

June 30, 2011

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))	ASLBP No. 09-892-HLW-CAB04

**STATE OF NEVADA ANSWER TO NRC STAFF REQUEST
FOR STAY OF THE APRIL 11 AND JUNE 9, 2011 BOARD ORDERS**

The stay requested by NRC Staff (Staff) in its June 20, 2011 Motion is partial, only requesting the Commission to stay the effectiveness of two particular orders of the Yucca Mountain Construction Authorization Board (CAB). For the reasons stated below, the State of Nevada (Nevada) is opposed to the limited stay requested by Staff and is also opposed to the “housekeeping” stay which Staff requests in the alternative.

As has been frequently observed by the parties and by CAB (e.g., in its May 20, 2011 Order Granting Motion to Quash), the continuation of this proceeding is much in doubt. Uncertainties exist that may ultimately terminate the proceeding in its entirety. Examples of these uncertainties are the related cases pending before the U.S. Court of Appeals for the District of Columbia Circuit and the pending decision of the U.S. Congress regarding the FY2012 budget. Based on these very uncertainties, CAB’s May 20, 2011 Order suspended all deposition discovery in this proceeding. Nevada did not oppose such suspension and believes that the licensing proceeding as a whole should be **temporarily** suspended or stayed until the uncertainties about the YMP are resolved, one way or the other. Staff’s request for only a **partial** stay, however, does not accomplish this purpose.

Staff's request for stay would apply **only** to the implementation of CAB's April 11 and June 9, 2011 Orders. The remainder of this licensing proceeding would otherwise proceed forward, under Staff's proposal. Such an approach would guarantee an unacceptable outcome – the loss of some or all of the parties' LSN document collections. The two CAB Orders challenged by Staff's Motion would (1) require all the parties to deliver their Yucca Mountain LSN document collections to the NRC's Office of the Secretary (SECY) and (2) require SECY to establish a publicly accessible database on ADAMS, comprised of all those collections. Staff's proposed stay of the two CAB Orders, if adopted, would nullify the CAB's orchestration of continued public accessibility of the Yucca Mountain databases. Specifically, the stay requested by Staff would effectively eliminate both (1) the delivery to SECY of all parties' LSN documents, and (2) their placement (and public accessibility) on ADAMS. The premise of the CAB's two Orders was the likelihood that the LSN itself will disappear on or before September 30, 2011, due to lack of funding. Without the existence of **either** the LSN or the ADAMS Yucca Mountain document library contemplated by CAB as LSN's successor document repository, public access to those document collections could wholly disappear. If granted, the limited stay sought by Staff could effectuate this result.

While Nevada would support a **temporary** stay of the entire proceeding until the uncertainties surrounding its continuation are resolved, it cannot support a partial stay such as that requested by Staff¹ – one which could serve to destroy public access to the LSN document collections comprising some four million documents. For these reasons, Nevada is opposed to the limited stay requested by Staff. Nevada is also opposed to the “housekeeping” stay proposed

¹ While Nevada urges rescission of CAB's June 10 Order (Answer filed today to DOE's Motion for Reconsideration), it cannot assume such rescission will be granted. Accordingly, Nevada must here articulate its opposition to the Staff's limited request for stay of CAB's April 11 and June 9 Orders; this is because if CAB does not rescind its June 10 Order, the limited stay requested by Staff could have an unacceptable effect. Specifically, such a stay could result in a period of public inaccessibility to the parties' Yucca Mountain document collections (should the LSN terminate September 30, and the parties' own planned exchange of documents be delayed).

by Staff, to give time to the Commission to decide its associated Petition. Given the Commission's recent record in deciding issues presented to it from this proceeding (e.g., its one full year **not** deciding the issue of DOE's withdrawal), there is no reason to believe a "housekeeping" stay would turn out to be short term in nature. Moreover, since Nevada is opposed to the requested partial stay, it stands to reason that a housekeeping stay would effectively achieve the same result, particularly if the Commission is unable or unwilling to decide the Staff's Petition in a timely manner.

