

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:  
U.S. DEPARTMENT OF  
ENERGY  
(High Level Waste Repository)

Docket No. 63-001-HLW  
ASLBP NO. 09-892-HLW-CAB04  
May 11, 2010

**SUPPLEMENT/AMENDMENT TO PETITION OF THE  
NATIONAL ASSOCIATION OF REGULATORY UTILITY  
COMMISSIONERS TO INTERVENE**

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Utility Commissioners

The National Association of Regulatory Utility Commissioners, in an abundance of caution, hereby supplements and amends its Petition to Intervene by adding the following text (which is underlined and bolded below) and the attached affidavit Commissioner Phyllis Reha of the Minnesota Public Utilities Commission.

**I. Amendment/Supplement to page 9 of NARUC's March 15 Intervention:**

“The affidavit of Commissioners Wright, the current Chairman of NARUC's Nuclear Issues-Waste Management Disposal Subcommittee, **and Commissioner Phyllis Reha a member of NARUC's Committee on Energy Resources and the Environment** is attached to discuss the particularized injuries suffered by NARUC members as a result of the continuing lack of a licensed high level waste repository, and provide evidence that demonstrate that NARUC is authorized by members to petition to intervene and represent their interests in this matter. In brief:

*[a] Name and address of **two** NARUC Member State Commissioner:*

The Honorable David Wright is a Commissioner with the South Carolina Public Service Commission and a NARUC member who receives his official mail at South Carolina Public Service Commission, 101 Executive Center Drive, Columbia, SC 29210. **The Honorable Phyllis Reha is a Commissioner with the Minnesota Public Utilities Commission and a NARUC member who receives**

**her official mail at Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147. They are two** ~~He is just one~~

of over 250 NARUC member State commissioners from across the United States, but ~~his~~ **their** experiences and obligations are representative of ~~his~~ **their** colleagues.

*[b] NARUC's authorization to participate for its members:*

Specifically, ~~the~~ **both** affidavits, appended as attachment one **and two**, cite a February 2010 resolution passed by NARUC at its recent winter meetings in Washington, D.C., instructing NARUC to oppose withdrawal of the application and to appear before the NRC.”

## **II. Amendment/Supplement to page 10 of the March 15<sup>th</sup> Intervention:**

*“[c] Standing:*

The affidavits also outlines the general scope of the South Carolina's **and the Minnesota Public Utilities Commission's** interests in this proceedings, citing ~~its~~ **their** obvious concerns about a successful review of Yucca Mountain, and how DOE's withdrawal of the application undermines **both** Commissioner ~~Wright's~~, and many of ~~his~~ **their** NARUC colleagues', ability to fulfill their respective parens patriae statutory duties to protect, the health, safety, and economic welfare of electric ratepayers. DOE, in its Final Environmental Impact Statement for the Yucca Mountain Geological Repository, concludes that not building the repository, assuming that no effective institutional controls in place after 100 years, would

lead to a situation where, “the spent nuclear fuel and high-level radioactive storage facilities in at 72 commercial and 5 DOE sites would begin to deteriorate and that radioactive material would be released into the environment, contaminating the local atmosphere, soil, surface water, and groundwater.” FEIS Section 7.2.2, at p. 7-33.[] Those sites are all”

Footnote[] See, generally, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105-6 (1976) (Zone of interests created by the AEA is avoidance of a threat to health and safety of the public). Cf. The attached Affidavits of The Honorable David Wright at pages 4-5 and of The Honorable Phyllis Reha at pages ?? of the attached Affidavit of the Honorable David Wright, NARUC Member Commissioner, in Support of the Standing of the National Association of Regulatory Utility Commissioners.

### **III. Amendment/Supplement to page 11 of the March 15<sup>th</sup> Intervention:**

“within the geographic boundaries of NARUC’s State commission members. The attached ~~Mr. Wright’s~~ affidavits references those in South Carolina and Minnesota as well as, via a webpage citation, the locations of others. See also map of locations at FEIS Figures 7-7, at 7-36.

As is discussed in ~~the both~~ affidavits, NARUC’s member State commission interests will be adversely affected by the continuing unavailability of a repository.”

