

TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Case.....	1
Statement of Facts.....	2
Argument	5
1. The Commission should not take discretionary interlocutory review based on grounds for the recusal and disqualification of three commission members.....	5
2. The Board correctly held that DOE may not withdraw the application absent congressional authorization.	6
A. DOE has a mandatory duty to present the license application to the commission.	6
B. The commission lacks authority under the NWPA to grant DOE’s motion to withdraw the application.....	8
C. No factual basis exists for the motion to withdraw.....	10
D. The Board correctly rejected contrary arguments made by DOE.....	12
1.... The Secretary’s determination that Yucca Mountain is “unworkable” does not form a basis for permitting unilateral withdrawal.	11
2.... The general language of the AEA does not require a different result.. ..	11
3..... General references to general regulations do not overcome the specificity of the NWPA.	12
4..... DOE’s decision to seek withdrawal is not entitled to deference.	14
5..... DOE’s decision to seek withdrawal is not the equivalent of a private applicant’s decision to withdraw a license application.	16
6..... The license application may not be withdrawn simply because the NWPA does not mandate construction and operation of the Yucca Mountain facility.....	17

7. Congressional funding of a Blue Ribbon Commission did not effect any substantive change in the requirements of the NWPA.	17
8. DOE can and should be required to perform its statutory duty, whether it agrees with it or not.....	18
3. The mandatory requirements of the NWPA are not satisfied by the mere filing of the licensing application.	18
4. The withdrawal of the application would violate separation of powers principles.	20
5. The Board correctly granted intervention to South Carolina.....	21
A. Standing.	21
B. Timeliness and contention admissibility.....	23
Conclusion	23

TABLE OF AUTHORITIES

Cases:

<i>Board of Governors of the Fed. Reserve Sys. v. Agnew</i> , 329 U.S. 441, 450 (1947)	14
<i>Bowen v. Michigan Academy of Family Physicians</i> , 476 U.S. 667 (1986)	8
<i>Brinkley v. Hassig</i> , 83 F.2d 351 (10th Cir. 1936).....	5
<i>Cathedral Candle Co. v. U.S. Intern. Trade Com’n.</i> , 400 F.3d 1352, 1365 (Fed. Cir. 2005)	15
<i>Chevron, U.S.A., Inc. v. NRDC</i> , 467 U.S. 837 (1984)	14
<i>Clinton v. City of New York</i> , 524 U.S. 417 (1998)	8
<i>E.E.O.C. v. Commercial Office Products Co.</i> , 486 U.S. 107, 120-121 (1988)	19
<i>Food and Drug Admin. v. Brown & Williamson Tobacco Corp.</i> , 529 U.S. 120 (2000)	13
<i>Investment Co. Institute v. Camp</i> , 401 U.S. 617 (1971)	15
<i>Jean v. Nelson</i> , 472 U.S. 846 (1985)	14
<i>Kendall v. United States</i> , 37 U.S. (12 Pet.) 524 (1838)	20
<i>Nuclear Energy Institute, Inc. v. Environmental Protection Agency</i> , 373 F.3d 1251 (D.C. Cir. 2004)	8
<i>Olegario v. U.S.</i> , 629 F.2d 204, 224 (2d Cir. 1980)	8
<i>Quackenbush v. Allstate Ins. Co.</i> , 517 U.S. 706, 716 (1996)	9
<i>Securities Industry Ass’n v. Board of Governors of Federal Reserve System</i> , 807 F.2d 1052, 1056 (D.C. Cir. 1986)	16
<i>Strickland v. Commissioner, Maine Dept. of Human Services</i> , 96 F.3d 542 (1st Cir.1996)	16
<i>United States v. Will</i> , 449 U.S. 200 (1980).....	5
<i>Valley v. Rapides Parish School Board</i> , 118 F.3d 1047 (5th Cir. 1997).....	5

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) 7

U.S. Constitution:

U.S. Constitution, Article II, Sec. 3, cl. 4 18

Federal statutes:

Pub. L. No. 107-200, 116 Stat. 735 (2002) (codified at 42 U.S.C. § 10135) 3, 6

42 U.S.C. § 2201(p) 12

42 USC § 5841(a)(1)..... 5

42 U.S.C. § 10134(b) 6, 19

42 U.S.C. § 10134(c) 8

42 U.S.C. § 10134(d) 8, 19

42 U.S.C. § 10134(e)(1) 6

42 U.S.C. § 10134(f)(6) 2

42 U.S.C. § 10172 2

Legislative history:

H.R. Rep. No. 97-491(1)(1982), 1982 U.S.C.C.A.N. (97 Stat.) 3799 3

House Conference Report No. 100-495, 1987 U.S.C.C.A.N. 2313-1521 3

Senate Report 107-159 (2002) 4, 11

H.R. Rep. No. 97-491(1)(1982), 1982 U.S.C.C.A.N. (97 Stat.) 3796 2

Code of Federal Regulations:

10 C.F.R. § 2.107 12

10 C.F.R. § 2.309(c)(1) 22

10 C.F.R. § 2.315(c) 20

STATEMENT OF THE CASE

Because the Commission is very familiar with the procedural posture of this matter, only a very brief procedural summary is necessary. The License Application (“LA”) was filed by DOE on June 3, 2008. After a number of proceedings had occurred, DOE announced in January 2010 that it intended to withdraw the LA. On March 3, 2010, DOE filed its motion to withdraw the License Application with prejudice.

On February 26, 2010, after DOE’s January announcement, and prior to the filing of the motion to withdraw, South Carolina filed a petition to intervene in this proceeding. Four other proposed intervenors (Washington State, Aiken County, South Carolina, the National Association of Regulatory Utility Commissioners, and the Prairie Island Indian Community) soon also filed petitions to intervene.

Eventually, briefs were filed by all parties on the merits of the motion, as well as on the intervention question. A daylong hearing was held by the Atomic Safety and Licensing Board on June 3, 2010, and on June 29, 2010, the Board issued an order denying the withdrawal motion and granting intervention to the petitioners.

By order dated the following day, the Commission invited the participants before the Board to “file briefs with the Commission as to whether the Commission should review, and reverse or uphold, the Board’s decision.”

