

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:
U.S. Department of Energy

ASLBP No. 09-892-HLW-CAB-04
May 17, 2010

(License Application For Geologic
Repository at Yucca Mountain)

Docket No. 63-001-HLW

REPLY TO DOE MOTION TO WITHDRAW LICENSE APPLICATION

Under the authority of CFR 10 § 2.107¹ the Department of Energy filed a Motion to Withdraw its license application to construct a permanent geologic disposal facility in Nevada at Yucca Mountain.

The issues raised by the Motion are: a) whether DOE is legally entitled to the relief requested, and b) whether DOE is factually entitled to the relief requested. If DOE lacks either entitlement, the Motion must fail. This reply will take up each question in turn and propose answers to guide the NRC in its resolution of the Motion.

QUESTION A: Whether DOE is legally entitled to the relief requested?

Answer: No. CFR 10 § 2.107 is a procedural rule permitting generally the filing of Motions to Withdraw licenses in licensing proceedings but which is inapplicable in this case because CFR 10 § 2.107 was not a legislative regulation passed pursuant to

¹ § 2.107 Withdrawal of application.

(a) The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. If the application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

(b) The withdrawal of an application does not authorize the removal of any document from the files of the Commission.

(c) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the Federal Register a notice of the withdrawal of an application if notice of receipt of the application has been previously published.

the Nuclear Waste Policy Act as amended and withdrawal of the HLW license is contrary to the plain language of the Act.

The Nuclear Waste Policy Act is a public law passed in 1983 in which Congress laid out federal plans for long-term geologic disposal facility of high level nuclear waste (HLW). The NWPA was amended in 1987 ultimately resulting in a designation by the Secretary of Energy and Resolution by the President establishing Yucca Mountain as the site for the High Level Waste disposal facility.

NWPA states that “In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility . . .”. Public Law 97-425, § 141(c)(2). This language requires the Nuclear Regulatory Commission to **assume** the need for the facility.

In its Motion to Withdraw the License Application, the DOE noted “Yucca Mountain is not a workable option . . .” for high level waste disposal. The Nuclear Waste Policy Act provides a mechanism for the Secretary of the Department of Energy to withdraw Yucca Mountain as an unsuitable site during the site characterization stage:

- (3) If the Secretary at any time determines the Yucca Mountain site to be unsuitable for development as a repository, the Secretary shall--
 - (A) terminate all site characterization activities at such site;
 - (B) notify the Congress, the Governor and legislature of Nevada of such termination and the reasons for such termination;
 - (C) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable;
 - (D) take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities at such site;
 - (E) suspend all future benefits payments under subtitle F [[42 USCS §§ 10173](#) et seq.] with respect to such site; and
 - (F) report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

However, the site characterization phase of this proceeding was subsequently changed by Congress in the 1987 Nuclear Waste Policy Amendment Act and other sites were eliminated from the analysis:

10 CFR 963.11

§ 963.11 Suitability determination.

DOE will evaluate whether the Yucca Mountain site is suitable for the location of a geologic repository on the basis of the preclosure and postclosure determinations described in §§ 963.12 and 963.15. If DOE's evaluation of the Yucca Mountain site for the location of a geologic repository under §§ 963.12 and 963.15 shows that the geologic repository is likely to meet the applicable radiation protection standards for the preclosure and postclosure periods, then DOE may determine that the site is a suitable location for the development of such a repository.

42 USCS § 10172

§ 10172. Selection of Yucca Mountain site

(a) In general.

(1) The Secretary shall provide for an orderly phase-out of site specific activities at all candidate sites other than the Yucca Mountain site.

(2) The Secretary shall terminate all site specific activities (other than reclamation activities) at all candidate sites, other than the Yucca Mountain site, within 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987].

(b) Eligibility to enter into benefits agreement. Effective on the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 [enacted Dec. 22, 1987], the State of Nevada shall be eligible to enter into a benefits agreement with the Secretary under section 170 [[42 USCS § 10173](#)].