### **IV. Attachment II – Duplicative Affidavit of the Honorable Phyllis Reha referenced by the other changes.**

*Note - this amendment closely tracks the affidavit filed by Commissioner Wright with NARUC’s original intervention. There are some changes. The biggest changes are the state law citations and the name address and experience of the affiant.*

**Attachment 2**

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD**

In the Matter of:  
U.S. DEPARTMENT OF  
ENERGY  
(High Level Waste Repository)

Docket No. 63-001-HLW  
ASLBP NO. 09-892-HLW-CAB04

May 11, 2010

**AFFIDAVIT OF THE HONORABLE PHYLLIS REHA,  
NARUC MEMBER COMMISSIONER,  
IN SUPPORT OF THE STANDING OF  
THE NATIONAL ASSOCIATION OF REGULATORY UTILITY  
COMMISSIONERS**

Phyllis Reha, being duly sworn, states as follows:

1. My name is Phyllis Reha. I have been a Commissioner on the Minnesota Public Utilities Commission and a voting member of the National Association of Regulatory Utility Commissioners (NARUC) since May 2001. I am also currently a member of the NARUC Committee on Energy Resources and the Environment and NARUC's Subcommittee on Clean Coal and Carbon Sequestration. I am also Co-Chair of the FERC/NARUC Collaborative on Smart Response and a member of the Leadership Group of the National Action Plan for Energy Efficiency. I serve on the Advisory Council of the National Council on Electricity Policy.

2. I receive official mail at the offices of the Minnesota Public Utilities Commission (121 7<sup>th</sup> Place East, Suite 350, Saint Paul, MN 55101), which is located approximately 31 miles from the Prairie Island Nuclear Generating Plant.

3. NARUC, founded in 1889, includes as members commissioners at regulatory agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. These State employees are charged with regulating the rates and conditions of service associated with the intrastate operations of electric, natural gas, water, and phone utilities.

4. In February 2010, at its recent winter meetings held in Washington, D.C., NARUC passed a “***Resolution on National Policy for Management and Disposal of Spent Fuel from Commercial Nuclear Power Plants.***” A copy of the resolution is attached. That resolution [1] instructs NARUC to “call upon the Secretary of Energy not to withdraw the Yucca Mountain license application from the review process underway at the NRC,” [2] points out that “NARUC and State utility commissions as stakeholders in the disposal policy on behalf of ratepayers—who continue to bear the ultimate cost of the fee payments to the Fund—should play an active role in representing their views to the Blue Ribbon Commission, drawing upon the multiple NARUC nuclear waste policy resolutions adopted over

the past 25 years, and [3] specifically instructs NARUC to “convey to the (Nuclear Regulatory) Commission that any alternative that leaves the spent nuclear fuel at present storage sites indefinitely, whether managed by the owners or by the government, is inconsistent with the NWPA findings of 1982 and would break faith with the communities which host those reactors with the understanding that the spent fuel would be removed by the government.”

5. Like almost all of my fellow NARUC State commissioners, I am charged by State statute with overseeing the operations of electric utilities operating in my State. For example, the Minnesota Public Utilities Commission has approved two separate extended power uprates at both the Prairie Island Nuclear Generating Plant and the Monticello Nuclear Generating Plant.

6. Like many of my NARUC colleagues, limiting both the expense and the risks<sup>1</sup> of on-site storage of spent nuclear fuel is a part of my broader regulatory responsibilities under the laws of my State.

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<sup>1</sup> Safe operation of electric facilities, including nuclear plants, is a key focus of my Commission’s oversight. See e.g., 2009 Minnesota Statutes, Chapter 216B.243 Certificate of Need for Large Energy Facility Subd. 3. Showing required for construction: “*No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need. In assessing need, the commission shall evaluate: ... (5) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region,*” ... “*(7) the policies, rules, and regulations of other state and federal agencies and local governments;*” ... and “*(12) if the applicant is proposing a nonrenewable generating plant, the applicant’s assessment of the risk of environmental costs and regulation on that proposed facility over the expected useful life of the plant, including a proposed means of allocating costs*

7. The Nuclear Waste Policy Act (NWPA), enacted in 1982, made the federal government responsible for safe and final disposal of such waste. Under the Act, utilities pay fees for disposal through the Nuclear Waste Fund (NWF). *Those fees are passed through to ratepayers.* Although utilities and their ratepayers continue to pay these charges, the United States Department of Energy (DOE), which manages the disposal program, failed to meet its statutory and contractual obligation to begin waste acceptance in 1998. Since 1981, Minnesota's ratepayers have paid over \$300 million dollars in fees levied pursuant to the NWPA to develop a permanent storage site and *effectively bear both the increased costs and risks of onsite storage.* Cumulatively, ratepayers across the country, protected by my fellow NARUC commissioners in other States, have contributed about \$17 billion in fees.