South Carolina’s position is that the Board’s decision should be affirmed in its entirety. However, it is also South Carolina’s position that three members of the Commission should recuse themselves from hearing this matter, for the reasons set forth in the motion for recusal that is being filed by all petitioners for intervention on the same

day as the present brief, which means in effect that the Commission should not take discretionary review of this interlocutory Order.

STATEMENT OF FACTS

Congress recognized nearly thirty years ago, when the NWPA was enacted, that “[i]t is necessary . . . to provide close Congressional control [over the repository development process] to assure that the political and programmatic errors of our past experience will not be repeated.” H.R. Rep. No. 97-491(1)(1982) at 29-30, 1982 U.S.C.C.A.N. (97 Stat.) 3796, 3797. (Emphasis added.)

Congress further noted in 1982 that an “essential element” of the repository development process was “a legislated schedule for federal decisions and actions for repository development.” H.R. Rep. No. 97-491(1)(1982) at 30, 1982 U.S.C.C.A.N. (97 Stat.) 3797. The latter part of that schedule was contemplated to be as follows:

When a site designation has become effective (i.e., has not been disapproved).	Within 90 days the Secretary of Energy shall submit to NRC a license application for development of the site.
Not later than January 1, 1989 or the expiration of 3 years after the submission of the license application (whichever is later).	NRC shall approve or disapprove a construction authorization for construction of a repository at the site.
Around 1995.	Operation of the first national high level nuclear waste repository.

Id. The portion of the legislative schedule referenced above does not make any provision for a subsequent exercise of discretion by the Secretary of Energy in deciding whether to pursue the project once a site designation has occurred. While the dates have been greatly delayed, the Congressional intent to maintain a legislated schedule has never wavered. In that regard, Congress in 1987 amended the NWPA by directing DOE to limit its site selection efforts to Yucca Mountain. *See* 42 U.S.C.A. §§ 10134(f)(6), 10172. After the

President recommended the Yucca Mountain site to Congress, Congress in 2002 enacted a joint resolution approving the development of a repository at Yucca Mountain. *See* Pub. L. No. 107-200, 116 Stat. 735 (2002) (codified at 42 U.S.C. § 10135).

Congress also recognized long ago that in the early stages of the site study process, further scientific inquiry might disqualify a site:

The risk that a site which has been considered probably adequate for development could be abandoned after significant commitment has been made to the site is a technically unavoidable aspect of repository development. It is a result of the limit of our ability to know with certainty all the characteristics of a rock formation deep underground until the rock site has actually been excavated and surveyed from the ‘horizon’, or level of the repository.

H.R. Rep. No. 97-491(1)(1982) at 30, 1982 U.S.C.C.A.N. (97 Stat.) 3799. However, the Yucca Mountain site has, since the above language was written in 1982, undergone another twenty years of scientific analysis, with two affirmative Congressional decisions advancing that site during the twenty years.

In 1987, Congress made specific allowance for the possibility that the Yucca site might be found scientifically lacking, noting that:

(3) DOE is authorized to site and construct, subject to existing licensing requirements, a deep geologic nuclear waste repository only at the Yucca Mountain site. In the event that the Yucca Mountain site proves unsuitable for use as a repository, DOE is required to terminate site-specific activities and report to the Congress.

House Conference Report No. 100-495 at 776, 1987 U.S.C.C.A.N. 2313-1521-22. In other words, at that stage of the process, DOE was to notify Congress if the site proved unsuitable.

By 2002, the site was deemed appropriate by Congress for submission of a license application. The Governor of Nevada protested, claiming among other things that the site

was geologically unsuitable. However, after several days of Congressional hearings, the appropriate Senate committee concluded that

Whether the combination of natural and engineered barriers proposed by the Secretary will meet the licensing requirements of the NRC will ultimately be for the Commission, rather than this Committee, to decide.

Senate Report 107-159 at 8 (emphasis added). To the same effect, the Committee additionally stated:

The Governor raises serious questions about the geology of the Yucca Mountain site, the design of the repository, the credibility of DOE's performance assessments, and the safety of nuclear waste transportation. These questions must be more fully examined and resolved before the NRC can authorize construction of the repository. But they should be resolved by the Commission, rather than by the Committee or the Senate as a whole. We cannot find on the basis of the record before us that any of the objections raised by the Governor warrants termination of the repository program at this point.

Id. at 13 (emphasis added). In a section of the same Report entitled "The Case for Going Forward," the Senate Committee noted that:

The Committee believes that the Secretary's recommendation to the President, combined with his testimony before the Committee, and the voluminous technical documents supporting the recommendation meet the burden of going forward imposed by the Act and are sufficient to justify allowing the Secretary to submit a license application for the repository to the Nuclear Regulatory Commission for its review.

Id.

As can be seen, Congress thus continued its process of maintaining a "legislated schedule," all the while leaving unaffected the initial mandatory requirement that a license application be filed by DOE, as well as the mandatory requirement that the Commission issue a decision on the merits of that application.

ARGUMENT

1. The Commission Should Not Take Discretionary Interlocutory Review Based on Grounds for the Recusal and Disqualification of Three Commission Members

One of the questions posed by the Commission was “whether the Commission should review . . . the Board’s decision.” Concurrent with this filing, Washington (joined by the State of South Carolina, Aiken County, South Carolina, and White Pine County, Nevada) has filed a motion respectfully requesting that Commissioners Magwood, Apostolakis, and Ostendorff recuse themselves and be disqualified from any consideration of the Order at issue. If the three members properly recuse themselves, the Commission will lack a quorum to act. 42 USC § 5841(a)(1)(“a quorum for the transaction of business shall consist of at least three members present.”).¹ Based on the circumstances presented in the motion to recuse/disqualify, the Commission should not take discretionary review of this interlocutory Order.