As a result of the Amendments to the NWPA in 1987² the site selection process was changed by Congressional action allowing the Secretary of Energy to recommend Yucca Mountain to the President and the President to designate the site. Nevada had the power to object to the determination and Nevada notified Congress of its disapproval of the site. Nevada's objection was overridden by Congressional action and the override has been upheld as a valid exercise of Congressional power.³ This

² Nuclear Waste Policy Amendments Act of 1987, Title V, Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 160 (codified at [42 U.S.C. 10101-10175](#) (1988)).

³ EPA vs. Environmental Defense Fund, *infra*.

override of state disapproval by Congressional override was criticized in the Virginia Law Review article by James Davenport, THE FEDERAL STRUCTURE: CAN CONGRESS COMMANDEER NEVADA TO PARTICIPATE IN ITS FEDERAL HIGH LEVEL WASTE DISPOSAL PROGRAM? 12 Va. Env'tl. L.J. 539, Summer 1993, but the U.S. Supreme Court has not addressed this critique.

The NRC is now invited to participate in the debate arising out of the Nuclear Waste Policy Amendment Act and determine, again, whether a past Congress and a past President have the authority to enact a law which sites a waste disposal facility at Yucca Mountain. It may not be immediately apparent that DOE's Motion to Withdraw raises this debate but a simple analysis reveals the truth in this assertion. President Obama has objected to the federal selection of Yucca Mountain as the disposal site. Through his budget and his Secretary, and DOE's Motion, President Obama has said "Yucca Mountain is no longer an option."

If Congressional resolution, properly signed into law by President Bush in July 2002, sites a disposal facility in Nevada without Nevada's concurrence, does the NWPA and the law generally allow the Department of Energy to veto the previous legal acts, eight years later by withdrawing its license application or is the Motion to Withdraw *ultra vires*?

Some may argue the decision to withdraw the license application is only a procedural matter pursued under NRC's hearing rules. But, this argument is form over substance. The effect of the DOE motion is to withdraw Yucca Mountain as a disposal site and undo the Nuclear Waste Policy Amendment Act. A disposal site at Yucca Mountain was exactly what two branches of government enacted in 1987 with the Nuclear Waste Policy Amendment Act and subsequent resolutions in July

2002 when President Bush approved the DOE's designation of Yucca Mountain as the proper disposal facility location. If Congress and the President acted, can those actions be changed now?

Let us assume the following illustration: the current President determined that despite the site designation lawfully made in 2002 he wanted Alaska to be the disposal site being angry that Sarah Palin made rude comments during his campaign. Does the President have the power to make Alaska the new facility by executive fiat? The obvious answer is of course not, the President, despite his many powers, lacks the authority to unilaterally ignore current law, lawfully enacted by a prior Congress and President. Congress has been given the power over U.S. property. One would point to a history of Presidential power exercise to see that the executive carries out the laws passed by Congress. Any executive action which contravenes the law of the land is beyond executive power. If the President cannot designate Alaska as a storage facility due to an absence of constitutional authority does it follow he cannot undo the law of the land by ignoring it?

Whether a President has the power to ignore or can be forced to obey the law depends upon the nature of the act required. As early a case as *Marbury v. Madison* disclosed that only certain kinds of acts are subject to enforcement by a judicial branch of government: discretionary acts cannot be enforced by courts; ministerial acts can be enforced by courts. *Marbury vs. Madison* involved persons' rights to judicial commissions signed by a previous administration (President Adams) but never delivered by the subsequent administration and in fact blocked by executive order (President Jefferson). Chief Justice Marshall delivered the opinion of the

Supreme Court deciding the deprived had a right to the commission but the Supreme Court lacked the power to grant relief.

