

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

_____)	
NYE COUNTY, NEVADA, et al.,)	
)	
Petitioners)	
)	
v.)	No. 12-1136
)	
U.S. NUCLEAR REGULATORY)	
COMMISSION, et al.,)	
)	
Respondents)	
_____)	

**UNOPPOSED MOTION OF THE STATE OF NEVADA
FOR LEAVE TO INTERVENE AS INTERVENOR-RESPONDENT**

Pursuant to Federal Rule of Appellate Procedure 15(d), the State of Nevada (“Nevada”) moves for leave to intervene in this action as an intervenor-respondent. In support of this motion, Nevada states as follows:

1. In the instant case, Petitioners (Nye County, Nevada, Aiken County, South Carolina, State of South Carolina, State of Washington, and the National Association of Regulatory Utility Commissioners) petition for review of a U.S. Nuclear Regulatory Commission (“Commission”) Memorandum and Order, dated September 9, 2011, which (1) announced that the Commission was evenly divided on whether to take the affirmative action of overturning or upholding the Atomic Safety and Licensing Board’s (“Board’s”) denial of the U.S. Department of Energy’s (“DOE’s”) motion to withdraw its application for an authorization to a construct a geologic repository at Yucca Mountain,

Nevada, and (2) consistent with budgetary limitations, directed the Board to complete necessary and appropriate case management activities. Petitioners explained that the petition was filed for protective purposes in the event the Court does not resolve all of the issues on the merits in Case No. 11-1271, scheduled for argument May 2, 2012.

2. In Case No. 11-1271 the same Petitioners (and some others) seek a writ of mandamus to compel the Commission to take certain actions related to the proposed Yucca Mountain geologic repository that, they claim, have been unreasonably delayed. By order in Case No. 11-1271, dated November 4, 2011, the Court granted Nevada's unopposed motion to intervene as an intervenor-respondent in that case.

3. Nevada's motion to intervene in the instant case should be granted for the same reasons that intervention was granted in Case No. 11-1271. In brief, Nevada's interests in the instant case are as follows.

a. Nevada has consistently opposed DOE's efforts to site and license a geologic repository at Yucca Mountain. Numerous and serious safety, environmental, social and economic injuries would be inflicted upon Nevada's lands and resources, and its economy and citizens, if the repository should go forward. *See* Affidavit of Robert Halstead, Executive Director, Nevada Agency for Nuclear Projects (attached hereto as Exhibit 1, and incorporated herein by reference).

b. These injuries to Nevada would all be avoided if DOE is allowed to withdraw its Yucca Mountain license application. However granting Petitioners' request that the NRC's Memorandum and Order dated September 9, 2011 be reversed and remanded would appear to have the effect of requiring the NRC to reactivate the

currently suspended Yucca Mountain licensing proceeding notwithstanding DOE's attempt to withdraw its application. This would create or at least increase the possibility that Nevada would suffer the injuries outlined above.

c. Moreover, because of the extremely severe budget constraints at the NRC, it is possible that the proceeding could be reactivated only with severe and possibly unlawful limitations on Nevada's ability to participate effectively in the NRC adjudicatory proceeding including, for example, burdensome deadlines for completion of deposition discovery, filing of testimony, or commencement and completion of evidentiary hearings.

d. Nye County has for years supported the establishment of a nuclear waste repository at Yucca Mountain, even after DOE concluded that such a repository was not a viable option and moved to withdraw its License Application. Nye County's support for the project – apparently based on its hopes of financial enrichment – runs directly contrary to the State of Nevada and the vast majority of the State's citizens, only about one point seven percent (1.7%) of whom live in Nye County. Nye County, therefore, cannot and will not represent or articulate the position of Nevada in this case, nor will any of the Respondents.

e. Congress has recognized that the host state for the waste repository should be accorded broad “rights of participation and consultation,” and that state participation “is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel.” Sections 101(b) and 111(a)(6) of the Nuclear Waste Policy Act of 1982 (“NWPA”), as amended, 42 U.S.C. §§ 10121(b) and 10131(a)(6).

