibility for managing the nation’s natural resources, including tribal lands owned by the United States in trust for Native Americans. The Interior Department resides in the District of Columbia and may be found throughout the country.

25. Defendant Bureau of Indian Affairs is a bureau within the Interior Department with the specific mission of providing federal governmental services to Native Americans and managing, on behalf of the Interior Department and the United States generally, the tribal lands that are owned by the United States in trust for Native Americans. The Bureau of Indian Affairs resides in the District of Columbia and may be found throughout the country.

26. Defendant U.S. Department of Energy (“DOE”) is a federal executive department with general responsibility for implementing and overseeing national energy policy, and is a successor agency to the now-defunct U.S. Atomic Energy Commission (“AEC”). DOE resides in the District of Columbia and may be found throughout the country.

27. Defendant U.S. Nuclear Regulatory Commission (“NRC”) is an independent federal agency with general responsibility for regulating the nation’s nuclear power plants and other uses of nuclear materials, and is a successor agency to the AEC. The NRC resides in the District of Columbia and may be found throughout the country.

The Dominant Role Of The U.S. Government In Creating The Market For The Domestic Uranium Mining Industry

28. In the 1940s, the United States developed atomic weapons composed, in part, of uranium. At that time, there was no commercial production of uranium in the United States. As

a national defense priority, the United States decided to create a domestic market for uranium. It did so by paying private companies to mine and process uranium ore to sell to the United States, and guaranteeing the price for that ore.

29. In 1946, Congress passed the Atomic Energy Act (the “1946 Act”), 60 Stat. 755, which created the United States Atomic Energy Commission (“AEC”). The purpose of the 1946 Act was to establish, *inter alia*, a “program of assisting and fostering private research and development” concerning atomic energy, and a “program for Government control for the production, ownership, and use of fissionable material to assure the common defense and security and to insure the broadest possible exploitation of the fields.” *Id.* at 756. Pursuant to that authority, the AEC immediately began a nationwide program to discover and acquire uranium ores and concentrates.

30. As the Interior Department’s Bureau of Mines declared in a 1960 publication: “Development of the uranium industry in the free world has resulted almost entirely from the U.S. Government for source material for military requirements. . . . to assist in carrying out . . . [AEC] objectives, a guaranteed uranium market was established for a time to encourage long-range private exploration and development.” U.S. Dept. Interior, Bureau of Mines *Mineral Facts and Problems 1960 Edition*, at 934 (1960). As the Bureau of Mines correctly stated further: “The demand for uranium by the Government resulted in perhaps the most intensive mass prospecting activity of the century.” *Id.* at 922.

31. Between 1946 and 1970, the United States, acting primarily through the AEC, consumed vast amounts of uranium concentrates for its military weapons programs. During this period, the United States pervasively was involved in and exercised nearly plenary control over all aspects of the uranium industry from the time of exploration through the time the uranium

ore, protore, and waste rock were removed from the mines, and the ore was milled, processed, and shipped to the AEC as uranium concentrate.

32. The Atomic Energy Act of 1954 (“1954 Act”), 68 Stat. 919, also directed the AEC to promote the development of nuclear energy. Building upon and expanding the 1946 Act, and emphasizing the strong “national interest” in the federal regulation of the “processing and utilization of source, byproduct, and special nuclear material,” Congress enacted the 1954 Act for the purposes of providing for, *inter alia*, “a program of conducting, assisting, and fostering research and development in order to encourage maximum scientific and industrial progress,” and “a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare.” *Id.* at 921-22. Accordingly, the U.S. Government sought to increase and maintain uranium production for military and nuclear power requirements.

Control and Regulation of the Uranium Mining and Processing Industry by the United States Government

33. All of the facilities that processed uranium for sale to the United States under the AEC’s programs were initially licensed by the AEC, which retained the federal licensing and regulatory authority until January 19, 1975, when the Nuclear Regulatory Commission (“NRC”) was activated pursuant to the Energy Reorganization Act of 1974, 88 Stat. 1240.

34. The 1946 Act and the 1954 Act both provided that the United States Government would be the sole owner of processed uranium products in the United States. When the AEC’s market program began, no person was permitted to sell processed uranium to anyone but the United States. No private party began doing so until the late 1960s. Even when such sales began, they were subject to licensing or approval by the AEC. Moreover, the AEC exercised and

maintained complete control over the uranium mining and milling industry through regulation, licensing, contractual requirement, construction requirements and administrative and safety control measures.

35. Immediately upon its creation by the 1946 Act, the AEC initiated a nationwide program for the discovery and acquisition of uranium ores and concentrates. By 1948, the known mineable reserves of uranium in the United States amounted to only one million tons containing approximately 2,500 tons of uranium concentrate. The United States considered this to be a small amount compared to the estimated future needs of the Nation.