Similarly, the NRC, a quasi-judicial body must decide if the submission of the license was a ministerial act and subject to NRC proceedings with the potential result that the withdrawal of the same license would be a violation of that ministerial duty. Having determined that question, the NRC must then determine whether the NRC has the power to enforce performance, or block non-performance, of the duty.

Additionally, the NRC must decide whether they have the power to even consider the withdrawal of the license or whether that determination must be left to the judicial branch of government?

QUESTION 1: WAS THE LICENSE APPLICATION SUBMISSION MINISTERIAL OR DISCRETIONARY AFTER THE JULY 2002 RESOLUTION?

Once Congress, the Secretary of Energy and the President designated Yucca Mountain as the location for a disposal facility, DOE was obligated to submit the license application. The terms of the NWPA required DOE to submit the application and required the NRC to determine if the site met the requirements of the NWPA. After site-characterization was completed, the Secretary of the DOE recommended the site to the President as provided by law, and prepared an Environmental Impact Statement ⁴ pursuant to the National Environmental Policy Act as amended in 1987.⁵ After the President approved the site in July 2002, the Governor of Nevada and any affected Indian Tribe had an opportunity to submit a Notice of

⁴ 42 USC § 10134 (a)(1)(D).

⁵ Id. §§4321-4370f.

Disapproval.⁶ The Notice of Disapproval was overridden by Congress and the site selection duties described in the statute were completed acts.⁷ The decision about the ultimate suitability of the site is no longer in the hands of the DOE, that decision (ultimate suitability) now resides with NRC.⁸

The DOE license submittal act is ministerial under the verbage of the NWPA; the NRC license decision is ministerial; the substance of the license decision is discretionary under the verbage of the NWPA.

If the DOE license submittal was ministerial, is it possible the withdrawal remains within DOE's power? No, the power legally to undo what one was required by law to do nullifies the ministerial act. "To what purpose are powers limited, and to what purpose is that limitation committed to writing; if these limits may, at any time, be passed [over] by those intended to be restrained?" *Marbury vs. Madison*, 5 U.S. 137, 176. The President, acting through its Department of Energy, is "passing over" a duty the executive is required by the Nuclear Waste Policy Act to perform. Congress has the power to determine uses of federal property under the Property Clause of the United States Constitution.⁹ Having made the determination that

⁶ Id. § 10135(b).

⁷ *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted by the Governor of the State [***142] of Nevada on April 8, 2002.

Pub. L. No. 107-200, 116 Stat. 735 (2002).

⁸ . The Resolution affirmatively and finally approved the Yucca site for a repository, thus bringing the site-selection process to a conclusion. No determination as to the soundness of the administrative and executive actions leading up to the Resolution's enactment would undo the Resolution's binding effects. *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251; 362 U.S. App. D.C. 204 (2004)

⁹ The [Property Clause of the U.S. Constitution](#) provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." [U.S. CONST. art. IV, § 3, cl. 2](#). Under the Clause, "Congress exercises the powers both of a proprietor and of a legislature over the public domain." [Kleppe v. New Mexico](#), 426 U.S. 529, 540, 49 L. Ed. 2d 34, 96 S. Ct. 2285 (1976). Indeed, the Supreme Court has repeatedly declared that Congress's power

Yucca Mountain is the site for disposal pending the outcome of NRC's determination of ultimate suitability when measured against scientific standards, the matter is final.

QUESTION 2: CAN CFR 10 § 2.107 AUTHORIZE THE WITHDRAWAL OF THE LICENSE APPLICATION?

This question raises the issue of supremacy of statute over regulation. Regulations are passed by federal agencies to carry out the purposes of statutes enacted by Congress and are subject to rules to ensure purposes are not thwarted.

