

September 30, 2013

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of:)
) Docket No. 63-001-HLW
U.S. Department of Energy)
(High Level Waste Repository))

**PRAIRIE ISLAND INDIAN COMMUNITY’S RESPONSE
TO THE COMMISSION’S AUGUST 30, 2013 ORDER**

The Prairie Island Indian Community (“PIIC”) respectfully submits this response to the August 30, 2013 Order issued by the Secretary of the Nuclear Regulatory Commission inviting all participants in this proceeding to provide views on how the NRC should continue with the licensing process and respond to the Motions filed by Nye County, Nevada¹ and the State of Nevada.²

On August 13, 2013, the U.S. Court of Appeals for the District of Columbia Circuit granted a writ of mandamus against the NRC, and directed the agency to “promptly continue with the legally mandated licensing process.”³ Accordingly, the PIIC suggests that the Commission issue an Order to, among other things:

1. Lift the suspension of the Yucca Mountain licensing proceeding;
2. Reconvene the Atomic Safety and Licensing Board with instructions to designate CAB 04 panel to conduct the proceeding;

¹ 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 (Aug. 23, 2013) (“Nye County Motion”). Nye County filed two essentially identical motions, one before the Commission and one before the Atomic Safety and Licensing Board. References herein to the Nye County Motion refer to the one pending before the Commission.

² State of Nevada Motion for Commission Action Related to a Possible Restart of the Yucca Mountain Licensing Proceeding (Aug. 23, 2013) (“Nevada Motion”).

³ *In re Aiken County*, No. 11-271, 2013 WL 4054877 (D.C. Cir. Aug. 13, 2013) (“*Aiken*”).

3. Order the NRC Staff to immediately release the unredacted NRC Staff Safety Evaluation Reports (“SERs”);
4. Designate the completion and publication of the SERs as the first priority for the expenditures of funds and order that the NRC Staff immediately proceed to complete and publish the unfinished SER volumes;
5. Direct that the Board schedule a case management conference to plan the next steps and to institute a timeline for the SER process;
6. Delay reinstatement of the Licensing Support Network (“LSN”) until after a case management conference and completion and publication of the SERs;
7. Make all documents filed and archived in the proceeding available on the NRC’s ADAMS archival system; and
8. Submit a revised NRC budget request to Congress for sufficient funds to enable the NRC to continue a thorough licensing process as mandated by the Nuclear Waste Policy Act of 1982, as amended.

As set forth above, the PIIC believes that the NRC should begin its compliance with the D.C. Circuit’s mandamus order by directing that a portion of the remaining \$11.1 million in appropriated funds be used to complete and publish the unfinished volumes of the NRC Staff’s Safety Evaluation Report (“SER”) for the proposed high-level waste repository at Yucca Mountain, including conclusions as to whether the proposed Yucca Mountain repository satisfies the applicable Commission regulations. However, given the NRC’s representation to Congress that “an estimated 6-8 months was needed to complete all volumes of the SER at a cost of \$6.5 million,”⁴ the other \$4.6 million (or whatever portion of the \$11.1 million in appropriated funds remains) could be used to restart of the process on a prompt basis, such as reconvening the Atomic Safety and Licensing Board. The Board could schedule a case management conference to plan the next steps, and perhaps establish a timeline for the SER process. For example, a case

⁴ Letter from Fred Upton, Chairman, United States House of Representatives Committee on Energy and Commerce, and John Shimkus, Chairman, United States House of Representatives Energy and Commerce Subcommittee on Environment and the Economy, to Allison M. Macfarlane, Chairman, U.S. Nuclear Regulatory Commission (Aug. 23, 2013) at 1.

management conference could be a means to require the NRC Staff to propose a case schedule, including completion of the SERs, and to provide an estimate of costs to undertake various restart steps (such as completing the SERs, continuing with discovery, restarting the LSN, etc.), which may provide more information on how to restart the process most effectively and expeditiously.