36. In December 1947, the AEC established the Colorado Raw Materials Office of the AEC in Grand Junction, Colorado. This office was responsible for spearheading the United States' uranium procurement program. Shortly thereafter, the AEC established an exploration branch in Grand Junction, Colorado. This branch of the AEC was responsible for spearheading the United States' uranium ore exploration program.

37. The AEC staffed its Grand Junction office with geologists, mining engineers, mineralogists, and other professionals. In the spring of 1948, the AEC began its search for domestic uranium.

Uranium Exploration By The United States

38. Between 1948 and 1956, the AEC pursued a broad program for the exploration of uranium in the western United States, including the Grants region of northwest New Mexico. The AEC was assisted in these exploration efforts by the USGS, which assigned more than 100 geologists and other experts to work with the AEC to search for uranium deposits. For several years, USGS personnel worked alongside AEC geologists and mining engineers at the AEC Grand Junction office. The AEC also employed members of the Navajo Nation as uranium prospectors.

39. The United States' uranium exploration program included: (a) withdrawal of hundreds of thousands of acres of public domain land for exploration purposes; (b) leasing of Indian trust, allotted, and reservation land for uranium exploration and uranium mining; (c) approval of surface use agreements for Indian trust land for use associated with uranium exploration and uranium mining; (d) geological studies of these lands; (e) physical exploration of these lands by means of drilling projects and extraction of ore samples; (f) airborne reconnaissance of these lands; and (g) publication of reports and other information to encourage private industry to become involved in uranium exploration and mining.

40. Between 1948 and 1956, the United States, through the AEC and the USGS, drilled millions of feet of exploratory and development holes in the western United States in its hunt for uranium, including on lands of the Navajo Nation in New Mexico.

41. Between 1949 and 1954, the United States, acting through the AEC and the U.S. Interior Department withdrew hundreds of thousands of acres of public domain land for uranium exploration purposes. When uranium was found, the AEC retained control over the land and executed mineral leases for the mining of the property. If no uranium was found, the land was returned to the public domain.

42. Between 1948 and 1958, AEC geologists and mining engineers undertook more than 7,500 preliminary examinations of radioactive occurrences in the United States. In 1966, approximately 7,700 of these reports were placed in "open files" for the public at AEC offices in Washington, D.C. and Grand Junction, and in approximately 21 locations where they were available for public inspection.

43. Between 1949 and 1956, the AEC commissioned and conducted airborne radiometric scanning of tens of thousands of square miles of potentially productive uranium

mining territory. Radiometric anomalies were posted every month at designated public places throughout the western United States to encourage further private sector uranium exploration, development, and mine production.

44. During this period, the AEC also developed new uranium-exploration technology at the electronic laboratory located at its Grand Junction office, including new and different techniques in the use of Geiger and scintillation counters, methods for gamma-ray logging and interpretation, a differential face scanner for in-place assaying in mines, and a gamma-only assay to determine effective disequilibrium. The AEC also provided private industry with facilities for calibrating their uranium exploration equipment.

45. Between 1950 and 1958, in conjunction with the U.S. Bureau of Public Roads, the AEC initiated an access road program to facilitate access to uranium prospecting locations and to facilitate transport of uranium ore from mines to processing facilities. In total, over 1,200 miles of roads in the western United States were built or improved through the AEC's program.

The United States' Purchase Of Uranium Ores And Concentrates

46. Between 1948 and 1958, the United States issued a number of "Circulars" providing various types of incentives for private industry to engage in uranium exploration, production, and sales to the United States. These incentives included guaranteed ore prices, haulage and mine development allowances, production bonuses, and grade premium allowances.

47. The United States established ore-buying stations throughout the western United States in areas where it appeared that there was uranium production potential sufficient to support a uranium processing mill. When a mill was built to process uranium ore in an area, the AEC would close its ore-buying station in that area and sell its accumulated stockpiles of ore to the mill for processing. One such AEC ore-buying station was located in Grants, New Mexico.

48. The AEC's uranium exploration program and its ore-buying stations were preliminary steps to the main objective of its raw materials program – the acquisition of uranium concentrates, or “yellow cake,” as it is commonly called. Between 1947 and 1960 the AEC entered into approximately 32 procurement contracts for the purchase of uranium concentrates.

49. The procurement contracts varied in their terms, but most provided for the construction of a uranium mill to be operated by the private contractor, and specified the particular uranium mines that could provide the raw materials for the mill. Such contracts also provided the required specifications for uranium concentrate, which was then delivered in steel drums to the AEC's Grand Junction office, where it was weighed, sampled, and assayed to determine the amount to be paid to the contractors under the terms of the applicable contracts.