In analyzing a court's role when reviewing agency rules promulgated under statutory authority the Appeals Court noted:

we analyze . . . claim[s] under the two-part test of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984). See *United States v. Mead Corp.*, 533 U.S. 218, 226-27, 150 L. Ed. 2d 292, 121 S. Ct. 2164 (2001). [***40] Under *Chevron's* first step, we ask "whether Congress has directly spoken to the precise question at issue," for if "the intent of Congress is clear, that is the end of the matter.... The court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-43. If the statute is "silent or ambiguous with respect to the specific issue," we proceed to *Chevron's* second step, asking whether the agency's interpretation "is based on a permissible construction of the statute." *Id.* at 843. At this stage, although we defer to agency statutory interpretations, "our judicial function is neither rote nor meaningless," *Natural Res. Def. Council, Inc. v. Daley*, 341 U.S. App. D.C. 119, 209 F.3d 747, 752 (D.C. Cir. 2000), and we will reject an interpretation "that diverges from any realistic meaning of the statute," *id.* at 753 (quoting *Massachusetts v. United States DOT*, 320 U.S. App. D.C. 227, 93 F.3d 890, 893 (D.C. Cir. 1996)) (internal quotation marks omitted).
Nuclear Energy Inst., Inc. v. EPA, 373 F.3d 1251; 362 U.S. App. D.C. 204 (2004)

To mimic the court of appeals and Supreme Court analysis under *Chevron*, does a 2.107 license withdrawal involve a situation where Congress has clearly set out its intent in the Nuclear Waste Policy Act? As previously noted, Congress directed the Secretary of Energy to submit a license application and designated Yucca Mountain as the site for the facility. In the NWPA Congress noted that after

over federal lands is "without limitations." *Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 580, 94 L. Ed. 2d 577, 107 S. Ct. 1419 (1987) (quoting *Kleppe*, 426 U.S. at 539). *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251; 362 U.S. App. D.C. 204 (2004)

site characterization was completed the Secretary “shall submit a license application”. In the 1987 NWPAA Congress determined that Yucca Mountain was the appropriate place for the facility. Having performed these site selection acts, the Secretary now moves to withdraw the very license he was required to submit for the place he was required to submit it. When Congress has expressed its intent on a matter, the agency charged with carrying out its intent must give effect to the clearly expressed intent of Congress. *Chevron v. Natural Res. Def. Council*, [467 U.S. 837, 843 \(1984\)](#).

The Yucca Mountain situation is somewhat similar to *Morton v. Ruiz* in which the BIA decided who got benefits and who did not on the alleged basis of whether or not the individual lived on the reservation. After denying benefits to Ruiz because he did not live “on” the reservation, the Supreme Court determined there were several situations where Indians who did not live on the reservation received benefits and no rule existed that was consistently applied to make the benefits determination. The Supreme Court was very concerned that there was no consistent rules being applied when the BIA had the authority to make rules:

This agency power to make rules that affect substantial individual rights and obligations carries with it the responsibility not only to remain consistent with the governing legislation. *FMC v. Seatrain Lines, Inc.*, [411 U.S. 726 \(1973\)](#); *Dixon v. United States*, [381 U.S. 68, 74 \(1965\)](#); *Brannan v. Stark*, [342 U.S. 451 \(1952\)](#), but also to employ procedures that conform to the law. See *NLRB v. Wyman-Gordon Co.*, [394 U.S. 759, 764 \(1969\)](#) (plurality opinion). No matter how rational or consistent with congressional intent a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds. *Morton v. Ruiz*, [415 U.S. 199 \(1974\)](#)

In the Yucca Mountain case, we have an agency designated by Congress to license a high level waste disposal facility at Yucca Mountain that suddenly decides to stop the project. As in the BIA case above, nothing in the regulations passed by the DOE regarding the HLW licensing proceeding carry out a clearly expressed

Congressional intent to halt licensing on the contrary, clear intent is shown to license.

Some may argue this situation is more like the *Chevron* case in which the Supreme Court created specific rules that agency regulations may be measured against. However, in *Chevron*, the Supreme Court noted:

While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices - resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.

