

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Commission

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	October 18, 2010

ANSWER OF THE STATE OF NEVADA TO THE MOTION FOR
A COMMISSION ORDER RESTORING THE TECHNICAL REVIEW
OF THE YUCCA MOUNTAIN LICENSE APPLICATION

On October 7, 2010, Aiken County, South Carolina, joined by the states of South Carolina and Washington, moved for a Commission order allegedly necessary to restore the NRC Staff's required review of the Yucca Mountain license application. The State of Nevada ("Nevada") opposes the motion. The Native Action Community Council ("NCAC") concurs and joins Nevada in this Answer.

The motion relies on "published news reports" that NRC Chairman Jaczko "has unilaterally directed NRC Staff to stop its review of DOE's Yucca Mountain license application..." Motion at 2. That is it. The "published news reports" are not identified, quoted, or described in any further detail. Such a motion based on unidentified authority is impossible to evaluate on its face and must fail for the simple reason that the moving parties have failed to meet their burden of proof. 10 C.F.R. § 2.325 ("Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof"). In fact, the Commission has been unwilling to grant relief based on newspaper articles even when the articles are identified. *See Amergen Energy Co., LLC (License Renewal for Oyster Creek Nuclear Generating Station),*

CLI-08-29, 68 NRC 658, 672 (2008); *Louisiana Power & Light Company (Waterford Steam Electric Station, Unit 3)*, CLI-86-1, 23 NRC 1, 6 note 2 (1986).

Moreover, a letter to Andrew A. Fitz, Senior Counsel for the State of Washington, from NRC Solicitor John Cordes, dated October 13, 2010, further undercuts the moving parties' case for relief. This letter, responding to Mr. Fitz's request for a copy of written communications to the NRC Staff from Chairman Jaczko (or from other NRC Commissioners) "concerning the cessation of [Yucca Mountain] license application review," states simply that "I [Mr. Cordes] have inquired and identified no such documents" (Attachment A at 2).

The October 13, 2010 letter from Mr. Cordes does identify and supply a memorandum to NRC office directors and regional administrators, dated October 4, 2010, providing guidance on budget execution under the Continuing Resolution enacted into law on September 30, 2010. The memorandum is from the NRC's Chief Financial Officer and Executive Director for Operations, not the NRC Chairman or any NRC Commissioner. This guidance does address, in a general fashion, NRC budget execution for the NRC High Level Waste Program. It says nothing specific about Staff's Safety Evaluation Report for Yucca Mountain. Nevertheless, Nevada is aware that two NRC Commissioners have stated a disagreement with the guidance memorandum based on their understanding that it calls for a halt to Staff SER work under the Continuing Resolution. However, the memorandum is within the delegated authority of the Executive Director for Operations and the Chief Financial Officer.¹ The memorandum is therefore effective as an instruction to NRC Staff working on the Yucca Mountain application unless the Commission itself overrides it by majority vote. It appears from an October 14, 2010

¹ The Commission's OMB-approved regulation for the administrative control of federal funds, dated December 22, 1998, provides (in section 5.b.) that "[t]he Chief Financial Officer (CFO) of the NRC is authorized and directed to discharge all financial management activities and functions, which includes the responsibility for the administrative control of the NRC's funds."

memorandum from the Secretary to Commissioner Ostendorff, and from related memoranda from Commissioners Ostendorff and Svinicki to the Chairman and fellow Commissioners, that a proposal to override the memorandum did not garner the necessary three votes.

Finally, the moving parties have also failed to certify that they made a sincere effort to contact the other parties to resolve the issue. 10 C.F.R. § 2.323 (b) is quite clear that a motion “must be rejected” if it does not include this certification.

For the reasons given above, the motion should be denied.

Respectfully submitted,

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Dated: October 18, 2010

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

In the Matter of)	
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U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer of the State of Nevada to the Motion for a Commission Order Restoring the Technical Review of the Yucca Mountain License Application has been served upon the following persons by the Electronic Information Exchange:

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