

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/

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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:

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