50. The AEC also assisted its contractors with expertise on milling and processing uranium ore to produce uranium concentrate. Chief among these efforts was the development and operation of AEC ore-testing pilot plants in Grand Junction, which operated between 1953 and 1958.

51. The AEC pilot plants primarily focused on: (a) amenability testing of uranium ores provided by contractors or prospective contractors to obtain metallurgical and cost data; and (b) developing new methods of uranium processing that would permit accurate scale up to commercial plants. Often, representatives of private companies were invited to the AEC ore-testing pilot plants to observe the tests. The AEC's effort to improve the technology and economics of extracting uranium concentrate from uranium ore ended in 1958 after an expenditure of tens of millions of dollars. The AEC's contribution to advancement of these metallurgical processes was significant.

52. AEC's original practice was typically to negotiate individually with private contractors on a price for uranium oxide. In May 1956, the AEC announced that it would revise its domestic uranium procurement program for the period April 1962 through December 31, 1966. For that period, the AEC guaranteed a government market for uranium for 500 tons of uranium oxide from any one mining property, or purchase of a mining property's output at a flat rate of \$8.00 per pound of uranium concentrate.

53. In late 1957, this structure was revised due to dramatic increases in reported ore reserves and mill capacity. In its stead, the AEC initiated the "allocation" system for the period 1962 through 1966. A formal announcement in November 1958 gave official notice of the modification of the procurement program and the transition to the "allocation" system. Under this system, the AEC issued an allocation to eligible properties based on ore reserves developed prior to November 24, 1958 and, in some limited instances, based on production history.

54. The AEC issued a total of approximately 800 allocations. On properties for which the AEC issued an allocation, a specified amount of the unmined uranium ore was "allocated" to the AEC. The AEC was obligated to purchase the "allocated" ore as soon as it was mined.

55. The new "allocation system" allowed the United States to exercise significant control over the mining properties, and procurement contracts were re-written to accommodate the new "allocation system."

56. Under the "allocation system," it was necessary for the contracts to describe each separate mining property and to specify the number of pounds of uranium oxide that would be purchased from each property. An agreed-upon mill recovery factor was applied to translate the mining property's allocation of uranium ore to an appropriate quantity of uranium oxide. The

contracts also required AEC's approval of ore purchase agreements entered into by mill operators to make certain that mining property allocations were not being exceeded and that shortfalls were not being filled by ore from non-approved properties..

57. In May 1958, the AEC removed the legal prohibition on selling uranium concentrates to any entity other than the AEC. There was, however, no such market for private sales. From 1958 to 1962, written permission of the AEC was required for the sale of uranium concentrate to any entity other than the United States government. No such sales occurred. After April 1962, sales were allowed to any properly licensed buyer. As a practical matter, the United States provided the only viable market for domestic uranium from the 1940s through the 1960s.

58. In 1962, it was apparent that the private market for uranium concentrate would not be sufficient to sustain a viable domestic uranium industry by the end of 1966 when the AEC's program was scheduled to end. Thus, in November 1962, the AEC announced its "stretch out" program for 1967 through 1970.

59. Under the "stretch out" program, government contractors could voluntarily defer a portion of their 1963-1966 contract commitments to the United States until 1967 or 1968 in exchange for a commitment by the United States to purchase an additional amount of uranium oxide, equal to the quantity deferred, in 1969 or 1970.

60. The United States' domestic uranium procurement program ended in 1970, with the last deliveries of uranium oxide to the United States taking place in late 1970 and early 1971.

61. From 1971 to 1975, there was essentially no viable domestic uranium market. Uranium prices fell, and many companies that previously had sold uranium to the United States

went out of business. The surviving mill operators produced uranium in substantially reduced quantities, mostly for future deliveries and for nuclear energy purposes.

History Of Uranium Mining In And Around The Navajo Nation

62. Following World War II and the establishment of the AEC, there was a renewed interest in mining in and around Navajo Nation lands in New Mexico and Arizona, due to the United States Government's demand for uranium for use in its nuclear weapons programs as well as due to the Government's policy goal to develop a domestic nuclear energy industry.

63. Some of the richest deposits of domestic uranium ore were located on lands on or around the Navajo Nation. Because the lands of the Navajo Nation were owned by the United States and held in trust for the Navajo Nation, the Bureau of Indian Affairs issued authorizations for uranium prospecting and mining on Navajo Nation lands. The Navajo Tribal Council typically was a signatory to these authorizations. For example, the Navajo Tribal Council passed a resolution on October 14, 1949 in support of uranium exploration and development on Navajo lands, and, in April 1951, the Bureau of Indian Affairs authorized the AEC and its contractors to investigate and explore for uranium ore deposits "on any part of the Navajo Indian Reservation."