¹ The rule of necessity will not apply in this circumstance. The rule of necessity provides that “an adjudicatory body (judges, boards, commissions, etc.) with *sole or exclusive* authority to hear a matter [must] do so even if the members of that body” would otherwise be disqualified from hearing the matter. *Valley v. Rapides Parish School Board*, 118 F.3d 1047, 1052 (5th Cir. 1997) (emphasis original). A critical component that must be satisfied before this rule may permit otherwise disqualified Commissioners from hearing a matter is that there must exist no alternative forum in which the dispute can be heard and where the parties to the proceeding may obtain relief. *Id. United States v. Will*, 449 U.S. 200, 213 (1980)(otherwise disqualified judge must hear case only “if the case cannot be heard otherwise.”); *Brinkley v. Hassig*, 83 F.2d 351, 357 (10th Cir. 1936)(disqualified board member may not hear case pursuant to rule of necessity “if another tribunal exists to which resort may be had.”).

In this case, however, resort to another tribunal may be had under the original jurisdiction vested with the United States Courts of Appeals under the NWPA, 42 U.S.C. § 10139(a)(1).

2. The Board Correctly Held That DOE May Not Withdraw The Application Absent Congressional Authorization.

A. DOE has a mandatory duty to present the license application to the Commission.

As the Board held, “under the statutory process Congress created in the NWPA, which remains in effect, DOE lacks authority to seek to withdraw the Application.”^{6/29/10 Order at 20.} This is a fairly simple question of statutory construction, with the intent of the unambiguous language of the statute confirmed by the history of the process and by many aspects of the nearly thirty years of legislative history. To hold in accordance with DOE’s arguments would therefore be contrary to the requirement of Section 114(b) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10134(b), which requires that if the site designation is permitted to take effect (as has happened with the enactment of Public Law 107-200 (2002), then “the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site. . . .” (Emphasis added.) The statute therefore prohibits the Secretary from unilaterally withdrawing the application in the absence of further Congressional action, and thus the motion to that effect by the Secretary should be denied as void and without authority.²

To reiterate, the Act specifically provides that “the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site. .

² The Act imposes other related duties on the Secretary as well. For instance, it requires the Secretary to annually update Congress as to the status of such application, 42 U.S.C. § 10134(c), and to prepare and update a project decision schedule that “portrays the optimum way to attain the operation of the repository .” 42 U.S.C. § 10134(e)(1). These provisions cannot be harmonized with the announced intent of the Secretary to abandon the project.

. .” (Emphasis added.) Conversely, no provision of the Act suggests that the Secretary may withdraw the application. Contrary to the views of the Administration, which appear to be that the mere proposal of an Executive budget excuses noncompliance with a statutory duty, the Supreme Court has held that

In the framework of our Constitution, the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute.

* * *

The Constitution did not subject this law-making power of Congress to presidential or military supervision or control.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587 (1952). The same case holds that the presidential order therein invalidated was beyond the power of the executive because it did “not direct that a congressional policy be executed in a manner prescribed by Congress--it directs that a presidential policy be executed in a manner prescribed by the President.” *Id.* The Court then held that the presidential order in that case, like the executive actions in the present case, merely

sets out reasons why the President believes certain policies should be adopted, [and] proclaims these policies as rules of conduct to be followed. . . .

Id. Justice Jackson, concurring, noted that

The example of . . . unlimited executive power that must have most impressed the forefathers was the prerogative exercised by George III, and the description of its evils in the Declaration of Independence leads me to doubt that they were creating their new Executive in his image.

Id. at 641.

Subsequently, the Court has reiterated these principles, holding, for instance, that “[w]e ordinarily presume that Congress intends the executive to obey its statutory commands and, accordingly, that it expects the courts to grant relief when an executive agency violates such a command.” *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 681 (1986). *See also, e.g., Clinton v. City of New York*, 524 U.S. 417, 444 (1998)(noting difference between permitted “executing the policy that Congress had embodied in the statute” and prohibited “rejecting the policy judgment made by Congress and relying on [President’s] own policy judgment”); *Olegario v. U.S.*, 629 F.2d 204, 224 (2d Cir. 1980)(“Constitution's grant of executive authority does not include the right to nullify legislative acts or ignore statutory directives”).

The present case is precisely just such a case in which the Executive Branch has disobeyed the commands of Congress, and in which a court, or in this case, this tribunal, should grant relief from such refusal to carry Congressional policy into execution. As the D.C. Circuit has held, with specific reference to Congress’s decision that Yucca Mountain would be the repository site, “Congress has settled the matter, and we, no less than the parties, are bound by its decision.” *Nuclear Energy Institute, Inc. v. Environmental Protection Agency*, 373 F.3d 1251, 1302 (D.C. Cir. 2004).

B. The Commission Lacks Authority Under The NWPA To Grant DOE’s Motion To Withdraw The Application.

If the Commission were to grant the motion to withdraw the application, such a grant would exceed the powers of the Commission, just as much as the Department’s filing of the motion would exceed the powers of the Department. Section 114(d) of the Act, 42 U.S.C. § 10134(d), provides that

The Commission shall consider an application for a construction authorization for all or part of a repository [and] shall issue a final decision approving or disapproving the issuance of such application. . . .

The above-quoted provision of the statute does not vest the Commission with power to permit the abandonment of the application by the Department, in the absence of further authorization from Congress. In other words, Congress provided that the Department must apply for a license, and the Commission must render a decision that either approves or disapproves the issuance of a license. As the Board held, the 2002 Joint Resolution

reinforced the expectation in the 1982 Act that the project would be removed from the political process and that the NRC would complete an adjudication of the technical merits.

Order at 9.

Congress did not offer the Commission the option of merely nonsuiting the case with prejudice, as the Department would have the Commission do. The statute created a power and a duty in the Commission only to hear and determine the merits of the application. Indeed, as shown in particular in the 2002 legislative history discussed above, Congress intended for this Commission, rather than DOE, to make all future decisions about the merits of the Yucca Mountain site as a potential repository. That duty cannot be satisfied if the Commission avoids its Congressionally-mandated duty by dismissing this matter without deciding its merits.

As with the federal courts, the Commission has “a strict duty to exercise the jurisdiction that is conferred upon [it] by Congress.” *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). There is no suggestion that this duty can be avoided in this matter, in which Congress addressed this particular license application proceeding,

specifically providing that the Commission must either approve or disapprove the application, as opposed to dismissing it. As a result, any dismissal of this matter pursuant to the motion of the Department would be an action beyond the statutory power of the Commission to take, in addition to being action upon a motion that itself would be filed in excess of the authority of the Department.

