

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Commission**

<b>In the Matter of</b>	)	
	)	
<b>U.S. DEPARTMENT OF ENERGY</b>	)	<b>Docket No. 63-001-HLW</b>
	)	
<b>(High Level Waste Repository)</b>	)	<b>December 9, 2013</b>

**STATE OF NEVADA CONSOLIDATED ANSWERS TO (1) FIVE PARTIES’  
REQUEST FOR LEAVE TO FILE MOTION FOR RECONSIDERATION  
AND (2) FIVE PARTIES’ MOTION FOR RECONSIDERATION  
OF COMMISSION’S NOVEMBER 18, 2013 RESTART ORDER**

On November 27, 2013, Nye County, Nevada, Aiken County, South Carolina, the States of South Carolina and Washington, and the National Association of Regulatory Utility Commissioners (“Five Parties”) filed (1) a joint request for leave to move for reconsideration of the Commission’s November 18, 2013 Memorandum and Order (CLI-13-08) (“Order”) and (2) a joint motion for reconsideration of the subject Order (“motion”). For the reasons set forth below, Nevada believes that parties (including Five Parties) are entitled to move for reconsideration of the Order but that the specific motion filed by Five Parties should be denied.

**A. Leave to File.**

Nevada believes that no request for leave to move for reconsideration was necessary because Subpart C of 10 C.F.R. Part 2 (including 10 C.F.R. § 2. 323 (e)) does not apply. The Subpart does not apply because, as Nevada pointed out in its November 27, 2013 petition for clarification of that same Order, the adjudicatory proceeding remains suspended, the Commission stated specifically in the Order (at 6) that the subject decision “is not strictly adjudicatory in nature” and “otherwise does not fit cleanly within the procedures described in our rules of practice” and the Commission has the inherent authority to clarify its decisions either

*sua sponte* or on request. Parties (including Five Parties) are entitled to move for reconsideration of the Order without prior permission to so move.

**B. Motion for Reconsideration.**

Five Parties demand that the Commission create a schedule for completing the remaining volumes of the Safety Evaluation Report (“SER”), provide detailed estimates of the remaining SER work and an explanation why completion of the SER will require an additional twelve months, provide a detailed justification for the estimated SER completion cost, and provide a detailed explanation why serial discovery and adjudication of a post-closure safety issues cannot be accomplished within available funds. Five Parties claim that the motion must be granted to comply fully with the decision and mandamus issued in *In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013) (“*Aiken County*”). It is also apparent that Five Parties believe that *Aiken County* empowered them to probe the basis for the Commission’s November 18, 2013 order so that *they* and other interested persons and Congress may be satisfied the course of action taken by the Commission is justified. *See e.g.*, motion at 7 (“[w]ithout additional analysis ... the participants in the licensing proceeding, Congress, and other interested parties will be unable to determine if serial discovery and adjudication of post-closure safety issues is achievable with existing NRC funds”).

The short answer to Five Parties’ motion is that nothing in *Aiken County* requires the Commission to grant the relief requested. In directing the Commission to “promptly continue with the legally mandated licensing process,” without further specificity, the Court obviously left it to the Commission’s expert judgment and discretion exactly how to proceed in both tracks of the Yucca Mountain licensing process. 725 F.3d 255 at 267. This approach was in accord with Circuit precedent. *See e.g.*, *Oil, Chemical and Atomic Workers International Union v. Zeger*,

*Assistant Secretary of Labor*, 768 F.2d 1480, 1488 (D.C. Cir. 1985) Indeed, it is quite apparent that Five Parties are in fact asking the Commission to grant certain relief that the Court denied. See December 5, 2011, Brief of Petitioners at 54. Moreover, there is certainly nothing in *Aiken County* that even remotely supports Five Parties' apparent belief that they are now invested with the extraordinary power to probe the Commission's decision-making process in order to satisfy themselves that the Order is justified.

Finally, Five Parties are not prejudiced by the Order. Five Parties' characterization of the SER completion costs mentioned in the Order as "enormous" (motion at 4) is based on rank speculation and is inconsistent with the essential thrust of their motion. Five Parties cannot possibly know how much SER work actually remains to be completed and, indeed, their motion is premised precisely on a lack of such knowledge. However, the Order states that the Commission will "closely monitor" progress under the Order and provides further that "[s]hould appropriated funds remain following completion of the activities directed in this decision, an estimate of further steps will prove necessary, and we will assess how best to use remaining funds at that time." Order at 22 and 22, note 87. Therefore, if completing the SER somehow requires an expenditure of funds that is less than what is currently estimated, Five Parties are free to ask the Commission at the appropriate time to embark on the particular licensing activities that they favor.

For the foregoing reasons, the motion should be denied.

Respectfully submitted,

*(signed electronically)*

Martin G. Malsch \*

Charles J. Fitzpatrick \*

John W. Lawrence \*

Egan, Fitzpatrick, Malsch & Lawrence, PLLC

1777 N.E. Loop 410, Suite 600

San Antonio, TX 78217

Tel: 210.496.5001

Toll-Free Fax: 855.427.6554

mmalsch@nuclearlawyer.com

cfitzpatrick@nuclearlawyer.com

jlawrence@nuclearlawyer.com

\*Special Deputy Attorneys General

Dated: December 9, 2013

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**Before the Commission**

<b>In the Matter of</b>	)	
	)	
<b>U.S. DEPARTMENT OF ENERGY</b>	)	<b>Docket No. 63-001-HLW</b>
	)	
<b>(High Level Waste Repository)</b>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *State of Nevada Consolidated Answers to (1) Five Parties' Request For Leave to File Motion For Reconsideration and (2) Five Parties' Motion For Reconsideration of Commission's November 18, 2013 Restart Order* has been served upon the following persons by the Electronic Information Exchange:

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

CAB04

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.gov  
anthony.baratta@nrc.gov  
jessica.bielecki@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  
shelbie.lewman@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  
tpoindexter@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  
cfitzpatrick@nuclearlawyer.com  
mmalsch@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  
Clark Hill PLC  
randersen@ClarkHill.com  
cclare@ClarkHill.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 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  
saged183@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@idservices.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  
leo1@atg.wa.gov  
Jonat@atg.wa.gov  
dianam@atg.wa.gov  
sharonn@atg.wa.gov

California Energy Commission  
Kevin.W.Bell@energy.ca.gov

California Department of Justice  
Office of the Attorney General  
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  
fbrooks@ndnlaw.com  
seredia@ndnlaw.com  
bniegemann@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  
jschwartz@gklaw.com

Caption Reporters, Inc.  
lcarter@captionreporters.com

*(signed electronically)*  
Laurie Borski, Paralegal