64. Between 1944 and the early 1980s, many million tons of uranium ore were mined from numerous mines on property in and around the Navajo Nation. The vast majority of this uranium ore was sold, as ore or uranium concentrate, to the United States Government for use in the national defense, and for use by the emerging domestic nuclear energy industry.

Development of Uranium Mining and Processing by the United States in the Northern New Mexico Area

65. The programs put in place by the AEC to encourage and facilitate domestic production and processing of uranium ore were successful. The annual mining rate of uranium

ore in the western United States climbed steadily, with northern New Mexico becoming the top producing region in the nation by 1958.

66. In the early 1950s, the AEC opened an ore-buying station in Grants, New Mexico, about 50 miles from the eventual site of the NECR Mine. This station began receiving uranium ore on July 5, 1956. In the 1950s, private industry and the United States pursued exploration programs in the area near the eventual site of the NECR Mine.

67. On May 24, 1956, the AEC announced the establishment of a new domestic uranium buying program to contract to buy uranium during the period April 1, 1962, through December 31, 1966. The action was taken “in recognition of the need for a continuing Government market in order to maintain a high rate of exploration and development.” Under this program, the AEC entered into uranium purchase contracts with at least three private companies in the area of Grants, New Mexico. Phillips Petroleum Company (“Phillips”) and the AEC (Contract #AT (05-1)-737) signed a purchase contract on September 17, 1957. Under this contract, AEC agreed to purchase processed tons of uranium from a Phillips’ uranium processing mill to be built outside Grants, New Mexico.

Phillips Uranium Purchase Contract Acquired by UNC and Extended by the United States

68. In the early 1960s, UNC acquired the Phillips uranium purchase contract with the United States. Shortly thereafter, UNC began to also sell uranium to the AEC pursuant to the terms of that contract. The AEC then transferred the rights to process uranium from the Phillips’ processing mill in Grants, New Mexico to UNC.

69. On August 5, 1965, AEC signed a stretch-out contract with UNC to defer delivery of approximately 3,800,000 pounds of uranium oxide to the AEC. This contract was a modification to Contract # AT (05-1)-737 entered into by Phillips, UNC’s predecessor-in-interest,

and the AEC (the “1965 Contract”). Under the 1965 Contract, UNC had a choice of processing the ore in its own mill or through other mills.

Development of the NECR Mine in the 1960s on Government Land (Section 35)

70. The vast majority of the mine development and mining operations at the NECR Site occurred on land in Section 35, Township 17 North, Range 16 West, in McKinley County, New Mexico (“Section 35”). Section 35 is owned by the United States in trust for the Navajo Nation. The United States acquired Section 35 on May 14, 1929, from Santa Fe Railroad (“Santa Fe”) pursuant to federal statutory authorization enacted on May 29, 1928, 45 Stat. 883, 889. In this transaction, Santa Fe retained the rights to “all oil, gas, coal and minerals whatsoever . . .” upon or under the land in Section 35. Uranium was not identified as an expressly reserved mineral, nor was it perceived generally to have any commercial value in 1929.

71. To avoid any dispute about the “rights of entry” under the 1929 mineral reservation, the land in Section 35 which became the NECR Site was also subject to a “Surface Owner’s Agreement” between Santa Fe and the Navajo Tribe, which was approved and executed by the Chairman of the Navajo Tribal Council and the U.S. Department of the Interior, Bureau of Indian Affairs, on March 9, 1959, acting for the “Land Owner,” and approved by the Interior Department’s Solicitor for New Mexico. Under the Surface Owner’s Agreement it was agreed that the “Land Owner hereby confirms, extends, and grants to Santa Fe Pacific, its lessees, licensees, successors and assigns, the rights to enter upon the described premises and to prospect for, mine, store and remove uranium and associated minerals using any means or methods of mining. . . .” The Surface Owner’s Agreement, *inter alia*, authorized the construction and maintenance of any and all “appurtenances, or facilities . . . necessary or convenient in

prospecting for and developing, producing, storing, transporting and marketing uranium and associated minerals produced from any portion of the described premises” in return for a two-percent royalty on the value of all uranium ore produced from the premises. The Surface Owner’s Agreement further allowed for the mining and removal of uranium minerals and the “right to use so much of the surface of said lands as may be necessary and convenient” The United States negotiated for and obtained a two percent royalty interest on the economic value of uranium produced from the lands in Section 35 where the NECR Mine was located. The United States expressly acknowledged, understood, and approved the use of the NECR Site for the purpose of uranium mining and for all other facilities necessary or convenient for prospecting, developing, and producing uranium, and it knew and specifically intended that the activities would result in waste rock and soil disposal at the NECR Site. In the 1959 Surface Owner’s Agreement, the United States imposed no mine reclamation obligations on the mine operators.