The PIIC appreciates and agrees with other parties' concerns that restarting the LSN other activities, if they are costly, may divert needed funds away from completion of the SERs. If completion of the SERs would not expend the entire \$11.1 million of appropriated funding, or if additional funding sources are identified or Congress appropriates additional funding, then some other effective restart activities can be undertaken at minimum cost on a parallel basis with work on the SERs. Convening a case management conference should also be promptly undertaken to comply with the Court's mandamus order.

Respectfully Submitted,

/Signed electronically by Philip R. Mahowald/

Philip R. Mahowald
Counsel for Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089
Tel. (651) 267-4006
pmahowald@piic.org

Dated: September 30, 2013

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CERTIFICATE OF SERVICE

I hereby certify that copies of the “Prairie Island Indian Community’s Response to the Commission’s August 30, 2013 Order” have been served on the following persons this 30th day of September, 2013, by Electronic Information Exchange in the above-captioned proceeding:

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Mail Stop T-3F23
Washington, DC 20555-0001

CAB 04

Thomas S. Moore, Chairman
tsm2@nrc.gov
Paul S. Ryerson, Administrative Judge
psr1@nrc.gov
Richard E. Wardwell, Administrative Judge
rew@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555
HEARINGDOCKET@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate
Adjudication
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001

Jessica A. Bielecki, Esq.
jessica.bielecki@nrc.gov
Rebecca Giiter
rebecca.giiter@nrc.gov
Daniel W. Lenehan, Esq.
daniel.lenehan@nrc.gov
Shelbie R. Lewman
shelbie.lewman@nrc.gov
Mitzi A. Young, Esq.
mitzi.young@nrc.gov
Megan Wright
Megan.wright@nrc.gov
Nicole Picard
Nicole.picard@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue S.W.
Washington, DC 20585

Martha S. Crosland, Esq.
martha.crosland@hq.doe.gov
Angela M. Kordyak, Esq.
angela.kordyak@hq.doe.gov
Nicholas P. DiNunzio
nick.dinunzio@rw.doe.gov
James Bennett McRae
ben.mcrae@hq.doe.gov
Sean A. Lev
sean.lev@hq.doe.gov

Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1777 N.E. Loop 410, Suite 600
San Antonio, TX 78217

Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com
Laurie Borski, Paralegal
lborski@nuclearlawyer.com

Counsel for State of Nevada
Egan, Fitzpatrick & Malsch, PLLC
1750 K Street, NW, Suite 350
Washington, DC 20006

Martin G. Malsch, Esq.
mmalsch@nuclearlawyer.com
Susan Montesi
smontesi@nuclearlawyer.com

Counsel for U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004

Donald J. Silverman, Esq.
dsilverman@morganlewis.com
Thomas A. Schmutz, Esq.
tschmutz@morganlewis.com
Thomas C. Poindexter, Esq.
tpoindexter@morganlewis.com
Paul J. Zaffuts, Esq.
pzaffuts@morganlewis.com
Alex S. Polonsky, Esq.
apolonsky@morganlewis.com
Lewis Csedrik, Esq.
lcsedrik@morganlewis.com
Raphael P. Kuyler, Esq.
rkuyler@morganlewis.com

Counsel for U.S. Department of Energy
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074

Donald P. Irwin, Esq.
dirwin@hunton.com
Michael R. Shebelskie, Esq.
mshebelskie@hunton.com
Kelly L. Faglioni
kfaglioni@hunton.com

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403

Gregory Barlow
lcda@lcturbonet.com

Lincoln County Nuclear Oversight Program
P.O. Box 1068
Caliente, NV 89008

Connie Simkins, Coordinator
jcciac@co.lincoln.nv.us

Counsel for Nye County, Nevada
Clark Hill
601 Pennsylvania Avenue, NW, #1000
Washington, DC 20004

Robert Andersen, Esq.
randersen@clarkhill.com
Christopher B. Clare, Esq.
cclare@clarkhill.com

