

# March 2010

## High-level Waste Hearings Summary Table

- On March 3<sup>rd</sup> the [DOE submitted a motion](#) to withdraw its pending license application for a permanent geologic repository at Yucca Mountain, Nevada asking the Board to dismiss its application with prejudice and to impose no additional terms of withdrawal.
- March 3<sup>rd</sup>, the [State of Washington \(Washington\) petitions](#) for leave to intervene in this proceeding.
- March 4<sup>th</sup> [Aiken County, South Carolina petitioned to intervene](#) in opposition to the DOE's motion to withdraw, with prejudice, its application. (In the alternative, Aiken County seeks to stay the matter pending a resolution of the petition Aiken County filed with the US court of Appeals concerning the lawfulness of a Motion to Withdraw the license application. The court of appeals has directed the DOE to respond to the petition by March 24. ( Aiken County also stated "the remaining respondents have failed to act as required under 42 U.S.C.A. § 10134(d) by acquiescing in and granting the DOE's request that consideration of the already submitted License Application be stayed pending its withdrawal, rather than considering and issuing a final decision on the merits of said application. Under 42 U.S.C.A. § 10134(d), these parties have an obligation to review and rule on the License Application as submitted.")
- March 15, the [National Association of Regulatory Utility Commissioners](#) filed to intervene (NARUC, founded in 1889, is a national organization whose members include the commissioners that head the agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates and conditions of service associated with the intrastate operations of electric, natural gas, water, and telephone utilities.)
- March 15<sup>th</sup>, Petition to Intervene of the [Prairie Island Indian Community](#) (The Petitioner is a federally recognized Indian tribe, whose community is adjacent to an Independent Spent Fuel Storage Installation where spent nuclear fuel is presently stored.)
- March 1<sup>st</sup> Cessation of Performance Confirmation Activates at the Yucca Mountain Site ceased.

# High-Level Waste hearing

Request for Additional Information table (RAI's) [here](#)

## ORDERS Electronic Hearing Docket Board Orders for March - CAB 4

Date	March	March 16	March 1
	<p><a href="#">Order - concerning scheduling</a> U.S. Department of Energy's Motion to Withdraw (Mar. 3, 2010). Petition of the State of South Carolina to Intervene (Feb. 26, 2010); State of Washington's Petition for Leave to Intervene and Request for Hearing (Mar. 3, 2010); Petition of Aiken County, South Carolina, to Intervene (Mar. 4, 2010). The Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference (Feb. 4, 2010); The Department of Energy's Status Report on Its Archiving Plan (Feb. 19, 2010)</p>	<p>ORDER (Filing Times for Answers and Replies) The provisions of 10 C.F.R. § 2.309(h) shall control the time for filing answers to the newly filed intervention petitions of the National Association of Regulatory Utility Commissioners and the Prairie Island Indian Community and the time for filing any replies. In the event any additional intervention petitions are filed, those same provisions shall control the time period for filing answers and replies. It is so ORDERED.</p>	<p><b>CESSATION OF PERFORMANCE CONFIRMATION ACTIVITIES AT THE YUCCA MOUNTAIN SITE</b> The purpose of this letter is to inform you that the U.S. Department of Energy has decided that certain Office of Civilian Radioactive Waste Management activities, including data collection and performance confirmation activities, at the Yucca Mountain site, will cease as of March 1, 2010. Specifically, the power and communications systems for all surface and subsurface work and data collection processes will be shut down. The termination will be performed in a controlled manner and the large existing datasets collected over the course of site characterization and performance confirmation, including those for the performance confirmation activities of seismic monitoring, precipitation, and construction monitoring, will not be impacted, although further data acquisition is being stopped. If you have any questions, please contact Jeffrey R. Williams at (202) 586-6850, or by email to <a href="mailto:jeff.williams@rw.doe.gov">jeff.williams@rw.doe.gov</a>.</p>