72. On December 1, 1967, UNC acquired the mining rights on Section 35 from Santa Fe, which rights included Santa Fe’s March 9, 1959 Surface Owner’s Agreement with the United States and the Navajo Nation. Prior to this date, UNC had acquired rights to a uranium mineral lease dated July 25, 1957, between Santa Fe and Phillips Petroleum Company pertaining to the same premises, which enabled UNC to carry out extensive mineral exploration drilling activities on Section 35 in 1962 that led to the discovery of substantial uranium ore.

AEC Agrees to Buy Uranium from the NECR Mine on Section 35

73. After lengthy negotiations with UNC, the United States agreed to allow UNC to develop the NECR Mine on its land to fulfill its uranium purchase contract with the AEC. The modification of the uranium purchase (*i.e.*, the 1965 Contract), as noted, was signed between UNC and the AEC on August 5, 1965. The 1965 Contract specifically identified the land from

which the United States agreed to obtain the uranium that the United States would purchase. The section of the 1965 Contract entitled "Mining Properties and Ore Producers" identified "[t]he properties and ore producers" from which the United States would purchase ores to be mined and processed by UNC under the 1965 Contract. Part 8 of Appendix A to the 1965 Contract described Section 35, Township 17 North, Range 16 West, *i.e.*, the land including the NECR Site, as land from which the uranium the United States agreed to buy could be mined.

74. In reliance on the AEC's commitment to purchase the processed uranium, by late 1967 UNC began to excavate and develop the NECR Mine on the land owned by the United States. At the time of this excavation and development, the United States knew that: (a) it had agreed that UNC could develop the NECR Mine on the land the United States owned on Section 35; (b) UNC expected to deliver uranium from the NECR Mine to the United States pursuant to the 1965 Contract; and (c) the United States was UNC's sole customer for uranium produced at the NECR Mine. But for this 1965 purchase agreement and consent by the United States, and the March 9, 1959 Surface Use Agreement executed by the U.S. Bureau of Indian Affairs and the Navajo Tribe, UNC could not have developed the NECR Mine.

75. To further facilitate the development of the NECR Mine, in about 1968, the United States, through the Federal Economic Development Administration, provided a \$1.783 million grant to build a road from Church Rock to the UNC's new NECR Mine, as reported in the U.S. Bureau of Mines' *Minerals Yearbook 1968* at 526-527.

76. The NECR Mine workings, now closed, consisted of two shafts: shaft number 1 was located in the Northeast 1/4 of Section 35, Township 17 North, Range 16 West; shaft number 2 was located in the Southwest 1/4 of Section 35, Township 17 North, Range 16 West. Ore was mined by underground methods from Sections 34 and 35, Township 17 North, Range 16

West, as well as from Section 3, Township 16 North, Range 16 West, but the surface workings (*i.e.*, the other facilities necessary or convenient for prospecting, developing, and producing uranium as described above in paragraph 71) are all located on the land owned by the United States in Section 35.

77. Production from the NECR Mine began by January 1969 with mining in drifts off of shaft number 1. Mining of these drifts continued through 1969. Thereafter, production was suspended and development of the NECR Mine continued. Production from the NECR Mine resumed in 1972 and continued until 1982, when the mine was shut down. During the 1972-1982 period, the uranium produced was sold to nuclear power plant operators for domestic energy production, as the AEC had intended.

The United States Knew and Specifically Intended That Mining Operations at the NECR Mine Would Result in the Disposal of Waste Rock and Soil Containing Radionuclides that the United States Now Says Justify the Cost of Removal

78. The NECR Mine is one of many mines developed under the AEC's program to encourage and develop the uranium market in the United States. In 1959, when the Bureau of Indian Affairs expressly authorized uranium mining on the land that became the NECR Site and in 1965 when the modification of the UNC's purchase contract with the AEC was signed in 1965, the United States knew and specifically intended that the development and operation of the NECR Mine would result in the generation and release of waste rock and soil containing radionuclides. As early as 1960, the Interior Department's Bureau of Mines published the following findings about radiation hazards from uranium minerals:

Radioactive materials emit energy that can damage living tissue. . . . Some elements such as uranium, thorium, and radium, are naturally radioactive. . . . Potential danger of exposure to radiation has become a major concern to the public. Military and civilian atomic energy use, along with the great increase in production and processing uranium ores, introduced new sources

of radioactive materials into man's environment. [U.S. Bureau of Mines, *Mineral Facts and Problems*, 1960 Edition, Bulletin 585 at 925 (1960).]

