

**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)

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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:

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