C. No factual basis exists for the motion to withdraw.

DOE has provided virtually no factual or legal basis for its motion. The claimed factual basis is shockingly threadbare: The application should be dismissed, the agency claims, and over \$10 billion worth of work abandoned, for no reason other than the fact that “the Secretary of Energy has decided that a geologic repository at Yucca Mountain is not a workable option for long-term disposition of those material.” DOE Motion at 1. The rest of the motion, the pertinent part of which is less than eight pages long and unsupported by attachments, provides no additional factual basis for the Secretary’s decision other than to reiterate that it is the Secretary’s judgment “that scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced dramatically over the twenty years since the Yucca Mountain project was initiated.” *Id.* at 3. No suggestion is offered as to what that “advanced” “scientific and engineering knowledge” might be. As the Board noted, quoting the DOE Reply Brief, “DOE makes clear that ‘the Secretary’s judgment here is not that Yucca Mountain is unsafe or that there are flaws in the [Application], but rather that it is not a workable option and that alternatives will better serve the public interest.’” Order at 4. In other words, DOE argues that this \$10 billion dollar effort must be abandoned, not on the

basis of any proffered scientific information or safety issues, but rather on the basis of a bare assertion, a mere *ipse dixit*, on the part of the present Administration.

The legislative history cited above leaves no doubt that Congress concluded in 2002 that enough study of the Yucca Mountain site had occurred over the previous twenty or more years to transfer any further decisions about suitability to the Commission, an independent regulatory agency, and away from other agencies of the Executive Branch. The evidence of suitability was ordered to be submitted to the Commission. *See, e.g.*, Sen. Rep. 107-159 at 13 (any further questions about geology, design, etc., “should be resolved by the Commission, rather than by the Committee or the Senate as a whole”); *Id.* at 8 (suitability of barriers is “ultimately be for the Commission, rather than this Committee, to decide”). DOE, however, has now claimed the authority to make the decision of suitability itself, relying on slim or no evidence. That action violates the Congressional command that the matter be submitted to the Commission, and likewise asks the Commission to violate the further Congressional determination that the Commission should be the forum in which any remaining arguments of unsuitability should be presented. Even if DOE had presented persuasive, or at least some, evidence of the unsuitability of the site, which it has dramatically failed to do, the decision of suitability still should be made by the Commission on the basis of that evidence, and not by the Department’s determination to declare by fiat that the application is no longer viable. Here, in contrast, DOE has not asked the Commission to weigh the evidence of suitability, but instead simply claims that it has unreviewable discretion to withdraw the application for whatever reasons it chooses.

D. The Board correctly rejected contrary arguments made by DOE.

After reaching its conclusion that the Act was not intended to permit the Secretary to withdraw the application unilaterally, the Board addressed and rejected eight different arguments made by DOE to attempt to establish otherwise. Order at 10-20. These will be briefly summarized below.

1. The Secretary’s determination that Yucca Mountain is “unworkable” does not form a basis for permitting unilateral withdrawal.

As the Board held, the plain meaning of the Act, took this and other “policy determinations out of DOE’s hands.” Order at 10. This result necessarily follows from language of the statute, the legislative history, and the Board’s confirmation of both. As the Board held, by 2002, “Congress was commanding, as a matter of policy, that Yucca Mountain was to move forward and its acceptability as a possible repository site was to be decided based on its technical merits.” Order at 10.

2. The general language of the AEA does not require a different result.

Next, the Board rejected DOE’s contention that certain broad language in the Atomic Energy Act, 42 U.S.C. § 2201(p), authorized DOE to make its own policy determinations about the Yucca Mountain project. The Board held that “The NWPA, however, is a subsequently-enacted, much more specific statute that directly addresses the matters at hand.” Order at 11. Among other authorities, the Board cited *Nuclear Energy Inst. v. Env’tl. Prot. Agency*, 373 F.3d 1251, 1288 (D.C. Cir. 2004), which noted that the specificity of the NWPA prevailed over general provisions in the AEA. Order at 12-13.

3. General references to general regulations do not overcome the specificity of the NWPA.

DOE contended before the Board that it should be permitted to withdraw the application because the Commission's normal procedural regulations, specifically 10 C.F.R. § 2.107, would permit such withdrawals. However, because of the obvious differences between the duties imposed by Congress on DOE in this matter, and the absence of such duties in the case of typical private utility applicants, the Board correctly concluded otherwise. Order at 13-16. The Board specifically held that "no previous case involved an applicant that was required by statute to submit its application, as is the case here with DOE's Application under the NWPA." *Id.* at 13. Existing NRC procedural regulations should be given effect only to the extent that those statutes and regulations are in harmony with the NWPA and with the express purposes of Congress in enacting the NWPA. As the Supreme Court has held,

The "classic judicial task of reconciling many laws enacted over time, and getting them to 'make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute." *United States v. Fausto*, 484 U.S., at 453. This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand. As we recognized recently in *United States v. Estate of Romani*, "a specific policy embodied in a later federal statute should control our construction of the [earlier] statute, even though it ha[s] not been expressly amended." 523 U.S., at 530-531.

Food and Drug Admin. v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 143 (2000). As applied here, this standard rule of statutory construction means that while many of the normal NRC procedural rules can apply to the present unique proceeding without offending Congressional intent, the ordinary NRC rules governing the withdrawal of a typical private license application should not be applied to this

extraordinary instance in which Congress has mandated that DOE must institute, and the Commission must decide, a licensing proceeding.

4. DOE’s decision to seek withdrawal is not entitled to deference.

The Board next rejected DOE’s argument that its decision to withdraw is entitled to deference under such cases as *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984), which held that weight should be given “to an executive department's construction of a statutory scheme it is entrusted to administer.” 467 U.S. at 844. The Board held that

where the statute is clear on its face, or is clear in light of its statutory scheme and legislative history, deference is inappropriate: “If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”

Order at 16 (quoting *Chevron*, 467 U.S. at 842-43).

