

**October 2010**  
**High-level Waste Hearings**  
**Summary Table**

# High-Level Waste hearing

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

Date	October 10	October 10	

## MOTIONS AND PLEADINGS

Date	October 7	October 10	October 18
	<p><a href="#">MOTION FOR A COMMISSION ORDER RESTORING THE TECHNICAL REVIEW OF THE YUCCA MOUNTAIN LICENSE APPLICATION</a></p> <p>Aiken County and the states of South Carolina and Washington have petitioned to intervene in the above-captioned proceeding to oppose withdrawal of the Department of Energy's (DOE's) license application for the construction of the Yucca Mountain geologic repository. Petitioners argue that the license application is required to be submitted and considered by the Nuclear Regulatory Commission (NRC) pursuant to the Nuclear Waste Policy Act (NWPA). On June 29, 2010, the Atomic Safety and Licensing Board (Licensing Board) issued an order denying the DOE's motion to withdraw its license application. The following day, on June 30, 2010, an expedited briefing schedule was set out by the NRC Secretary inviting participants in this proceeding to brief the NRC Commissioners, acting in their adjudicatory capacity (Commission), regarding whether the Commission should review the Licensing Board decision, and if so whether the Commission should uphold or reverse the Licensing Board order. The Commission has not indicated whether it will review the Licensing Board decision.</p>	<p>Note from the NRC Hearing Docket: Two significant changes to the EIE adjudicatory submission system.</p> <p>Easier Access to Documents Submitted to the Service List: Access to documents through the service list email will now be simplified. Effective with the changes, when a hearing party selects the link to the document, the document will appear independent of the submission form. Thus navigation through the submission form to view the document will no longer be required, and this will substantially reduce the time necessary to retrieve documents. If a submission has more than one document attached, then each attachment will be separately listed in the service email and each may be accessed independently. 2. Accept Additional File Types: It will now be possible for submitters to attach files in formats other than portable document format (.pdf). Effective with the changes, NRC will accept and convert those submissions to the .pdf format before electronically serving them to the hearing parties. This service will convert most commonly used native file formats (e.g., .doc, .wpd, .xls). A complete list of acceptable formats will be shown in the EIE On-Line Help screens. While this service will be available to all submitters, it is intended for use by interveners who do not have ready access to the tools necessary to complete their own conversions. Also, submitters who wish to use the service should be aware that the conversion program may inadvertently modify the document's formatting or margin settings. Thus, while the document's content will be unaffected, its appearance may be different than that shown in the native file submission. Only the converted .pdf document will be served to the parties and it will become the official record in the proceeding's docket. Submitters will be required to acknowledge and accept the potential for formatting changes before completing a submission that requires conversion. More information on these changes and technical guidance can be found in the Online Help Guide. Users may also call the Help Desk toll-free at 1-866-672-7640 if they require technical assistance.</p>	<p><a href="#">ANSWER OF THE STATE OF NEVADA TO THE MOTION FOR A COMMISSION ORDER RESTORING THE TECHNICAL REVIEW OF THE YUCCA MOUNTAIN LICENSE APPLICATION</a></p> <p>On October 7, 2010, Aiken County, South Carolina, joined by the states of South Carolina and Washington, moved for a Commission order allegedly necessary to restore the NRC Staff's required review of the Yucca Mountain license application. The State of Nevada ("Nevada") opposes the motion. The Native Action Community Council ("NCAC") concurs and joins Nevada in this Answer.</p> <p>The motion relies on "published news reports" that NRC Chairman Jaczko "has unilaterally directed NRC Staff to stop its review of DOE's Yucca Mountain license application..." Motion at 2. That is it. The "published news reports" are not identified, quoted, or described in any further detail. Such a motion based on unidentified authority is impossible to evaluate on its face and must fail for the simple reason that the moving parties have failed to meet their burden of proof. 10 C.F.R. § 2.325 ("Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof"). In fact, the Commission has been unwilling to grant relief based on newspaper articles even when the articles are identified.</p> <p>The October 13, 2010 letter from Mr. Cordes does identify and supply a memorandum to NRC office directors and regional administrators, dated October 4, 2010, providing guidance on budget execution under the Continuing Resolution enacted into law on September 30, 2010. The memorandum is from the NRC's Chief Financial Officer and Executive Director for Operations, not the NRC Chairman or any NRC Commissioner. This guidance does address, in a general fashion, NRC budget execution for the NRC High Level Waste Program. It says nothing specific about Staff's Safety Evaluation Report for Yucca Mountain. Nevertheless, Nevada is aware that two NRC Commissioners have stated a disagreement with the guidance memorandum based on their understanding that it calls for a halt to Staff SER work under the Continuing Resolution. However, the memorandum is within the delegated authority of the Executive Director for Operations and the Chief Financial Officer.....</p>

