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)	**)**	**December 9, 2013**

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

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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
evangeline.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
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@ccdanv.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@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
leeo1@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