Accordingly, Nevada's views were routinely solicited and its comments were timely considered throughout the Yucca Mountain site characterization process, the site approval process, the site selection process, and the construction authorization process.

See NWPA Secs. 113(a) & (b), 114(a)(1)(H), 115(b), 116(a)-(c), and 117(a) & (b).

Under the NRC Rules of Practice, Nevada was granted automatic standing to intervene in the Yucca Mountain licensing proceeding. 10 C.F.R. § 2.309(d)(2). The fact that Nevada has been heard and afforded full participation rights at every stage of the Yucca Mountain process suggests that this Court should similarly allow Nevada to participate as an intervenor in this proceeding to offer its unique views and perspectives as the host state for the repository. Moreover, Nevada was allowed to intervene in the D.C. Circuit case that set the stage for the instant one, *In re Aiken County, Petitioner*, 645 F. 3d 428 (D.C. Cir. 2011).

4. Nevada's interests will not be adequately represented in the absence of intervention. Only Nevada is in a position to represent its sovereign and other interests. Moreover, Nevada may be in a position to present arguments in support of Respondents that Respondents cannot make themselves given the pendency of the NRC proceeding. In sum, Nevada's views on the arguments advanced by Petitioners will be of assistance to the Court.

5. Petitioners filed their Petition for Review on March 7, 2012. A motion for leave to intervene in this case must be filed within 30 days, or by April 6, 2012. Fed. R. App. P. 15(d). This motion meets that deadline. Nevada's participation as intervenor-respondent will not delay the proceedings or prejudice any party. Nevada also stands

ready to cooperate with the parties and the Court to ensure efficient and timely adjudication of the present case.

6. Counsel for Nevada has contacted counsel for all parties regarding this motion for leave to intervene. Respondents stated that they do not object to Nevada's Motion for Leave to Intervene. Petitioners all stated they do not object to Nevada's motion provided Nevada does not oppose the pending motion to hold the case in abeyance. Nevada does not oppose the abeyance motion.

Respectfully submitted,

/s/

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Attorneys for the State of Nevada

DATED: April 5, 2012

CERTIFICATE OF SERVICE

I certify that on April 5, 2012, the *Unopposed Motion of the State of Nevada for Leave to Intervene as Intervenor-Respondent* was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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*For Respondents U.S. Nuclear Regulatory Commission, NRC Atomic Safety and
Licensing Board, Gregory B. Jaczko, Thomas Moore, Paul Ryerson and Richard
Wardwell*

/s/

John W. Lawrence

Exhibit 1

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NYE COUNTY, NEVADA, et al.,)	
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Petitioners,)	
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U.S. NUCLEAR REGULATORY)	
COMMISSION and GREGORY)	No. 12-1136
JACZKO, Chairman of the)	
Nuclear Regulatory Commission,)	
)	
Respondents)	

AFFIDAVIT OF ROBERT J. HALSTEAD

I, Robert J. Halstead, do hereby swear that the following matters are true and correct based on my personal knowledge:

1. I am the Executive Director of the Nevada Agency for Nuclear Projects ("Agency"), the Agency vested by state law to carry out the duties and responsibilities imposed on the State of Nevada ("Nevada"), by the Nuclear Waste Policy Act ("NWPA"), as amended. 42 U.S.C. 10101, et seq.

2. The primary responsibility of the Agency is to oversee and evaluate the U.S. Department of Energy's ("DOE's") programs (a) to characterize or otherwise study the proposed Yucca Mountain site in southern Nevada for the purpose of assessing its suitability as a repository for high-level radioactive waste and spent nuclear fuel ("Yucca Mountain Project"), (b) to apply for all necessary licenses for the Yucca Mountain

Project, and (c) if the Yucca Mountain Project is licensed, to construct and operate it as a repository for the disposal of high level radioactive waste and spent nuclear fuel.

3. I hire and supervise consultants and scientists that, for Nevada, oversee DOE's activities involving the Yucca Mountain site. My position also involves regularly tracking and evaluating the Yucca Mountain Project. That is the basis of my personal knowledge of the matters stated in this Affidavit.