As Justice Rutledge has noted, concurring in *Board of Governors of the Fed. Reserve Sys. v. Agnew*, 329 U.S. 441, 450 (1947), an agency’s “specialized experience gives [it] an advantage judges cannot possibly have, not only in dealing with the problems raised for [its] discretion by the system's working, but also in ascertaining the meaning Congress had in mind in prescribing the standards by which [the Board] should administer it.” There is no suggestion of such specialized experience in this case. In addition, this is not a case where this tribunal is asked to validate a longstanding agency practice. The newly-arrived-at position of DOE in this litigation is not even an agency practice or regulation at all; nor is it a position of long standing. Moreover, and as the Board held, “the NRC does not owe deference to DOE’s understanding of the NRC’s own responsibilities under section 114(d).” Order at 16-17.

Chevron accords deference to agency practices and regulations, as opposed to “appellate counsel’s post hoc rationalizations for agency action. . . .” *Investment Co. Institute v. Camp*, 401 U.S. 617, 628 (1971). The same case holds that “It is the administrative official and not appellate counsel who possesses the expertise that can enlighten and rationalize the search for the meaning and intent of Congress.” *Id.*³ In a later case, *Jean v. Nelson*, 472 U.S. 846 (1985), the Supreme Court characterized *Camp* as involving a situation in which the agency “had offered no pre-litigation administrative interpretation of these statutes.” 472 U.S. at 856. That description applies equally here. *See also, e.g., Cathedral Candle Co. v. U.S. Intern. Trade Com’n.*, 400 F.3d 1352, 1365 (Fed. Cir. 2005)(regulation or other formal process is normally required to invoke *Chevron* deference). The Board recognized the absence here of the kind of agency action given deference, noting that “DOE’s interpretation is reflected in nothing more formal than a motion before this Board—and not, for example in a formal agency adjudication or notice-and-comment rulemaking.” Order at 16.

In addition to not being a policy or regulation of the agency, as opposed to a position taken during a contested proceeding, DOE’s position in this lawsuit has had little legal analysis cited on its behalf. By contrast, and as an illustration of the kinds of administrative actions that received the deference of courts, *see, e.g., Securities Industry Ass’n v. Board of Governors of Federal Reserve System*, 807 F.2d 1052, 1056 (D.C. Cir. 1986)(observing that the Federal Reserve Board had “comprehensively addressed the

³ The fact that DOE counsel’s arguments are here presented at a “trial” level, rather than at the appellate level, is of no significance. The position of the agency is still a post hoc rationalization, rather than the implementation of a longstanding, consistent, agency policy.

language, history, and purposes of the Act that bear on whether commercial banks should be able to place commercial paper”). The present case instead resembles several others cited in *Securities Industry Ass’n.*, where the court noted that “the agency involved failed to present the Court with anything to which to defer.” *Id.*

Finally, the DOE position taken in this case on the interpretation of the NWPA is not one of long standing. It was first formally stated less than three months ago, when the Motion to Withdraw was filed. While the length of time of an agency construction is not the only factor considered in determining whether to accord deference to it, nevertheless, “longstanding agency interpretations generally receive greater deference than newly contrived ones.” *Strickland v. Commissioner, Maine Dept. of Human Services*, 96 F.3d 542, 548 (1st Cir.1996).

5. DOE’s decision to seek withdrawal is not the equivalent of a private applicant’s decision to withdraw a license application.

At p. 17 of the Order, the Board again reiterated the effect of its holding at pp. 13-16, which is that the statutorily-mandated license application in the present case simply cannot be analogized to the actions of a private reactor operator seeking licensure. As the Board held, “The obvious difference is that Congress has never imposed a duty on private NRC applicants to pursue license applications, nor has Congress required that the Commission reach a decision on a private licensing application that the applicant chooses to withdraw.” *Id.*

6. The license application may not be withdrawn simply because the NWPA does not mandate construction and operation of the Yucca Mountain facility.

The Board next rejected DOE's claim that the absence of a Congressional mandate for construction and operation of the Yucca Mountain repository is enough to defeat a claim that the duty to seek licensure is mandatory. Order at 18. As the Board held, "That further steps must take place before a repository might actually be constructed and become operational does not entitle DOE to ignore the process that Congress created." *Id.* Put differently, if one step of a process is mandated, as here, it does not aid the opponent of mandatory action to note that has not yet been a decision about what to do following the completion of the mandated action.

7. Congressional funding of a Blue Ribbon Commission did not effect any substantive change in the requirements of the NWPA.

The Board concluded, contrary to DOE's contention on the point, that Congress's funding of a Blue Ribbon Commission on America's Nuclear Future to review federal policy on spent nuclear fuel management and disposal and to examine alternatives to Yucca Mountain was inconsistent with continuing to process the Yucca Mountain Application. The short answer to this contention, and the one given it by the Commission, is that Congress, "[i]n including funding for the Blue Ribbon Commission in the 2010 Appropriations Bill, . . . did not repeal the NWPA or declare that the Yucca Mountain site is inappropriate." Order at 18. In fact, and as noted by the Board, Congress specifically instructed the Blue Ribbon Commission to consider all alternatives for nuclear waste disposal, necessarily including a geologic repository at Yucca Mountain. *Id.* n.69.

8. DOE can and should be required to perform its statutory duty, whether it agrees with it or not.

The final DOE argument considered and rejected by the Board was the argument that it would be “absurd and unreasonable” to require DOE to proceed with an application that it no longer favors on policy grounds.” Order at 19, quoting DOE Reply at 18. This remarkable view by DOE of executive duty under the constitution is approximately the equivalent of a general telling Congress, after war has been declared, that “I won’t fight and you can’t make me, because my heart wouldn’t be in it.” As the Board held, however, agencies are frequently “required to implement legislative directives in a manner with which they do not necessarily agree.” Order at 19. In addition, of course, and cited by the Board, Order at 19 n.71, Article II, Sec. 3, cl. 4 of the Constitution provides that the President shall “take Care that the Laws be faithfully executed.”