CHEVRON U.S. A. v. NATURAL RES. DEF. COUNCIL, 467 U.S. 837, 865-866 (1984).

Congress was in no quandary here; Congress did not dither about, having a difficult time deciding between competing locations for the disposal site. On the contrary, Congress, in the 1987 NWPA clearly stated its intent: Yucca Mountain was the chosen site. A determination with which the current administration (not Congress) appears to disagree.

QUESTION 3: ARE THERE STRUCTURAL OR CONTENT CLUES IN THE NUCLEAR WASTE POLICY ACT THAT SUGGEST CONGRESS CONTEMPLATED A WITHDRAWAL OF THE LICENSE APPLICATION AFTER SUBMISSION?

Does the structure and content of the Nuclear Waste Policy Act contemplate such a change of course where the plain language of the act does not directly forbid withdrawal of the license? Clearly not, the Nuclear Waste Policy Act in its current format continues to name Yucca Mountain as the source for a deep geologic repository of nuclear waste. Congress did not hesitate to make the designation in the face of competing political interest in 1987 through 2002. Since making that designation, Congress has had nine years to change the format for designating another site and has not done so. It is significant that in the 1987 amendments

Congress removed all other sites from consideration, yet left Yucca Mountain as the sole remaining site. The structure and content of the NWPA and amendments discloses that Congress has steadily moved from considering multiple sites, then to three sites, then Congress focused on a single site: Yucca Mountain. During the intervening years to the present, Congress has never waived in that choice.

Part 63 of 10 CFR contemplates specific rules just for Yucca Mountain, indeed, the definitions section in 63.2 specifically contemplates construction at Yucca Mountain, Nevada.¹⁰ It is the duty of the presiding officer to conduct the hearings according to law.¹¹ Clearly rule 2.107 is a rule of general application which

¹⁰ Barrier means any material, structure, or feature that, for a period to be determined by NRC, prevents or substantially reduces the rate of movement of water or radionuclides from the Yucca Mountain repository to the accessible environment, or prevents the release or substantially reduces the release rate of radionuclides from the **waste**. For example, a barrier may be a geologic feature, an engineered structure, a canister, a **waste** form with physical and chemical characteristics that significantly decrease the mobility of radionuclides, or a material placed over and around the **waste**, provided that the material substantially delays movement of water or radionuclides. Commencement of construction means clearing of land, surface or subsurface excavation, or other substantial action that would adversely affect the environment of a site. It does not include changes desirable for the temporary use of the land for public recreational uses, site characterization activities, other preconstruction monitoring and investigation necessary to establish background information related to the suitability of the Yucca Mountain site or to the protection of environmental values, or procurement or manufacture of components of the geologic repository operations area.

¹¹ § 2.319 Power of the presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order. The presiding officer has all the powers necessary to those ends, including the powers to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law, including subpoenas requested by a participant for the attendance and testimony of witnesses or the production of evidence upon the requestor's showing of general relevance and reasonable scope of the evidence sought;
- (c) Consolidate parties and proceedings in accordance with §§ 2.316 and 2.317 and/or direct that common interests be represented by a single spokesperson;
- (d) Rule on offers of proof and receive evidence. In proceedings under this part, strict rules of evidence do not apply to written submissions. However, the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative.
- (e) Restrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments;
- (f) Order depositions to be taken as appropriate;

applies to all types of licenses, not necessarily to the unique circumstances of the Yucca Mountain repository.¹² The rule relied upon by the DOE does not fall within Subpart J, licensing of Yucca Mountain and are not contemplated within the NWPA or the NWPAA.¹³

QUESTION B. ARE THERE FACTUAL IMPEDIMENTS TO DOE'S MOTION TO WITHDRAW THE LICENSE? YES. DOE has alleged no facts, scientific or otherwise, that would interfere with licensing the Yucca Mountain facility.