Respectfully submitted,

(signed electronically)

Charles J. Fitzpatrick *

Martin G. Malsch *

John W. Lawrence *

Egan, Fitzpatrick, Malsch & Lawrence, PLLC

1777 N.E. Loop 410, Suite 600

San Antonio, TX 78217

Tel: 210.496.5001

Fax: 210.496.5011

cfitzpatrick@nuclearlawyer.com

mmalsch@nuclearlawyer.com

jlawrence@nuclearlawyer.com

*Special Deputy Attorneys General

Attorneys for the State of Nevada

Dated: June 30, 2011

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

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

I hereby certify that the foregoing *State of Nevada Answer to NRC Staff Request for Stay of the April 11 and June 9, 2011 Board Orders* has been served upon the following persons by the Electronic Information Exchange:

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel

CAB 04

thomas.moore@nrc.gov
paul.ryerson@nrc.gov
richard.wardwell@nrc.gov

Anthony.Eitreim@nrc.gov
djg2@nrc.gov
katie.tucker@nrc.gov
sara.culler@nrc.gov
Patricia.Harich@nrc.gov
axw5@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
hearingdocket@nrc.gov
elj@nrc.gov
emile.julian@nrc.gov
rll@nrc.gov
evangelina.ngbea@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Comm Appellate Adjudication
OCAAMAIL@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
mitzi.young@nrc.govjab2@nrc.gov
elva.bowdenberry@nrc.gov
michelle.albert@nrc.gov
christopher.hair@nrc.gov
anthony.baratta@nrc.gov
paul.bollwerk@nrc.gov
gpb@nrc.gov
james.cutchin@nrc.gov
mshd.resource@nrc.gov
joseph.deucher@nrc.gov
joseph.gilman@nrc.gov
kg.golshan@nrc.gov
nsg@nrc.gov
roy.hawkens@nrc.gov
daniel.lenehan@nrc.gov
linda.lewis@nrc.gov
ogcmailcenter@nrc.gov
lgm1@nrc.gov
david.mcintyre@nrc.gov
cmp@nrc.gov
tom.ryan@nrc.gov
jack.whetstine@nrc.gov
Megan.Wright@nrc.gov

U.S. Department Of Energy
 Office of General Counsel
 martha.crosland@hq.doe.gov
 nicholas.dinunzio@hq.doe.gov
 ben.mcrae@hq.doe.gov
 christina.pak@hq.doe.gov
 sean.lev@hq.doe.gov
 cyrus.nezhad@hq.doe.gov

Office of Counsel, Naval Sea Systems
 Command
 frank.putzu@navy.mil

For U.S. Department of Energy
 Talisman International, LLC
 plarimore@talisman-intl.com

For U.S. Department of Energy
 dmaerten@caci.com

Counsel for U.S. Department of Energy
 Morgan, Lewis, Bockius LLP
 lcsedrik@morganlewis.com
 cmoldenhauer@morganlewis.com
 tpindexter@morganlewis.com
 apolonsky@morganlewis.com
 tschmutz@morganlewis.com
 dsilverman@morganlewis.com
 pzaffuts@morganlewis.com
 sstaton@morganlewis.com
 rkuyler@morganlewis.com
 annette.white@morganlewis.com

Counsel for U.S. Department of Energy
 Hunton & Williams LLP
 kfaglioni@hunton.com
 dirwin@hunton.com
 mshebelskie@hunton.com
 smeharg@hunton.com
 enoonan@hunton.com
 jwool@hunton.com
 bwright@hunton.com

State of Nevada
 Attorney General's Office
 madams@ag.nv.gov

Counsel for State of Nevada
 Egan, Fitzpatrick, Malsch & Lawrence
 mmalsch@nuclearlawyer.com
 cfitzpatrick@nuclearlawyer.com
 jlawrence@nuclearlawyer.com
 smontesi@nuclearlawyer.com
 lborski@nuclearlawyer.com

State of Nevada
 Nuclear Waste Project Office
 slynch1761@gmail.com
 steve.fr@hotmail.com

Counsel for Nye County, Nevada
 Ackerman Senterfitt
 robert.andersen@akerman.com

Nye County Regulatory/Licensing Advisor
 mrmurphy@chamberscable.com

Nye County Nuclear Waste Repository Project
 Office (NWRPO)
 zchoate@co.nye.nv.us
 csandoval@co.nye.nv.us

Counsel for Lincoln County, Nevada
 Whipple Law Firm
 bretwhipple@nomademail.com
 baileys@lcturbonet.com

Lincoln County District Attorney
 lcda@lcturbonet.com

Lincoln County Nuclear Oversight Prgm
 jcciac@co.lincoln.nv.us

For Lincoln County and White Pine County,
 Nevada
 Intertech Services Corporation
 mikebaughman@charter.net

Clark County, Nevada
 klevorick@co.clark.nv.us
 Elizabeth.Vibert@ccdandv.com

Counsel for Clark County, Nevada
 Jennings, Strouss & Salmon, PLC
 arobbins@jsslaw.com
 droby@jsslaw.com
 salleyne@jsslaw.com