## MOTIONS AND PLEADINGS

Date	March 3	March 3	March 4th
	<p><a href="#"><u>PETITION TO INTERVENE OF THE PRAIRIE ISLAND INDIAN COMMUNITY</u></a></p> <p>This Petition should be granted because it meets the Atomic Safety and Licensing Board's (ASLB or Board) intervention requirements. The Petitioner has a direct and compelling interest in opposing DOE's motion. The Petitioner is a federally recognized Indian tribe, whose community is adjacent to an Independent Spent Fuel Storage Installation where spent nuclear fuel is presently stored. These SNF sites were originally intended to be temporary storage sites, pending completion of a repository to timely receive and dispose of said waste as provided by the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. § 10101, <i>et seq</i>, and the Standard Contract entered into by nuclear utilities and the U.S. Department of Energy, Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste.</p> <p>The Petitioner also represents energy users in their community, which are among the nation's ratepayers that have paid billions of dollars in fees under the standard contract for the purpose of ensuring SNF on a prompt basis. As the Court held in <i>Indiana Michigan Power Co v DOE</i>, 88 F3d 1272, 1277, (1996), there exists a reciprocal obligation between the payment of SNF fees under the Standard Contract, and DOE's performance of its SNF disposal duties:</p>	<p><a href="#"><u>NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS PETITION TO INTERVENE</u></a></p> <p>...Dismissal of the Yucca Mountain application will significantly undermine the government's ability to fulfill its outstanding obligation to take possession and dispose of the nation's spent nuclear fuel and high level nuclear waste. Dismissal at this late stage, in the absence of any rational explanation or record-based findings to justify it, is an incredible waste of the billions in ratepayer dollars spent on the licensing proceeding to date. Moreover, ratepayers across the country continue to pay for a national storage "solution," enhanced litigation costs, and the clearly documented increased costs of interim storage. If the motion is successful, and history is any indication, it will effectively delay DOE's ability to finally begin to accept waste for at least 25 years.</p>	<p><a href="#"><u>PETITION OF AIKEN COUNTY, SOUTH CAROLINA, TO INTERVENE</u></a></p> <p>Pursuant to the provisions of 10 C.F.R. § 2.309 pertaining to intervention and/or the provisions of 10 C.F.R. § 2.315 pertaining to participation by a non-party, Aiken County, South Carolina hereby petitions to intervene in this proceeding in opposition to the Department of Energy's motion to withdraw, with prejudice, its application in this case. In the alternative, Aiken County seeks to stay this matter as contemplated by Rule 18, Federal Rules of Appellate Procedure, pending resolution of the petition Aiken County has filed with the United States Court of Appeals for the District of Columbia Circuit concerning the lawfulness of a Motion to Withdraw the license application. (Petition attached as Exhibit 1). The Court of Appeals has directed the Department of Energy to respond to the Petition by March 24 and has given Aiken County until April 5 to file its reply, if any.</p>

	March 3	March 9	
	<p><b><u>STATE OF WASHINGTON'S PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING</u></b></p> <p>The State of Washington (Washington) petitions for leave to intervene in proceeding.</p> <p>Washington seeks intervention to oppose an anticipated motion by the Department of Energy (DOE) to dismiss with prejudice its application for a construction authorization to proceed with a deep geologic repository for high-level radioactive waste and spent nuclear fuel at Yucca Mountain, Nevada. Washington's believe it meets the Atomic Safety and Licensing Board's (ASLB or Board) intervention requirements stating it has a keen interest in DOE's anticipated motion.</p> <p>Washington hosts and is overseeing the cleanup of nearly two-thirds of the nation's defense related high-level radioactive waste. Also, the disposition of this waste is intimately tied to the Yucca Mountain project. Washington states the "DOE's anticipated motion should not be heard without argument from Washington, which is uniquely situated among the parties to this proceeding."</p>	<p><b>NOTICE OF SCREENING</b></p> <p>Notice is hereby given of the actions take by Morgan, Lewis &amp; Bockius LLP ("The Firm") pursuant to D.C. Rules of Professional Conduct 1.11 to screen Karen D. Cyr from the above-captioned proceeding. The actions taken by the Firm are described in the attached letter to Stephen G. Burns, General Counsel and Designated Agency Ethics Official, U.S. Nuclear Regulatory Commission.</p>	

