

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

_____ )	Docket No. 63-001-HLW
In the Matter of )	
U.S. DEPARTMENT OF ENERGY )	
(License Application for Geologic )	
Repository at Yucca Mountain) )	December 9, 2013
_____ )	

**FIVE PARTIES' ANSWER TO NEVADA'S PETITION FOR CLARIFICATION OF  
RESTART ORDER AND STAFF REQUIREMENTS MEMORANDUM**

Nye County, Nevada, the State of South Carolina, the State of Washington, Aiken County, South Carolina, and the National Association of Regulatory Utility Commissioners (collectively the "Five Parties") hereby respond to the State of Nevada's November 27, 2013 Petition for Clarification of November 18, 2013 Restart Order and Related Staff Requirements Memorandum ("Nevada Petition for Clarification").

The Five Parties concur with the Staff Requirements Memorandum's (associated with SECY-13-0113) ("SRM") direction that Staff should "adopt work previously completed as a first principle, to the maximum extent possible, and should undertake original investigation or inquiry only as necessary to account or adjust for new information." The Five Parties believe that nothing in the SRM directs Staff to contravene NRC rules governing the proper staff review procedures that may apply to work already accomplished before the licensing proceeding was illegally suspended in 2011. The Five Parties already acknowledged that adopting previously completed work (even to the maximum extent possible) on one or more SERs could include

additional staff review if required.<sup>1</sup> Therefore, the Five Parties do not believe clarification of the SRM is necessary, since nothing in the SRM suggested that NRC rules could be circumvented during completion of the SERs.

Nevada notes that “insofar as Nevada is aware, NRC Staff management and Office of General Counsel (‘OGC’) review of any drafts of the SER was not completed when work on the SER was suspended in the fall of 2011.” Nevada Petition for Clarification at 4. The Five Parties are similarly unaware of the status of the staff review, and that is among the reasons why the Five Parties’ Motion for Reconsideration requests modification to NRC’s Order to provide additional information on the status of the SERs.<sup>2</sup> Furthermore, while some of the Staff’s technical work in developing the SERs and related Technical Evaluation Reports (“TERs”) **may** require additional review to become approved SERs, all Staff Management Reviews and OGC reviews of SERs that had been completed prior to the illegal suspension of the licensing proceedings can and should be used to the maximum extent possible in order to preserve scarce appropriated funds. Contrary to what Nevada implies,<sup>3</sup> a number of previously developed SERs were “uncompleted” by simply stripping the SERs of their safety conclusions and improperly converting them into TERs. See *In re Aiken County*, 725 F.3d 255, 268 (D.C. Cir. 2013); Nye County’s Motion for Lifting of Suspension of Yucca Mountain Licensing Proceeding, Scheduling of Immediate Case Management Conference, and Issuance of Related Administrative Orders at \*16, *In re U.S. Dep’t of Energy*, NRC No. 63-001-HLW (Aug. 23, 2013). Thus, if necessary staff and legal reviews were completed before those safety conclusions were removed, the SER(s) can and should be issued without wasting further funds.

The Five Parties do not interpret the SRM to preclude the use of the technical analyses or staff management reviews accomplished (or “completed”) prior to the illegal suspension of

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<sup>1</sup> See *Motion for Reconsideration of Memorandum and Order* at 3, n. 4 (Nov. 27, 2013) (“Five Parties’ Motion for Reconsideration”).

<sup>2</sup> See *generally* Motion for Reconsideration.

<sup>3</sup> Nevada Petition at 4.

the licensing process that led to the issuance of the writ of mandamus in *In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013). According to Nevada, “work is not considered ‘completed’ unless the Staff management and OGC review required by internal Staff practice and procedure was completed.” *Id.* Thus, Nevada’s Petition could theoretically be interpreted as restricting the Staff from adopting previous technical work or internal reviews that had not received **final** Staff management and OGC review by the time the former Chairman improperly suspended the licensing proceeding. Out of an abundance of caution, the Five Parties want to make clear that the Commission should obviously reject any such restrictions. Requiring Staff to ignore such technical work and reviews is not required by NRC rules, would be a significant waste of resources, and would be inconsistent with the Court’s decision in *In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013), *request for rehearing en banc denied on Oct. 28, 2013*.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Five Parties' "Answer to Nevada's Petition for Clarification of Restart Order and Staff Requirements Memorandum" in the above-captioned proceeding has been served on the following this 9th day of December, 2013, by Electronic Information Exchange.

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