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*associated with that risk*" and subd. 3b (b): "*Any certificate of need for additional storage of spent nuclear fuel for a facility seeking a license extension shall address the impacts of continued operations over the period for which approval is sought.*" Additionally, Minnesota Administrative Rules 7855.0650 WASTES AND EMISSIONS provides that applicants for large energy facilities: "*shall provide data on wastes and emissions associated with construction or operation of the facility, including: A. the types and estimated amounts of solid, liquid, and gaseous radioactive wastes that would be produced by the facility, and the level of radioactivity of each in curies per year;*" and "*B. an analysis of human exposure to ionizing radiation attributable to operation of the facility, taking account of the pathways of radioactive releases to humans;*". Also see Minnesota Rules 7855.0660 POLLUTION CONTROL AND SAFEGUARDS EQUIPMENT: "*The applicant shall provide data regarding pollution control and safeguards equipment, including: A. the provisions that would be made for management of radioactive materials.. B. a description of contingency plans to reduce the effects of an accidental release of radioactive materials;*" and ... "*F. the measures that would be taken to prevent spills or leaks of pollutants, or to minimize the effects of spills or leaks on the environment.*"

8. Nuclear power supplies approximately 13,000 Kwh of electricity to homes and businesses in Minnesota according to the U.S. Energy Information Administration. There are two nuclear power plants in Minnesota along with two Independent Spent Fuel Storage Installations.<sup>2</sup>

9. Because nuclear power fuels about 20 percent of the nation's electricity supply, it raises both cost and safety issues for NARUC member State commissioners across the country, especially for those where nuclear plants are located, *i.e.*, in Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. *See*, U.S. Energy Information Administration, Independent Statistics and Analysis, States with Commercial Nuclear Industries, available online at: [http://www.eia.doe.gov/cneaf/nuclear/page/at\\_a\\_glance/reactors/states.html](http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/reactors/states.html)

(Accessed March 12, 2010).

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<sup>2</sup> *See, State Profiles*, U.S. Energy Information Administration (Independent Statistics and Analysis) at: [http://www.eia.doe.gov/cneaf/nuclear/page/at\\_a\\_glance/reactors/states.html](http://www.eia.doe.gov/cneaf/nuclear/page/at_a_glance/reactors/states.html) (last accessed March 15, 2010) (Lists 31 states that have commercial nuclear reactors, the generation and capacity trends, general locations, and State emissions levels. Profiles updated with 2007 emissions data on November 6, 2009.)

10. DOE's Final Environmental Impact Statement for the Yucca Mountain Geological Repository concludes that not building the repository could result in "widespread contamination of the seventy-two commercial and five DOE sites across the United States, with resulting human health impacts." (DOE/EIS—0250, Section 2.12).<sup>3</sup>

11. Continued operation of existing nuclear plants *requires* some *safe* and secure method of disposing of the high level radioactive waste and spent nuclear fuel generated. Effective management and *permanent* disposal of nuclear waste is essential to minimize the life cycle costs of these facilities. The rising expenses of expanding on-site storage while simultaneously funding reactor decommissioning accounts and the long promised DOE centralized waste repository continues to increase the costs of nuclear energy.

12. Many of NARUC's State commission members scrutinize these costs of electric utilities to ensure ratepayers pay only for expenses that are reasonable and prudent. These commissions are responsible for assuring safe and reliable utility services. Utility plans for *interim* on-site storage involve large sums and raise significant financial issues.

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<sup>3</sup> See, generally, *Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2)*, ALAB-342, 4 NRC 98, 105-6 (1976) (Zone of interests created by the AEA is avoidance of a threat to health and safety of the public). Cf. footnote 1 *supra*.

13. Spent fuel continues to pile up at 73 locations in 35 States at sites that were never intended for long-term storage, and State-regulated utilities (along with numerous State commissions) expend significant resources on related protracted litigation over DOE's non-performance. Ratepayers ultimately bear not only the cost of utility payments to DOE intended to cover the cost of the disposal program *and* the costs (and risks) of the additional on-site storage required by DOE's refusal to take that waste, but also the costs of the associated protracted litigation over DOE's refusal to take the waste, as well as litigation to block new plants exacerbated by DOE's delay in approving a repository.