	March 29	March 26	March 29
	<p><b>EUREKA COUNTY'S RESPONSE TO PETITIONS TO INTERVENE BY STATES OF SOUTH CAROLINA AND WASHINGTON; AIKEN COUNTY, SOUTH CAROLINA; PRAIRIE ISLAND INDIAN COMMUNITY; AND NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS</b></p> <p>Eureka County takes no position on the petitions to intervene in this proceeding that have been submitted by the States of South Carolina and Washington; Aiken County, South Carolina; the Prairie Island Indian Community; and the National Association of Regulatory Utility Commissioners.</p>	<p><b>NYE COUNTY ANSWERS TO THE PETITIONS TO INTERVENE FILED BY THE STATE OF SOUTH CAROLINA, STATE OF WASHINGTON, AIKEN COUNTY, SOUTH CAROLINA, THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, AND THE PRAIRIE ISLAND INDIAN COMMUNITY</b></p> <p>County does not oppose the Petitions to Intervene. Nye County supports the intervention of these parties who have demonstrated standing and a stake in this proceeding, and have met the requirements of 10 C.F.R. §§ 2.309(a) through (g). By granting intervention, the CAB assures that all perspectives are considered as it determines whether to grant, deny, or condition DOE's Motion to Withdraw in this licensing proceeding which has major implications for national nuclear policy. For the reasons stated in the Five Additional Petitioners' filings in response to the requirements of 10 C.F.R. §§ 2.309(a)-(g), which responses are incorporated herein by reference, Nye County supports the late intervention of each of the Five Additional Petitioners in this proceeding.</p>	<p><a href="#"><u>ANSWER OF THE STATE OF NEVADA TO AIKEN COUNTY'S PETITION TO INTERVENE</u></a></p> <p><b>I. AIKEN COUNTY LACKS STANDING TO INTERVENE</b></p> <p><b>II. TIMELINESS</b></p> <p><b>III. AIKEN COUNTY'S REQUEST TO PARTICIPATE IN THIS PROCEEDING AS A LOCAL GOVERNMENTAL BODY MUST BE DENIED FOR FAILURE TO</b></p> <p><b>IV. COMPLY WITH 10 C.F.R. § 2.315(C)</b></p> <ul style="list-style-type: none"> <li>a) Aiken County Fails to Identify Any Interest Sufficient to Warrant Participation</li> <li>b) Aiken County Fails to Properly Identify Its Representative for this Proceeding</li> <li>c) Aiken County Fails to Identify Any Contention in Which it Would Participate</li> </ul> <p><b>IV. AIKEN COUNTY'S PETITION SHOULD BE DENIED BECAUSE IT HAS FAILED TO MEET THE LICENSING SUPPORT NETWORK REQUIREMENTS OF 10 C.F.R. PART 2, SUBPART J</b></p> <ul style="list-style-type: none"> <li>a) The Regulatory Framework and the Licensing Board's Application Thereof.</li> <li>b) Inadequacy of Aiken County LSN Compliance.</li> </ul> <p><b>V. CONTENTIONS</b></p> <ul style="list-style-type: none"> <li>a) SOC-MISC-01 – WITHDRAWAL OF APPLICATION WITHOUT CONGRESSIONAL AUTHORITY</li> <li>b) SOC-MISC-02 – WITHDRAWAL OF APPLICATION IN VIOLATION OF SEPARATION OF POWERS</li> <li>c) SOC-MISC-03 – IF THE COMMISSION WERE TO GRANT DOE'S ANTICIPATED MOTION TO WITHDRAW THE APPLICATION, THAT GRANT WOULD EXCEED THE COMMISSION'S POWERS UNDER THE NWPA</li> </ul> <p>Based upon the foregoing analysis of Aiken County's standing, timeliness, lack of any demonstrated interest under 10 C.F.R. § 2.315(c) and LSN compliance, the Petition of Aiken County to intervene should be denied.</p>