Counsel for Eureka County, Nevada
 Harmon, Curran, Speilberg & Eisenberg
 dcurran@harmoncurran.com

Eureka County, Nevada
 Office of District Attorney
 tbeutel.ecda@eurekanv.org

Eureka County, Nevada
 Public Works
 rdamele@eurekanv.org

Eureka County, Nevada
 Nuclear Waste Advisory
 eurekanrc@gmail.com

For Eureka County, Nevada
 NWOP Consulting, Inc.
 lpitchford@comcast.net

Counsel for Churchill, Esmeralda, Eureka,
 Mineral and Lander Counties
 Armstrong Teasdale LLP
 jgores@armstrongteasdale.com

Counsel for Churchill, Esmeralda, Eureka,
 Mineral and Lander Counties
 Kolesar and Leatham
 rlist@klnevada.com

Esmeralda County Repository Oversight
 Program-Yucca Mountain Project
 muellered@msn.com

Mineral County Nuclear Projects Office
 yuccainfo@mineralcountynv.org

For Lincoln and White Pine County, Nevada
 LSN Administrator
 jayson@idtservices.com

Counsel for White Pine County, Nevada
 kbrown@mwpower.net

White Pine County (NV) Nuclear Waste
 Project Office
 wpnucwst1@mwpower.net
 wpnucwst2@mwpower.net

Counsel for Inyo County, Nevada
 Gregory L. James, Attorney at Law
 gljames@earthlink.net

Counsel for Inyo County, Nevada
 Law Office of Michael Berger
 michael@lawofficeofmichaelberger.com
 robert@lawofficeofmichaelberger.com

Inyo County Yucca Mountain Repository
 Assessment Office
 crichards@inyocounty.us

Attorney General, State of Washington
 toddb@atg.wa.gov
 andyf@atg.wa.gov
 michaeld@atg.wa.gov
 leeol@atg.wa.gov
 Jonat@atg.wa.gov
 dianam@atg.wa.gov
 sharonn@atg.wa.gov

California Energy Commission
 kwbell@energy.state.ca.us

California Department of Justice
 Office of the Attorney General
 susan.durbin@doj.ca.gov
 brian.hembacher@doj.ca.gov
 timothy.sullivan@doj.ca.gov
 Michele.Mercado@doj.ca.gov

Counsel for State of South Carolina
 Davidson & Lindemann, P.A.
 kwoodington@dml-law.com

Counsel for Aiken County, SC
Haynsworth Sinkler Boyd, PA
tgottshall@hsblawfirm.com
rshealy@hsblawfirm.com

Florida Public Service Commission
Office of the General Counsel
cmiller@psc.state.fl.us

Counsel for Native Community
Action Council
Alexander, Berkey, Williams & Weathers
cberkey@abwwlaw.com
swilliams@abwwlaw.com
rleigh@abwwlaw.com

Native Community Action Council
mrizabarte@gmail.com

Counsel for Prairie Island Indian
Community
donkeskey@publiclawresourcecenter.com

Prairie Island Indian Community
pmahowald@piic.org

Nuclear Energy Institute
awc@nei.org
ecg@nei.org
jxb@nei.org

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
jay.silberg@pillsburylaw.com
timothy.walsh@pillsburylaw.com
maria.webb@pillsburylaw.com

Counsel for Nuclear Energy Institute
Winston & Strawn
whorin@winston.com
rwilson@winston.com
drepka@winston.com
CSisco@winston.com

National Association of Regulatory
Utility Commissioners
jramsay@naruc.org
ddennis@naruc.org

For Joint Timbisha Shoshone Tribal Group
joekennedy08@live.com
purpose_driven12@yahoo.com

Counsel for Joint Timbisha Shoshone
Tribal Group
Fredericks & Peebles, L.L.P.
dhouck@ndnlaw.com
jpeebles@ndnlaw.com
sthinelk@ndnlaw.com
fbrooks@ndnlaw.com
seredia@ndnlaw.com
bniegemann@ndnlaw.com
rrhoan@ndnlaw.com
rcolburn@ndnlaw.com

Counsel for Joint Timbisha Shoshone
Tribal Group
Godfrey & Kahn, S.C.
sheinzen@gklaw.com
dpoland@gklaw.com
aharring@gklaw.com
jdobie@gklaw.com
hrenfro@gklaw.com
jschwartz@gklaw.com

Caption Reporters, Inc.
lcarter@captionreporters.com

(signed electronically)
Laurie Borski, Paralegal