3. The mandatory requirements of the NWPA are not satisfied by the mere filing of the licensing application.

DOE argues, although in a manner far from direct, that its duty with regard to the licensing application was satisfied once it filed the application. DOE Motion at 8 (“the text of the NWPA does not specify actions the Secretary can or must take once the application is filed”).⁴ The Board did not specifically address this argument, perhaps because of the relative vagueness of its presentation.

⁴ A similar statement is made by DOE on p. 5 of its Motion to Withdraw (“The statute simply requires that the Secretary ‘shall submit. .. an application for a construction authorization.’ NWPA § 114(b), 42 U.S.C. § 10134(b). It neither directs nor circumscribes the Secretary's actions on the application after that submission.”

DOE's constrained view of its statutory duty is not much different from arguing that a stop sign requires only that a driver stop, but not stay there, regardless of might be coming down the road. The argument proposes a result that would be not only absurd, but also at odds with other parts of the NWPA. As held in such cases as *E.E.O.C. v. Commercial Office Products Co.* 486 U.S. 107, 120-121 (1988), a court should not countenance a reading of a statute that leads to "absurd or futile results . . . plainly at variance with the policy of the legislation as a whole. . . ." It would be absurd in the extreme to hold that after Congress had directed a fifteen-year program (1987-2002) of site study and development solely at Yucca Mountain, and costing in excess of ten billion dollars, the Department could then thwart any further action on the selected repository site simply by filing, and then later withdrawing, the license application. (Indeed, under DOE's view, the application could be filed on one day, and withdrawn on the very next day, without contravening the statute.)

DOE's interpretation is also at odds with the overall policy and purpose of the NWPA and with the 2002 Congressional selection of Yucca Mountain as the repository site. Congress anticipated that further action, both by the Commission and by Congress, would be necessary before the repository could open, but such further action was clearly to be the action of the Commission on the merits of the application and the subsequent action of Congress in providing further funding for the repository if the application were approved. *See, e.g.*, 42 U.S.C. § 10134(d). At p. 7 of its Motion to Withdraw, DOE cites several statements in the 2002 House Committee Report to the effect that the 2002 Joint Resolution did not authorize the construction of the repository. This, and similar arguments by DOE at pp. 5-7 of its Motion, are merely statements of the obvious:

Clearly, Congress did not, and would not, authorize appropriations for the construction of the repository until the Commission approved the license. However, to state that much is not to state, as DOE claims, that the NWPA does not require DOE to continue with an application proceeding. To the contrary, Congress did not intend for the Department to abandon, or the Commission without considering the merits to dismiss, the license application.

Finally, the requirement to file the application implies a duty to prosecute it in good faith, and not merely to comply with the form of the NWPA by filing the application, while disregarding the Act's substantive implication the application be presented in good faith. In this regard, this case is similar to such cases as *NTEU v. Nixon*, 492 F.2d 587 (D.C.Cir.1974), which held that the President may not refrain from executing laws duly enacted by the Congress. *See also, e.g., Kendall v. United States*, 37 U.S. (12 Pet.) 524, 613 (1838) ("To contend that the obligation imposed on the President to see the laws faithfully executed implies a power to forbid their execution, is a novel construction of the Constitution, and entirely inadmissible").

4. The Withdrawal Of The Application Would Violate Separation Of Powers Principles.⁵

DOE does not expressly argue that it has some sort of inherent executive authority to ignore Congress and act according to its own view of what should be done in this matter. Nevertheless, this is, in effect, the logical outgrowth of what the Department does argue. DOE's position thus would have the Executive Branch determine matters that have

⁵ The Board did not find it necessary to reach this issue.

already been determined by Congress, and thereby would constitute an executive encroachment on legislative power, as held in the authorities previously cited.

5. The Board correctly granted intervention to South Carolina.

Finally, South Carolina would note that the Board, after carefully considering each of the relevant factors, properly granted intervention to South Carolina. As the Board noted, DOE did not contest the intervention of any of the petitioners. At this point in the proceeding, it is not known whether any of the other parties who opposed South Carolina's intervention will continue to do so, but the holdings of the Board will be summarized below, and if any specific objections are reiterated by other parties, South Carolina will respond in its second brief, due on July 16.⁶

A. Standing.

The Board first noted the three now-settled aspects of standing: “(1) a distinct and palpable harm that constitutes injury-in-fact; (2) the harm is fairly traceable to the challenged action; and (3) the harm is likely to be redressed by a favorable decision.” Order at 25.

As the Board held in addressing the issue of injury-in-fact, South Carolina “is home to seven commercial reactors that store HLW onsite, as well as the Savannah River Site (SRS), where, similar to Hanford, weapons program waste is currently housed.” Order at 25. The Board accepted the contentions of South Carolina and others that

⁶ The Board also held that the governmental petitioners, including South Carolina, met the lesser requirements for participation as interested governmental participants under 10 C.F.R. § 2.315(c). South Carolina had requested such participation if its petition for intervention were denied. While South Carolina agrees that it is entitled to such participation in any event, South Carolina would reiterate that it is entitled to intervene for all the reasons set forth in its prior filings and in the Board Order.

DOE's decision to abandon Yucca Mountain leaves this nation without the permanent disposal solution mandated by the NWPAs, and thus without a federally promised process and timetable for removal of HLW from temporary storage facilities. As a result, petitioners assert they will be forced to bear the associated health and safety risks indefinitely, or at least until Congress legislates an alternative method of disposal—a prospect that, if achievable at all, would mean decades of delay.

Order at 26. The Board further held that “The prolonged risk of harm, and the cessation of the legislatively established process looking to alleviate it, constitute injury-in fact.

The Board then held that “The second and third requirements for standing—causation and redressability—necessarily follow from petitioners’ injury. *Id.* On the issue of causation, the Board held that DOE’s decision to abandon the Yucca Mountain project “would delay indefinitely any possible removal of HLW from the temporary storage sites affecting petitioners, thereby prolonging the associated risks.” *Id.* Finally, the Board held that its decision could redress the petitioners’ injury by requiring “that DOE continue to follow the licensing process established by the NWPAs, along the path toward the prospect of a permanent HLW repository.” *Id.*⁷

All three of the Board’s conclusions with respect to standing would appear to be self-evident. If other parties assert that these conclusions are erroneous, South Carolina will address such arguments in its response brief.