Date	March 29	March 29	March 29
	<p><a href="#"><u>U.S. DEPARTMENT OF ENERGY'S RESPONSE TO PETITIONS TO INTERVENE OF THE STATE OF WASHINGTON, THE STATE OF SOUTH CAROLINA, AIKEN COUNTY, THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, AND THE PRAIRIE ISLAND INDIAN COMMUNITY</u></a></p> <p>DOE does not oppose the intervention of these five petitioners to allow them to make their legal arguments in opposition to the Motion to Dismiss. To avoid delay and to promote efficiency, DOE respectfully submits that the Board should permit their intervention on the following terms:</p> <ol style="list-style-type: none"> <li>1. The petitioners are allowed admission as intervenors under 10 C.F.R. § 2.309, with the scope of their intervention limited to opposition to the Motion to Withdraw;</li> <li>2. The petitioners' contentions are to be resolved through a briefing process that the Board establishes for the Motion to Withdraw and any argument that the Board allows regarding that motion. The petitioners may raise their objections to the Motion to Withdraw without amending their proffered contentions.</li> <li>3. The Board should establish the following briefing schedule to address the Motion to Withdraw and objections to that motion by these petitioners and any existing parties: (i) all briefs in opposition to the Motion to Withdraw are to be filed within 21 days after the order granting the petitioners' intervention; and (ii) DOE's consolidated reply to the briefs in opposition and the replies of any other parties aligned with DOE on the Motion to Withdraw are to be filed within 21 days after the last brief in opposition is filed.</li> </ol> <p>DOE does not of course concede the merits of the petitioners' proffered contentions or any other matter that they have pleaded, and expressly reserves its right to contest all of these petitioners' substantive arguments on the merits. 8 DOE also does not consent to any later attempt by petitioners to broaden the proposed scope of their participation or to modify the process for resolution of the Motion to Withdraw as it may be established by this Board.</p> <p>Counsel for South Carolina, Washington, Aiken County and PIIC have informed DOE that they are agreeable to the intervention terms and the briefing schedule proposed above. Counsel for NARUC has informed DOE that it does not agree with the terms proposed by DOE. DOE has solicited the views of the existing parties about the proposed terms. The following have informed DOE that they do not agree with them: State of Nevada, Clark and Nye Counties, NAAC. DOE has not received responses from any other parties.</p>	<p><b>THE COUNTY OF INYO'S RESPONSE TO PETITIONS TO INTERVENE BY THE STATES OF SOUTH CAROLINA AND WASHINGTON; AIKEN COUNTY, SOUTH CAROLINA; PRAIRIE ISLAND INDIAN COMMUNITY; AND NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS</b></p> <p>The County of Inyo takes no position on the petitions to intervene in this proceeding that have been submitted by the States of South Carolina and Washington; Aiken County, South Carolina; the Prairie Island Indian Community; and the National Association of Regulatory Utility Commissioners.</p>	<p><b>March 29, FOUR NEVADA COUNTIES OF CHURCHILL, ESMERALDA, LANDER AND MINERAL ANSWER TO THE PETITIONS TO INTERVENE FILED BY THE STATE OF SOUTH CAROLINA, STATE OF WASHINGTON, AIKEN COUNTY, SOUTH CAROLINA, THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, AND THE PRAIRIE ISLAND INDIAN COMMUNITY</b></p> <p>The Four Nevada Counties of Churchill, Esmeralda, Lander and Mineral hereby submit their Answer to the Petitions to Intervene filed by the State of South Carolina, the State of Washington, Aiken County, South Carolina, The National Association of Regulatory Utility Commissioners, and the Prairie Island Indian Community (collectively, the "Petitioners"). The Four Nevada Counties have no objection to Petitioners' intervention so long as they have met the requirements for intervention set forth in 10 C.F.R. § 2.309 or, alternatively, 10 C.F.R. § 2.315.</p>