79. After three years on standby status following its shut down in 1982, the NECR Mine was closed permanently in 1985. Beginning in 1984, UNC performed reclamation of the mine and ventilation holes (in January and February 1984) and undertook various other closure activities: dismantling much of the mine; surfacing the structure; installing concrete caps on mining openings; and clean-up of uranium tailings. UNC undertook other closure activities in 1994. It hauled away and buried debris and trash in May 1994. UNC cemented underground workings and supply holes in March 1994. In April 1994, UNC filled ventilation hole #5 and compacted it with natural soil. From June to August 1994, UNC re-contoured and placed soil cover in the area of ventilation hole numbers 3, 8 and 10, as well as the canyon pole and canyon areas, which were subsequently seeded and mulched in September 1994. UNC also placed riprap (rocks used for erosion/drainage control) in the canyon drainage areas around this time. Thereafter, the NRC inspected and verified the completion of the NRC closure activities and concluded that UNC had adequately removed NRC regulated soil and other materials from the NECR Site. Specifically, on October 31, 1989, NRC found in a Memorandum by NRC Project Manager, Peter J. Garcia entitled "CLEANUP OF TAILINGS AT THE NORTHEAST CHURCH ROCK MINE," that: "UNC has adequately removed remaining byproduct material from the mine site. No further action is therefore necessary."

The USEPA Response Actions Under CERCLA

80. In early 2005, the Navajo Nation identified the NECR Site as a top priority for further investigation and cleanup. In November 2005, USEPA agreed to become the lead agency for this purpose. In September 2006, UNC entered into an Administrative Order on

Consent with USEPA, which directed UNC to conduct a Remedial Site Evaluation (“RSE”) at the NECR Site.

81. As part of the RSE, UNC conducted surveys and took soil samples to determine levels of radionuclides at the NECR Site. At USEPA’s direction, a field screening level was set at 2.24/picoCuries per gram (pCi/g), a level that is at or near natural background levels for rock and soil in this vicinity. .

82. On April 27, 2007, USEPA issued a Unilateral Administrative Order (UAO) to UNC requiring UNC to, among other things, remove and dispose of soils from around several home sites near the NECR Site. Despite UNC’s objections, but to comply with the UAO, UNC trucked these soils from the NECR Site to a facility in Grandview, Idaho, after USEPA rejected all alternative disposal options proposed by UNC

83. On May 30, 2009, USEPA issued an Engineering Evaluation and Cost Analysis (EE/CA) report on the NECR Site and surrounding area. USEPA has stated that it will select removal or remediation alternatives from those proposed in the EE/CA. Based on these alternatives, USEPA may order extensive and costly removal of waste rock and soil from the NECR Site and adjacent areas and USEPA may order costly disposal of this material at offsite disposal areas.

84. On July 24, 2009, USEPA entered into an Administrative Order on Consent with UNC and GE, arising from Plaintiffs’ request to volunteer to perform an interim removal action for the NECR Site to address any concerns about soils that may be blown off the site by wind onto a nearby portion of the reservation. UNC and GE carried out the interim removal action under USEPA’s direction.

85. The NECR Site now consists of a number of areas where soil and rock have been spread or piled. This waste rock or “overburden” was extracted as part of the mining process, but

does not contain economic amounts of uranium. Typically, mine closure consists of consolidating and capping the overburden on-site and reestablishing native vegetation. For the NECR Site, however, USEPA has indicated that it is likely to require UNC to depart from normal closure requirements. Instead, USEPA has proposed to require UNC to remove soil and waste rock to other areas due to the presence of radionuclide levels in excess of a standard of 2.24 pCi/g, which is at or close to natural background materials for soil and rock in this area.

86. Such low levels of radioactivity generally have not required offsite removal of waste rock and soil overburden for other closed uranium mines regulated by other federal and state environmental agencies. Many closed uranium mines exist in the area of the NECR Site. None have been subject to the standards for remediation or removal applied by USEPA here.

87. USEPA's May 2009 EE/CA estimates that the CERCLA response alternatives for the NECR Site may range from \$25.8 million to \$293.6 million, depending on which removal action alternative is selected. The total response costs incurred and to be incurred at the NECR Site may be in excess of those sums.

88. UNC and GE have performed substantial additional response actions at the NECR Site since May 2009, working with federal regulatory agencies and the Navajo Nation, and continue to do so.

89. GE is a "person" within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

90. UNC is a "person" within the meaning of section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

91. The United States is a "person" within the meaning of CERCLA section 101(21). 42 U.S.C. § 9601(21).

92. The United States is liable under CERCLA to the same extent as any nongovernmental entity, pursuant to section 120(a) of CERCLA, 42 U.S.C. § 9620(a).

93. The NECR Site is a “facility” within the meaning of section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

94. Radionuclides are “hazardous substances” within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

95. Radionuclides also are listed as “hazardous substances” in regulations found at 40 C.F.R. § 302.4.

96. “Hazardous substances” within the meaning of CERCLA section 101(14) were disposed of at the NECR Site. 42 U.S.C. § 9601(14).