Nye County Regulatory/Licensing Advisor
18160 Cottonwood Rd. #265
Sunriver, OR 97707

Malachy Murphy, Esq.
mrmurphy@chamberscable.com

Counsel for Eureka County, Nevada
Harmon, Curran, Speilberg & Eisenberg, LLP
1726 M. Street N.W., Suite 600
Washington, DC 20036

Diane Curran, Esq.
dcurran@harmoncurran.com

Counsel for Churchill, Esmeralda, Lander,
and Mineral Counties, Nevada
Armstrong Teasdale, LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237

Robert F. List, Esq.
rlist@klnevada.com
Jennifer A. Gores, Esq.
jgores@arnstrongteasdale.com

For Lincoln County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702

Dr. Mike Baughman, Consultant
bigboff@aol.com

Nuclear Waste Repository Project Office
1210 E. Basin Road, Room 6
Pahrump, NV 89060

Celeste Sandoval
csandoval@co.nye.nv.us

Counsel for Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155

Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdandv.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
8330 W. Sahara Avenue, #290
Las Vegas, NV 89117

Phil Klevorick
klevorick@clarkcountynv.gov

Mineral County Nuclear Projects Office
P.O. Box 1600
Hawthorne, NV 89415

Linda Mathias, Director
yuccainfo@mineralcountynv.org

For White Pine County, Nevada
Office of the District Attorney
801 Clark Street, Suite 3
Ely, NV 89301

Kelly Brown, District Attorney
kbrown@mwpower.net

Esmeralda County Repository Oversight
Program
Yucca Mountain Project
Mineral County Nuclear Projects
PO Box 490
Goldfield, NV 89013

Edwin Mueller, Director
muellered@msn.com

Bret O. Whipple
1100 South Tenth Street
Las Vegas, NV 89104
bretwhipple@nomademail.com

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Kevin, W. Bell, Senior Staff Counsel
kwbell@energy.state.ca.us

California Department of Justice
Office of the Attorney General
1300 I Street, P.O. Box 944255
Sacramento, CA 94244-2550

Susan L. Durbin, Esq.
Susan.durbin@doj.ca.gov
Michele Mercado
Michele.mercado@doj.ca.gov

Counsel for Inyo County, California
712 Owens Gorge Road
HC 79, Box 11
Mammoth Lakes, CA 93546

Gregory L. James, Attorney at Law
gljames@earthlink.net

Counsel for Inyo County
Law Office of Michael Berger
233 East Carrillo Street, Suite B
Santa Barbara, CA 93101

Michael Berger, Esq.
mberger@bsglaw.net
Robert S. Hanna, Esq.
rshanna@bsglaw.net

Cathreen Richards
crichards@inyocounty.us

Nuclear Energy Institute Inc.
1201 F Street, NW, Suite 1100
Washington, DC 20004-1218

Ellen C. Ginsberg, Esq.
ecg@nei.org
Anne W. Cottingham, Esq.
awc@nei.org
Jerry Bonanno, Esq.
jxb@nei.org

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122

Jay E. Silberg, Esq.
jay.silberg@pillsburylaw.com
Timothy J.V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Maria D. Webb, Senior Energy Legal Analyst
maria.webb@pillsburylaw.com

California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Floor, P.O. Box 70550
Oakland, CA 94612-0550

Timothy E. Sullivan, Dep. Attorney General
timothy.sullivan@doj.ca.gov

Native Community Action Council
P.O. Box 140
Baker, NV 89311

Ian Zabarte, Member of Board of Directors
mirzabarte@gmail.com

Counsel for Joint Timbisha Shoshone Tribal
Group
Fredericks Peebles & Morgan LLP
2020 L Street, Suite 250
Sacramento, CA 95814