⁷ The Board also addressed and rejected Nevada’s contentions that the petitioners’ claims of harm were too general and that the petitioners’ claims were purely procedural. Order at 26-30.

B. Timeliness and contention admissibility.

The Board also held that there was good cause for the petitions to intervene to have been filed at the time they were filed, and not earlier, because “DOE’s motion to withdraw could not have been reasonably anticipated prior to its filing.” Order at 34. Because there was no firm evidence of an intent to withdraw the application prior to late January 2010, the Board held that “petitioners could not have had cause to file any sooner.” The Board also concluded that the remaining factors of 10 C.F.R. § 2.309(c)(1), relating primarily either to standing or to the effect of the intervention on the proceeding, had been satisfied, Order at 37-41. as had LSN compliance issues. Order at 41-44. Finally, the Board held that the petitioners’ contention pertaining to the withdrawal of the license application was admissible. Order at 44-46. Again, should any other party challenge any of these conclusions, South Carolina will address them more fully in its response brief.⁸

CONCLUSION

For the foregoing reasons, as well as those set out in the motion for recusal, the State of South Carolina respectfully requests that the Commission decline to take discretionary interlocutory review of the ASLB’s June 29, 2010 Order. Even if the Commission reviews the merits of the Board order, however, that order should be affirmed and upheld in its entirety, and the Commission should direct the Department of Energy to prosecute the License Application in good faith.

⁸ South Carolina also incorporates by reference its contentions on issues pertaining to intervention that are set forth in its Petition to Intervene, dated February 26, 2010, and in its Reply Brief on its Petition to Intervene, filed April 5, 2010 (and corrected version filed April 6, 2010).

Respectfully submitted,

Signed (electronically) by Kenneth P. Woodington

HENRY DARGAN McMASTER
Attorney General
JOHN W. McINTOSH
Chief Deputy Attorney General
ROBERT D. COOK
Assistant Deputy Attorney General
LEIGH CHILDS CANTEY
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
law.com
(803) 734-3970

DAVIDSON & LINDEMANN, P.A.
WILLIAM H. DAVIDSON, II
KENNETH P. WOODINGTON
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202
TEL: (803) 806-8222
FAX: (803) 806-8855
E-MAIL: wdavidson@dml-law.com
kwoodington@dml-

ATTORNEYS for Intervenor, State
of South Carolina

Columbia, South Carolina

July 9, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
U.S. DEPARTMENT OF ENERGY)
)
(High-Level Waste Repository))
)

Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the **BRIEF OF THE STATE OF SOUTH CAROLINA PURSUANT TO COMMISSION ORDER DATED JUNE 30, 2010** dated July 9, 2010, have been served upon the following persons by Electronic Information Exchange.

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: tsm2@nrc.gov
psr1@nrc.gov
rew@nrc.gov

Anthony C. Eitreim, Esq., Chief Counsel
ace1@nrc.gov
Daniel J. Graser, LSN Administrator
djg2@nrc.gov
Zachary Kahn, Law Clerk
zxc1@nrc.gov
Matthew Rotman, Law Clerk
matthew.rotman@nrc.gov
Katherine Tucker, Law Clerk
katie.tucker@nrc.gov
Joseph Deucher
jhd@nrc.gov
Andrew Welkie
axw5@nrc.gov
Jack Whetstone
jgw@nrc.gov
Patricia Harich
patricia.harich@nrc.gov
Sara Culler
sara.culler@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Michael G. Dreher, Esq.
michael.dreher@nrc.gov
Karin Francis, Paralegal
kxf4@nrc.gov

Joseph S. Gilman, Paralegal
jsg1@nrc.gov
Daniel W. Lenehan, Esq.
daniel.lenehan@nrc.gov
Andrea L. Silvia, Esq.
alc1@nrc.gov
Mitzi A. Young, Esq.
may@nrc.gov
Marian L. Zobler, Esq.
mlz@nrc.gov
Jessica A. Bielecki
Jessica.Bielecki@nrc.gov

OGC Mail Center
OGCMailCenter@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
E-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate
Adjudication
ocaamail@nrc.gov

Charles J. Fitzpatrick, Esq.
John W. Lawrence, Esq.
Egan, Fitzpatrick, Malsch & Lawrence PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
E-mail: cfitzpatrick@nuclearlawyer.com
jlawrence@nuclearlawyer.com

Martin G. Malsch, Esq.
Egan, Fitzpatrick & Malsch, PLLC
1750 K Street, N.W. Suite 350

Washington, D.C. 20006
E-mail: mmalsch@nuclearlawyer.com

Brian W. Hembacher, Esq.
Deputy Attorney General
California Attorney General's Office
300 South Spring Street
Los Angeles, CA 90013
E-mail: brian.hembacher@doj.ca.gov

Timothy E. Sullivan, Esq.
Deputy Attorney General
California Department of Justice
1515 Clay Street., 20th Flr.
P.O. Box 70550
Oakland, CA 94612-0550
E-mail: timothy.sullivan@doj.ca.gov

Kevin W. Bell, Esq.
Senior Staff Counsel
California Energy Commission
1516 9th Street
Sacramento, CA 95814
E-mail: kwbell@energy.state.ca.us

Bryce C. Loveland
Jennings Strouss & Salmon, PLC
8330 W. Sahara Avenue, Suite 290
Las Vegas, NV 89117-8949
Email: bloveland@jsslaw.com

Alan I. Robbins, Esq.
Debra D. Roby, Esq.
Jennings Strouss & Salmon, PLC
1350 I Street, NW Suite 810
Washington, D.C. 20005-3305
E-mail: arobbins@jsslaw.com
droby@jsslaw.com