97. There have been “releases” or threatened “releases” as defined in CERCLA section 101(22), 42 U.S.C. § 9601(22), of hazardous substances into the environment at the NECR Site.

98. The United States knew and specifically intended that the generation and disposal of soil and waste rock containing radionuclides would result at the NECR Site.

99. The costs incurred by the Plaintiffs to date in response to the release and threatened release of hazardous substances at the NECR Site are “necessary costs of response” and are consistent with the NCP, according to the USEPA.

STATUTORY NOTICE

100. A copy of this Complaint has been provided to the Attorney General of the United States and to the Administrator of USEPA, as required by section 113(l) of CERCLA, 42 U.S.C. § 9613(l).

FIRST CLAIM FOR RELIEF

(Asserted By General Electric Company)

CERCLA Cost Recovery Under Sections 107(a)(1), (2), (4)(B),
42 U.S.C. §§ 9607(a)(1), (2), (4)(B) – Owner Liability

101. GE hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 100.

102. CERCLA section 107(a) imposes liability upon any person who currently owns, or who at the time of disposal of any hazardous substances owned, any facility where such hazardous substances were disposed of. 42 U.S.C. § 9607(a)(1), (2).

103. The United States currently owns the NECR Site and owned it at the time hazardous substances were disposed of at that facility.

104. The United States is liable to GE under CERCLA section 107(a), 42 U.S.C. § 9607(a), for all response costs incurred by GE in connection with the NECR Site.

SECOND CLAIM FOR RELIEF

(Asserted By General Electric Company)

CERCLA Cost Recovery Under Sections 107(a)(3), (4)(B),
42 U.S.C. §§ 9607(a)(3), (4)(B) – Arranger Liability

105. GE hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 100.

106. CERCLA section 107(a) imposes liability upon any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances. 42 U.S.C. § 9607(a)(3).

107. The United States arranged for the disposal of hazardous substances at the NECR Site.

108. The United States is liable to GE under CERCLA section 107(a), 42 U.S.C. § 9607(a), for all response costs incurred by GE in connection with the NECR Site.

THIRD CLAIM FOR RELIEF
(Asserted By General Electric Company)
CERCLA Cost Recovery Under Section 113(f)(1),
42 U.S.C. § 9613(f)(1) – Contribution

109. GE hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 100.

110. CERCLA section 113(f)(1) provides any person with a right of contribution from any other potentially responsible party under CERCLA section 107(a) during or following any civil action under CERCLA sections 106 or 107(a). 42 U.S.C. § 9613(f)(1).

111. The United States is responsible for the costs of removal and remediation and other response costs at the NECR Site as the owner of the NECR Site and/or as an arranger for the disposal of hazardous substances at the NECR Site.

112. The United States is liable to GE in contribution for all response costs incurred by GE in connection with the NECR Site.

FOURTH CLAIM FOR RELIEF
(Asserted By General Electric Company)
CERCLA Declaratory Judgment Under Section 113(g)(2),
42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201 – Declaratory Judgment

113. GE hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 108.

114. CERCLA section 113(g)(2) provides that in any action brought under section 107(a) of CERCLA, the person bringing the action may seek a declaration of liability that will be

binding on any future action for response costs as defined under CERCLA sections 101(23)-25). 42 U.S.C. § 9613(g)(2).

115. An actual and substantial controversy exists between GE and the United States concerning the United States' obligation to reimburse GE for environmental response costs and other expenses that GE will incur in the future to remediate hazardous substances at the NECR Site. GE's future costs are neither remote nor speculative.

116. Absent a judicial declaration setting forth the parties' rights, duties, and obligations with respect to such costs, multiple legal actions may result.

117. GE is entitled to a declaratory judgment pursuant to CERCLA section 113(g)(2) that requires the United States to reimburse GE for all necessary response costs to be incurred by GE in the future in connection with the NECR Site.

FIFTH CLAIM FOR RELIEF

(Asserted By United Nuclear Corporation)

CERCLA Cost Recovery Under Sections 107(a)(1), (2), (4)(B),
42 U.S.C. §§ 9607(a)(1), (2), (4)(B) – Owner Liability

118. UNC hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 100.

119. CERCLA section 107(a) imposes liability upon any person who currently owns, or who at the time of disposal of any hazardous substances, owned any facility where such hazardous substances were disposed of. 42 U.S.C. § 9607(a)(1), (2).

120. The United States currently owns the NECR Site and owned it at the time hazardous substances were disposed of at that facility.