4. Nevada has a strong interest in protecting the health and safety of its citizens from radiological injuries and in protecting its lands and groundwater from radioactive contamination. The disposal of high-level radioactive waste and spent nuclear fuel at Yucca Mountain will inevitably lead to increased radiation doses to Nevada's citizens and to the contamination of the lands and the groundwater of Nevada with radioactive materials. Nevada's sovereign interests are injured because, under Nevada law, all groundwaters are owned by the people of Nevada and administered in trust by Nevada.

5. The Yucca Mountain Project would rank among the largest and most irreversible public works projects in history. Among other things, public lands in a corridor hundreds of miles long would have to be withdrawn so that waste could be transported to Yucca Mountain for disposal. These lands could not be used for public roads and bridges and other public infrastructure projects.

6. DOE's plans to transport spent nuclear fuel assemblies from their current locations at nuclear power reactors and other storage sites around the United States to Yucca Mountain would be the largest spent nuclear fuel transportation campaign in the

history of the United States. This transportation campaign would create the risk of discharges of radioactive materials and land contamination, both within and outside of Nevada. Nevada emergency response resources would need be called upon, especially if a release occurs or is threatened in Nevada urban areas.

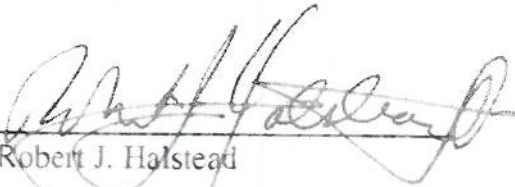
7. Nevada would incur an enormous expense in escorting and monitoring DOE's transportation of high-level radioactive waste and spent nuclear fuel shipments into the state, as well as the resources expended in training, preparing and equipping first responders, hospitals and law enforcement in anticipation of such shipments. In addition, Nevada would be required to expend substantial resources improving its transportation infrastructure, in order to maintain and rebuild roads and highways which would be inevitably and significantly impacted by their utilization by large numbers of extremely heavy vehicles transporting waste to Yucca Mountain. Another threat to Nevada arises from the intense negative perception and stigma associated with transportation to and disposal of high-level radioactive waste and spent nuclear fuel in Nevada. This could lead to losses of jobs and tax revenues. *See also*, "Mountain of Trouble: A Nation at Risk – Report on Impacts of the Proposed Yucca Mountain High-Level Nuclear Waste Program," February 2002 (prepared by the Nevada Agency for Nuclear Projects, Office of the Governor of the State of Nevada), available at <http://www.state.nv.us/nucwaste/yucca/impactreport.pdf>.

8. These injuries to Nevada would all be avoided if DOE is allowed to withdraw its Yucca Mountain license application. However granting Petitioners' request that the NRC's Memorandum and Order dated September 9, 2011 be reversed and

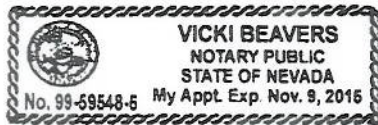
remanded would appear to have the effect of requiring the NRC to reactivate the currently suspended Yucca Mountain licensing proceeding notwithstanding DOE's attempt to withdraw its application. This would create or at least increase the possibility that Nevada would suffer the injuries outlined above. Moreover, because of the extremely severe budget constraints at the NRC, it is possible that the proceeding could be reactivated only with severe and possibly unlawful limitations on Nevada's ability to participate effectively in the NRC adjudicatory proceeding including, for example, burdensome deadlines for completion of deposition discovery, filing of testimony, or commencement and completion of evidentiary hearings.


9. Nye County has for years supported the establishment of a nuclear waste repository at Yucca Mountain, even after DOE concluded that such a repository was not a viable option and moved to withdraw its License Application. Nye County's support for the project – apparently based on its hopes of financial enrichment – runs directly contrary to the State of Nevada and the vast majority of the State's citizens, only about one point seven percent (1.7%) of whom live in Nye County. Nye County, therefore, cannot and will not represent or articulate the position of Nevada in this case, nor will any of the other Respondents.

Further, the affiant says not.


Robert J. Halstead

The above-named affiant personally appeared before me this 3rd day of April, 2012, and executed this affidavit.




Notary Public, State of Nevada
My Commission expires:
11/9/15