14. Delays in the repository program, such as the Department of Energy's (DOE) recent motion to scrap the application for the Yucca Mountain facility that sparked the need for this NARUC intervention, necessarily results in the owners and operators of nuclear power plants having to store greater quantities of used nuclear fuel for longer periods of time, increasing both costs and risks associated with interim storage and also providing additional reasons to delay construction of new plants. Ratepayers in my State (and many other NARUC member States) continue to pay for a national storage "solution," enhanced litigation costs, and the increased costs of interim storage. History suggests if the DOE withdrawal motion

is successful, it will effectively set the date the federal government can finally begin to accept waste back at least 25 years. As State commissioners, my NARUC colleagues across the country and I have an obvious interest in this proceeding – protecting ratepayers’ interests in reasonable utility practices as well as rates – an interest no other party will adequately represent. There is no question that our respective statutory duties to protect ratepayers are impacted by whatever action the NRC takes on the motion to withdraw.

Phyllis A. Reha

Phyllis Reha

Sworn and subscribed to before me this 10<sup>th</sup> day of May, 2010

Robin L. Rice Notary Public

My Commission expires:



***Resolution on National Policy for Management and Disposal of Spent Fuel from Commercial Nuclear Power Plants***

**WHEREAS**, The Nuclear Waste Policy Act (NWPA) of 1982 sets national policy that the federal government is responsible for safe, permanent disposal of all government and commercial high-level radioactive waste, including spent nuclear fuel, in a geologic repository beginning in 1998; *and*

**WHEREAS**, Those who have benefitted from nuclear-generated electricity—reactor owners and ratepayers—under the NWPA were to pay for the commercial share of disposal costs through fees paid to the Nuclear Waste Fund; *and*

**WHEREAS**, Reactor owners and ratepayers made fee payments since 1983 totaling over \$16 billion to the Fund, which earned another \$13.5 billion in interest, to more than meet the needs of the repository development program, which encountered numerous managerial, financial, legal and political difficulties resulting in failure to meet the 1998 date set in statute and contracts with the reactor owners; *and*

**WHEREAS**, When the Department of Energy, as disposal program manager, failed to begin waste acceptance in 1998, the reactor owners sued for partial breach of contract for which the Federal Court of Appeals found the government liable; *and*

**WHEREAS**, DOE and the Justice Department estimate the liability for court-awarded damages and settlements could be as much as \$12.3 billion—if the waste were to be accepted for disposal by 2020; *and*

**WHEREAS**, The Obama Administration declared its intent to terminate the Yucca Mountain repository development program and instead has appointed the Blue Ribbon Commission on America's Nuclear Future to evaluate alternative disposal strategies and recommend a new direction that does not involve Yucca Mountain; *and*

**WHEREAS**, NARUC believes current law regarding Yucca Mountain development must be followed, however the Association must prepare itself for the possibility that the Administration may succeed in canceling the repository project; *now, therefore be it*

**RESOLVED,** That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2010 Winter Committee Meetings in Washington, D.C., expresses its disappointment at having the federal government take 25 years and expend over \$10 billion on Yucca Mountain as the repository site only to have the repository project be proposed to be cancelled before the Nuclear Regulatory Commission made a safety and technical decision on the license application submitted in 2008; *and be it further*

**RESOLVED,** That NARUC call upon the Secretary of Energy not to withdraw the Yucca Mountain license application from the review process underway at the NRC; *and be it further*

**RESOLVED,** That NARUC and State utility commissions as stakeholders in the disposal policy on behalf of ratepayers—who continue to bear the ultimate cost of the fee payments to the Fund—should play an active role in representing their views to the Blue Ribbon Commission, drawing upon the multiple NARUC nuclear waste policy resolutions adopted over the past 25 years; *and be it further*

**RESOLVED,** That NARUC convey to the Commission that any alternative that leaves the spent nuclear fuel at present storage sites indefinitely, whether managed by the owners or by the government, is inconsistent with the NWPA findings of 1982 and would break faith with the communities which host those reactors with the understanding that the spent fuel would be removed by the government; *and be it further*

**RESOLVED,** That the Commission should seek to determine if there is something about a geological repository generally or Yucca Mountain specifically that makes either a poor choice, suggesting a search should begin for a new repository site; *and be it further*