121. The United States is liable to UNC under CERCLA section 107(a), 42 U.S.C. § 9607(a)(2), for all response costs incurred by UNC in connection with the NECR Site.

SIXTH CLAIM FOR RELIEF

(Asserted By United Nuclear Corporation)

CERCLA Cost Recovery Under Sections 107(a)(3), (4)(B),
42 U.S.C. §§ 9607(a)(3), (4)(B) – Arranger Liability

122. UNC hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 100.

123. CERCLA section 107(a) imposes liability upon any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances. 42 U.S.C. § 9607(a)(3).

124. The United States arranged for the disposal of hazardous substances at the NECR Site.

125. The United States is liable to UNC under CERCLA section 107(a), 42 U.S.C. § 9607(a), for all response costs incurred by UNC in connection with the NECR Site.

SEVENTH CLAIM FOR RELIEF

(Asserted By United Nuclear Corporation)

CERCLA Cost Recovery Under Section 113(f)(1),
42 U.S.C. § 9613(f)(1) – Contribution

126. UNC hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 100.

127. CERCLA section 113(f) provides any person with a right of contribution from any other potentially responsible party under CERCLA section 107(a) during or following any civil action under CERCLA sections 106 or 107(a). 42 U.S.C. § 9613(f)(1).

128. The United States is responsible for the costs of removal and remediation and other response costs at the NECR Site as the owner of lands at the NECR Site and/or as an arranger for the disposal of hazardous substances at the NECR Site.

129. The United States is liable to UNC in contribution for all response costs incurred by UNC in connection with the NECR Site.

EIGHTH CLAIM FOR RELIEF

(Asserted By United Nuclear Corporation)

CERCLA Cost Recovery Under Section 113(g)(2),
42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201 – Declaratory Judgment

130. UNC hereby re-alleges and incorporates herein the allegations in Paragraphs 1 through 100 and Paragraphs 118 through 125.

131. CERCLA section 113(g)(2) provides that any person may seek a declaration of liability for response costs as defined under CERCLA sections 101(23)-(25). 42 U.S.C. § 9613(g)(2); 42 U.S.C. §§ 9601(23)-(25).

132. An actual and substantial controversy exists between UNC and the United States concerning the United States' obligation to reimburse and/or indemnify UNC for environmental response costs and other expenses that UNC will incur in the future to remediate hazardous substances at the NECR Site that are the subject of this action. UNC's future costs are neither remote nor speculative.

133. Absent a judicial declaration setting forth the parties' rights, duties, and obligations with respect to such costs, multiple legal actions may result.

134. UNC is entitled to a declaratory judgment pursuant to CERCLA section 113(g)(2) that requires the United States to reimburse UNC for all necessary response costs to be incurred by UNC in the future in connection with the NECR Site.

PRAYER FOR RELIEF

WHEREFORE, GE requests the following relief:

(a) Enter judgment pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in favor of GE and against the United States for all recoverable past response costs incurred and to be incurred by GE at the NECR Site (excepting any costs not recoverable as a result of the September 2006 Administrative Order on Consent referenced above), together with prejudgment interest accruing through the date of judgment;

(b) Enter judgment pursuant to section 113 of CERCLA, 42 U.S.C. § 9613, in favor of GE and against the United States, for the United States' equitable share of response costs already incurred and to be incurred by GE in connection with the NECR Site, with interest, as allowed by law; and

(c) Enter a declaratory judgment on liability, pursuant to section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201 in favor of GE and against the United States that will be binding on any subsequent actions to recover responses costs incurred by GE in connection with the NECR Site, with interest, as allowed by law; and

(d) Attorneys' fees and costs, as allowed by law; and

(e) Such other and further relief in favor of GE and against the United States as the Court deems just and proper.

WHEREFORE, UNC requests the following relief:

(a) Enter judgment pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in favor of UNC and against the United States in the amount of all recoverable past response costs incurred by UNC at the NECR Site (excepting any costs not recoverable as a result of the September 2006 Administrative Order on Consent referenced above), together with prejudgment interest accruing through the date of judgment;

(b) Enter judgment pursuant to section 113 of CERCLA, 42 U.S.C. § 9613, in favor of UNC and against the United States, for the United States' equitable share of response costs already incurred and to be incurred by UNC in connection with the NECR Site, with interest, as allowed by law; and

(c) Enter a declaratory judgment on liability pursuant to section 113 of CERCLA, 42 U.S.C. § 9613, and 28 U.S.C. § 2201, in favor of UNC and against the United States that will be binding on any subsequent actions to recover responses costs incurred by UNC in connection with the NECR Site; and

(d) Attorneys' fees and costs, as allowed by law; and

(e) Such other and further relief in favor of UNC and against the United States as the Court deems just and proper.

Dated: April 26, 2010

Respectfully submitted,

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