	<p>March 26</p> <p><b><u>ANSWER OF CLARK COUNTY, NEVADA TO PETITIONS TO INTERVENE OF THE STATE OF SOUTH CAROLINA, AIKEN COUNTY, SOUTH CAROLINA AND THE STATE OF WASHINGTON</u></b></p> <p>Clark County joins in the three Answers filed today by the State of Nevada ("Nevada") in response to the Petitioners' requests.1 Nevada's Answers address each of the Petitioners' lack of standing, un-timeliness, and matters of LSN compliance. Nevada's Answers also address in detail each element of the proffered contentions.</p>	<p>March 29</p> <p><b>March 29th - JOINT TIMBISHA SHOSHONE TRIBAL GROUP RESPONSE TO PETITIONS TO INTERVENE BY THE STATES OF SOUTH CAROLINA AND WASHINGTON, AND AIKEN COUNTY, SOUTH CAROLINA</b> The Joint Timbisha Shoshone Tribal Group joins with and supports the State of Nevada and its Answers to the Petitions to Intervene of the States of South Carolina and Washington, and Aiken County, South Carolina, excepting that portion of Nevada's Answers relating to the Petitioners' Licensing Support Network compliance (Section V of Answer to South Carolina and Aiken County; and Section IV of Answer to Washington).</p>	<p><b><u>NRC STAFF ANSWER TO PETITION OF AIKEN COUNTY, SOUTH CAROLINA, TO INTERVENE</u></b></p> <p>As set forth below, Aiken County's petition to intervene as a party, pursuant to 10 C.F.R. § 2.309, should be denied because it fails to establish Aiken County's standing in the proceeding and does not independently proffer an admissible contention. The request for a stay should also be denied. The Staff, however, does not oppose Aiken County's request to participate as an interested government participant</p>
	<p>March 29</p> <p><b><u>March 29, NRC STAFF ANSWER TO STATE OF WASHINGTON'S PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING</u></b></p> <p>Washington did not submit an admissible contention, and therefore, its Petition should be denied. However, the Staff would not object to a request by Washington to participate under 10 C.F.R. § 2.315(c),1 provided it certifies pursuant to 10 C.F.R. §§ 2.1003 and 2.1009, that it has made its documentary material available via the Licensing Support Network (LSN), or that it does not have any documentary material.</p>	<p>March 29</p> <p><b><u>NRC STAFF ANSWER TO SOUTH CAROLINA PETITION TO INTERVENE AND SUPPLEMENT INTRODUCTION</u></b></p> <p>On February 26, 2010, the State of South Carolina ("South Carolina" or "State") filed a petition to intervene in the above-captioned proceeding. Petition of the State of South Carolina to Intervene, dated February 26, 2010 ("Petition"). For the reasons set forth below, South Carolina's Petition should be denied because it does not proffer an admissible contention. However, because the Staff does not dispute that South Carolina has demonstrated its standing to intervene, the Staff would not object to a request by South Carolina to participate under 10 C.F.R. § 2.315(c),1 provided it certifies pursuant to 10 C.F.R. §§ 2.1003 and 2.1009, that it has made its documentary material available via the Licensing Support Network (LSN), or that it does not have any documentary material.</p>	<p>March 29</p> <p><b><u>ANSWER OF THE STATE OF NEVADA TO THE STATE OF SOUTH CAROLINA'S PETITION TO INTERVENE</u></b></p> <p>The State of Nevada opposes South Carolina's petition. This Answer by Nevada is adopted in its entirety by the Native Community Action Council ("NCAC").</p>

	March 29		
	<p><a href="#"><u>ANSWER OF THE STATE OF NEVADA TO THE STATE OF WASHINGTON'S PETITION TO INTERVENE</u></a></p> <p>On March 3, 2010, the State of Washington ("Washington") filed a petition for leave to intervene in this proceeding. For the reasons set forth below, the State of Nevada ("Nevada") opposes Washington's petition. This Answer by Nevada is adopted in its entirety by the Native Community Action Council ("NCAC").</p>		