Felicia M. Brooks
fbrooks@ndnlaw.com
Ross Colburn Esq.
rcolburn@ndnlaw.com

Fredericks Peebles & Morgan LLP
1001 Second Street
Sacramento, CA 95814

John M. Peebles
jpeebles@ndnlaw.com
Darcie L. Houck, Esq.
dhouck@ndnlaw.com

California Department of Justice
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

Brian Hembacher, Dep. Attorney General
brian.hembacher@doj.ca.gov

Counsel for Native Community Action
Council
Alexander, Berkey, Williams & Weathers LLP
2030 Addison Street, Suite 410
Berkley, CA 94704

Curtis G. Berkey
cberkey@abwwlaw.com
Scott W. Williams
swilliams@abwwlaw.com
Rovianne A. Leigh, Esq.
rleigh@abwwlaw.com

Counsel for Joint Timbisha Shoshone Tribal
Group
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P. O. Box 2719
Madison, WI 53701-2719

Steven A. Heinzen, Esq.
sheinzen@gklaw.com
Julie Dobie
jdobie@gklaw.com
Jacqueline Schwartz
jschwartz@gklaw.com

Fredericks Peebles & Morgan, LLP
3610 North 163rd Plaza
Omaha, NE 68116

Shane Thin Elk
sthinelk@ndnlaw.com

Counsel for Nuclear Energy Institute
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817

David A. Repka, Esq.
drepka@winston.com
William A. Horin, Esq.
whorin@winston.com
Rachel Miras-Wilson
rwilson@winston.com

Counsel for Aiken County, South Carolina
Haynesworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
P.O. Box 11889
Columbia, SC 29211-1889

Thomas R. Gottshall, Esq.
tgottshall@hsblawfirm.com
S. Ross Shealy, Esq.
rshealy@hsblawfirm.com

Counsel for Prairie Island Indian Community
Public Law Resource Center PLLC
505 N. Capitol Avenue
Lansing, MI 48933

Don L. Keskey, Esq.
donkeskey@publiclawresourcecenter.com

Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701

Marta Adams, Chief Deputy
madams@ag.nv.gov

Counsel for State of South Carolina
Davidson & Lindemann, P.A.
1611 Devonshire Drive
P.O. Box 8568
Columbia, SC 29201

Kenneth P. Woodington, Esq.
kwoodington@dmi-law.com

Counsel for State of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117

Michael L. Dunning
michaelD@atg.wa.gov
Andrew A. Fitz
andyF@atg.wa.gov
H. Lee Overton
LeeO1@atg.wa.gov
Jonathan C. Thompson
JonaT@atg.wa.gov
Todd R. Bowers, Esq.
toddb@atg.wa.gov

Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32303

Cynthia Miller, Esq.
cmiller@psc.state.fl.us

Counsel for National Association of
Regulatory
Utility Commissioners (NARUC)
1101 Vermont Avenue, Suite 200
Washington, DC 20005

James Bradford Ramsay, Esq.
jramsay@naruc.org

Loreen Pitchford
nwop@comcast.net

Patricia Larimore
plarimore@talisman-intl.com

Joe Kennedy
joekennedy08@live.com

Daniel Maerten
dmaerten@caci.com

Jason Pitts
jayson@idtservices.com

State of Nevada
Nuclear Waste Project Office

Akerman Senterfitt LLP
750 9th N.W., Suite 750
Robert M. Anderson
robert.anderson@akerman.com

Susan Lynch
Slynch1761@gmail.com
Steve Frishman
steve.fr@hotmail.com

U.S. Department of Energy
Office of the General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321

Naval Sea Systems Command Nuclear
Propulsion Program
1333 Isaac Hull Avenue, S.E.
Washington Navy Yard, Bldg. 197
Washington, DC 20376

George W. Hellstrom
george.hellstrom@ymp.gov

Frank A. Putzu
frank.putzu@navy.mil

/Signed electronically by Philip R. Mahowald/

Philip R. Mahowald
Counsel for Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089
Tel. (651) 267-4006
pmahowald@piic.org