As a rationale for DOE's entitlement to withdraw, DOE cited the President's determination that Yucca Mountain disposal is not an appropriate disposal site.

- (g) Regulate the course of the hearing and the conduct of participants;
- (h) Dispose of procedural requests or similar matters;
- (i) Examine witnesses;
- (j) Hold conferences before or during the hearing for settlement, simplification of contentions, or any other proper purpose;
- (k) Set reasonable schedules for the conduct of the proceeding and take actions reasonably calculated to maintain overall schedules;
- (l) Certify questions to the Commission for its determination, either in the presiding officer's discretion, or on motion of a party or on direction of the Commission;
- (m) Reopen a proceeding for the receipt of further evidence at any time before the initial decision;
- (n) Appoint special assistants from the Atomic Safety and Licensing Board Panel under § 2.322;
- (o) Issue initial decisions as provided in this part;
- (p) Dispose of motions by written order or by oral ruling during the course of a hearing or prehearing conference. The presiding officer should ensure that parties not present for the oral ruling are notified promptly of the ruling;
- (q) Issue orders necessary to carry out the presiding officer's duties and responsibilities under this part; and
- (r) Take any other action consistent with the Act, this chapter, and [5 U.S.C. 551-558](#).

¹² § 2.100 Scope of subpart.

This subpart prescribes the procedure for issuance of a license; amendment of a license at the request of the licensee; transfer and renewal of a license; and issuance of a standard design approval under subpart E of part 52 of this chapter.

¹³ § 2.2 Subparts.

Each subpart other than subpart C of this part sets forth special rules applicable to the type of proceeding described in the first section of that subpart. Subpart C sets forth general rules applicable to all types of proceedings except rulemaking, and should be read in conjunction with the subpart governing a particular proceeding. Subpart I of this part sets forth special procedures to be followed in proceedings in order to safeguard and prevent disclosure of Restricted Data.

This statement flies in the face of the July 2002 determination by then President Bush that Yucca Mountain was an appropriate disposal site based upon the determination by the Secretary of Energy. This would be the case of dueling administrations if it were not for the fact that the Bush administration cannot duel. The Bush administration is out of office and has no legal standing to fight with the current administration.

This type of duel is unlawful. The Founding Fathers had limited experience with kings, being able to observe their behavior in Europe. What they observed was a new kingship erasing the works of earlier kingships and what they designed was a system to prevent that kind of wanton waste from occurring. A bicameral legislature, independent of the executive and a judiciary that was also an independent branch of government. Powers were delegated among the group. The power to make law belongs to Congress, not the President. Accordingly, since a prior Congress made the law, it is up to this Congress to change the law. Absent this kind of orderly legal change, little separates us from the abuses we now observe in the Chavez administration in Venezuela.

There is one set of facts that can entitle the DOE to the relief requested in its motion: Congress changes its mind and determines that Yucca Mountain is an inappropriate site for the facility. When this fact occurs, the DOE Motion is appropriate and the DOE is entitled to relief, until then: No Relief.

The reason this makes so much sense, is absent a change in Congress, the next President can repeat the behavior of the current administration and put Yucca Mountain back on the table again, deciding "what a great place to dispose of waste, a deep geologic repository." If this President has the unilateral power to remove it

from consideration, the next President similarly has the unilateral power to rename Yucca Mountain as the proper site. Such behavior by the executive branch, if allowed, would cause a restart of the proceeding and another round of expensive hearings to rehash material already covered. This is not the behavior of government envisioned by the Founding Fathers and recorded in the Constitution. We are a nation governed by laws, not men.

DATED this 17th day of May, 2010.

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING BOARD

In the Matter of)
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U.S. DEPARTMENT OF ENERGY) Docket No. 63-001
)
) ASLBP No. 09-892-HLW-CAB-04
(High-Level Waste Repository:)
Pre-Application Matters))
)
)
_____) May 17, 2010

CERTIFICATE OF SERVICE

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