**RESOLVED,** That if a new repository program is to be recommended, then a new, more transparent site selection process should be considered, a new organization might be better suited for managing it and a reformed financing means be established that more reliably supports the new disposal strategy instead of subsidizing unrelated government activities; *and be it further*

**RESOLVED,** That NARUC pro-actively inform the Commission, DOE and the Congress that there are benefits in taking an initial near-term action to provide government or industry-run central interim storage of used nuclear fuel from the nine shutdown reactor sites, since it seems that whatever new disposal or

reprocessing strategy is pursued, it will be unlikely to be in operation for another twenty or more years; *and be it further*

**RESOLVED**, That the federal government and owners of spent nuclear fuel should be

encouraged to simplify and make equitable settlements over the ongoing litigation that provides payment for past expenses that the owners should not have to have incurred had DOE provided the “disposal services” agreed in the Standard Contracts; and to develop a regime for forecasting future payments without court-ordered judgments including suspension of Nuclear Waste Fund fee payments unless and until a revised program is agreed upon or the Yucca Mountain Project is fully restarted.

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*Sponsored by the Committees on Electricity and Energy Resources and the Environment*

*Adopted by the NARUC Board of Directors February 17, 2010*

## **Consultation.**

Pursuant to 10 C.F.R. §2.323(b), (which may or may not apply, given that the present document is not a motion, strictly speaking) the undersigned certifies that he has made a sincere effort to contact other parties and resolve the issues raised in this document. While many parties have not been heard from, the result of that consultation is as follows:

### **2 Parties do not oppose amendment/supplementation:**

“Nye County does not oppose your amendment.”

“NEI does not oppose the amendment/supplement.”

### **4 Parties express no position at this time &/or reserve right to respond:**

“DOE takes no position on your proposed filing.”

“The NRC Staff expresses no position on the proposed amendment, but reserves the right to file a responsive pleading when it is filed.”

“The County of Inyo takes no position on the proposed supplement at this time, but reserves the right to file a response.”

“Eureka County takes no position on your proposal.”

### **2 Parties oppose the amendment/supplementation:**

“Clark County opposes your amendment and reserves the right to file a response. The State of Nevada summarized well the reasons why your proposed amendment or supplement is improper.”

“Nevada opposes your inappropriate “Amendment” and reserves the right to file a response, unless your “Amendment” is properly struck by the CAB even before a response is filed. Your Reply to all Answers opposing your Intervention is due today. As you know, such Replies may not contain new

evidence such as the affidavit you propose. You are likewise not entitled to try to wire around that prohibition by filing an “Amended” Intervention petition, to try to remedy the deficiencies which were pointed out to you in last week’s Answers by other parties. If you compound your improper “Amendment” filing, by filing a Reply later today which incorporates your proposed “Amendment”, as though it were granted, Nevada will oppose that too.”

NARUC’s counsel is currently focused on drafting its reply to the DOE motion to withdraw. Urgent personal obligations will take NARUC’s counsel out of the office all next week. NARUC’s assistant general counsel is currently on extended leave and will not return to the office for several months. At some point after my return, pending a Board ruling on this proposed supplement/amendment, NARUC will file a version of the intervention with the proposed amendments incorporated for the convenience of all parties and the Board.

NARUC respectfully requests that the forgoing supplement/amendment to its March 15, 2010 intervention be allowed.

Respectfully submitted:

DATED this 11 day of May, 2010

Signed (electronically) by JAMES BRADFORD RAMSAY

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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

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Docket No. 63-001-HLW  
ASLBP NO. 09-892-HLW-CAB04  
May 11, 2010

**CERTIFICATE OF SERVICE**

I, James Bradford Ramsay, hereby certify that copies of the National Association of Regulatory Utility Commissioners' (NARUC) Supplement Response to its Petition to Intervene dated May 11, 2010, have been served upon the following persons by Electronic Information Exchange.

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**CAB 01**

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## **ADDITIONAL CERTIFICATION**

### **Availability of Material**

As required by 10 C.F.R. § 2.1012(b) and 10 C.F.R. §2.1003, the undersigned also has made a good faith effort to substantially comply with the “Availability of Material” requirements, 10 C.F.R. § 2.1003. NARUC has been in communication with Daniel J. Graser, the NRC’s Licensing and Support Network Administrator to obtain technical guidance to comply with this provision.

[Signed Electronically by James Bradford Ramsay]

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