Donald J. Silverman, Esq.
Thomas A. Schmutz, Esq.
Thomas C. Poindexter, Esq.
Paul J. Zaffuts, Esq.
Alex S. Polonsky, Esq.
Lewis Csedrik, Esq.
Raphael P. Kuyler, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
E-mail: dsilverman@morganlewis.com
tschmutz@morganlewis.com
tpoindexter@morganlewis.com
pzaffuts@morganlewis.com
apolonsky@morganlewis.com

lcsedrik@morganlewis.com
rkuyler@morganlewis.com

Malachy R. Murphy, Esq.
18160 Cottonwood Rd. #265
Sunriver, OR 97707
E-mail: mrmurphy@chamberscable.com

Robert M. Andersen
Akerman Senterfitt
801 Pennsylvania Avenue N.W., Suite 600
Washington, DC 20004 USA
E-mail: robert.andersen@akerman.com

Martha S. Crosland, Esq.
Angela M. Kordyak, Esq.
Nicholas P. DiNunzio
James Bennett McRae, Esq.
U.S. Department of Energy
Office of the General Counsel
1000 Independence Avenue, S.W.
Washington, DC 20585
E-mail: martha.crosland@hq.doe.gov
angela.kordyak@hq.doe.gov
nick.dinunzio@rw.doe.gov
ben.mcrae@hq.doe.gov

George W. Hellstrom
U.S. Department of Energy
Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
E-Mail: george.hellstrom@ymp.gov

Jeffrey D. VanNiel, Esq.
530 Farrington Court
Las Vegas, NV 89123
E-mail: nbrjdv@gmail.com

Susan L. Durbin, Esq.
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
E-mail: susan.durbin@doj.ca.gov

Frank A. Putzu
Naval Sea Systems Command Nuclear
Propulsion Program
1333 Isaac Hull Avenue, S.E.
Washington Navy Yard, Building 197
Washington, DC 20376
E-mail: frank.putzu@navy.mil

John M. Peebles
Darcie L. Houck

Fredericks Peebles & Morgan LLP
1001 Second Street
Sacramento, CA 95814
E-mail: jpeebles@ndnlaw.com
dhouck@ndnlaw.com

Shane Thin Elk
Fredericks Peebles & Morgan, LLP
3610 North 163rd Plaza
Omaha, Nebraska 68116
E-mail: sthinelk@ndnlaw.com

Ellen C. Ginsberg
Michael A. Bauser
Anne W. Cottingham
Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, D.C. 20006
E-mail: ecg@nei.org
mab@nei.org
awc@nei.org

David A. Repka
William A. Horin
Rachel Miras-Wilson
Winston & Strawn LLP
1700 K Street N.W.
Washington, D.C. 20006
E-mail: drepka@winston.com
whorin@winston.com
rwilson@winston.com

Jay E. Silberg
Timothy J.V. Walsh
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1122
E-mail: jay.silberg@pillsburylaw.com
timothy.walsh@pillsburylaw.com

Gregory L. James
710 Autumn Leaves Circle
Bishop, California 93514
Email: gljames@earthlink.net

Arthur J. Harrington
Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
E-mail: aharring@gklaw.com

Steven A. Heinzen
Douglas M. Poland
Hannah L. Renfro
Godfrey & Kahn, S.C.
One East Main Street, Suite 500

P.O. Box 2719
Madison, WI 53701-2719
E-mail: sheinzen@gklaw.com
dpoland@gklaw.com
hrenfro@gklaw.com

Robert F. List, Esq.
Jennifer A. Gores, Esq.
Armstrong Teasdale LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
E-mail: rlist@armstrongteasdale.com
jgores@armstrongteasdale.com

Diane Curran
Harmon, Curran, Spielberg, & Eisenberg,
L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
E-mail: dcurran@harmoncurran.com

Ian Zabarte, Board Member
Native Community Action Council
P.O. Box 140
Baker, NV 89311
E-mail: mrizabarte@gmail.com

Richard Sears
District Attorney No. 5489
White Pine County District Attorney's Office
801 Clark Street, Suite 3
Ely, NV 89301
E-mail: rwsears@wpcda.org

Donald P. Irwin
Michael R. Shebelskie
Kelly L. Faglioni
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
E-mail: dirwin@hunton.com
mshebelskie@hunton.com
kfaglioni@hunton.com

Curtis G. Berkey
Scott W. Williams
Rovianne A. Leigh
Alexander, Berkey, Williams, & Weathers
LLP
2030 Addison Street, Suite 410
Berkley, CA 94704
E-mail: cberkey@abwwlaw.com
swilliams@abwwlaw.com
rleigh@abwwlaw.com

Bret O. Whipple
1100 South Tenth Street
Las Vegas, Nevada 89104
E-mail: bretwhipple@nomademail.com

Gregory Barlow
P.O. Box 60
Pioche, Nevada 89043
E-mail: lcda@lcturbonet.com

Michael L. Dunning
Andrew A. Fitz
H. Lee Overton
Jonathan C. Thompson
State of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
E-mail: MichaelD@atg.wa.gov
AndyF@atg.wa.gov
LeeO1@atg.wa.gov
JonaT@atg.wa.gov

Thomas R. Gottshall
S. Ross Shealy
Haynesworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
Post Office Box 11889
Columbia, SC 29211-1889
E-mail: tgottshall@hsblawfirm.com
rshealy@hsblawfirm.com

Connie Simkins
P.O. Box 1068
Caliente, Nevada 89008
E-mail: jcciac@co.lincoln.nv.us

Dr. Mike Baughman
Intertech Services Corporation
P.O. Box 2008
Carson City, Nevada 89702
E-mail: bigoff@aol.com
Michael Berger
Robert S. Hanna
Attorney for the County of Inyo
233 East Carrillo Street Suite B
Santa Barbara, California 93101
E-mail: mberger@bsglaw.net
rshanna@bsglaw.net

Don L. Keskey
Public Law Resource Center PLLC
505 N. Capitol Avenue
Lansing, MI 48933
E-mail:
donkeskey@publiclawresourcecenter.com

Philip R. Mahowald
Praire Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089
E-mail: pmahowald@piic.org

James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
1101 Vermont Avenue NW, Suite 200
Washington, DC 20005
E-mail: jramsay@naruc.org

Signed (electronically) by Kenneth P. Woodington

This 29th day of June, 2010