Date	October 18	October 19	October 20
	<p><a href="#"><u>NRC STAFF ANSWER TO MOTION FOR AN ORDER RESTORING TECHNICAL REVIEW OF THE YUCCA MOUNTAIN LICENSE APPLICATION INTRODUCTION</u></a></p> <p>The staff of the U.S. Nuclear Regulatory Commission (Staff) files this answer in response to the "Motion for a Commission Order Restoring the Technical Review of the Yucca Mountain License Application," dated October 7, 2010 (Motion) filed by Aiken County, South Carolina, and joined in by the States of Washington and South Carolina (Movants). Movants seek an order directing the Staff to resume its review of the Department of Energy (DOE) license application (LA) and vacating any orders issued to the staff to discontinue its review. <i>Id.</i> at 2 and 7. For the reasons discussed below, the Motion should be denied.</p> <p>NRC Staff states they are acting prudently due to the lack of 2011 funding that has not yet been voted on by Congress and will end on Dec. 3<sup>rd</sup>. The NRC states they have not unilaterally directed the Staff to discontinue its technical review of the Yucca Mountain LA.</p> <p>On October 4, 2010, the NRC Executive Director for Operations and Chief Financial Officer jointly directed the Staff to "continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget using available Nuclear Waste Fund resources during the period of the Continuing Resolution (CR)." Memorandum from J. E. Dyer, Chief Financial Officer, and R.W. Borchardt, EDO, to Office Directors and Regional Administrators, Guidance Under a Fiscal Year 2011 Continuing Resolution, dated October 4, 2010 (ML102770484).</p> <p>The Commission's proposed FY 2011 budget, issued in early 2010, noted that DOE may file a motion to withdraw its Yucca Mountain license application, the licensing review could be suspended, identified resources (ten million dollars) associated with "orderly closure" of the technical review, and the NRC's intent "to document the work and insights gained from the review."</p>	<p><a href="#"><u>CORRECTED ANSWER OF THE STATE OF NEVADA TO THE MOTION FOR A COMMISSION ORDER RESTORING THE TECHNICAL REVIEW OF THE YUCCA MOUNTAIN LICENSE APPLICATION</u></a></p>	<p><b>STATE OF NEVADA FOURTH UPDATE TO ITS PARTY WITNESS LIST FOR PHASE I DISCOVERY</b></p> <p>In accordance with Case Management Order #2 (CMO #2) dated September 30, 2009 (at 5-6), the State of Nevada hereby files its Fourth Update to Its Party Witness List for Phase I Discovery and states that no additional Party Witnesses have been identified since the time of its last update filed on August 24, 2010.</p>
Date	October 26	October 28	October 28
	<p><b>NRC STAFF UPDATED IDENTIFICATION OF WITNESSES RELATED TO PHASE 1 NEPA CONTENTIONS</b> - The NRC At this time, the staff has not identified any additional witnesses.</p>	<p><b>CLARK COUNTY, NEVADA'S THIRD CERTIFICATION OF NO ADDITIONAL PARTY WITNESSES</b></p> <p>Clark County hereby certifies that no additional Party Witnesses have been identified since its Initial Identification of Party Witnesses on October 13, 2009.</p>	<p>Inyo County Certified no additional witnesses.</p>

Date	October 28	October 29	October 30
	<p>Inyo County Attorney:  Change of Address  Gregory L. James  Attorney for the County of Inyo  712 Owens Gorge Road  HC 79, Box 11  Mammoth Lakes, California 93546  Telephone: (760) 935-4148  Facsimile: (760) 935-4840  Email: gljames@earthlink.net</p>	<p><b>JOINT TIMBISHA SHOSHONE TRIBAL GROUP'S FILING REGARDING THE IDENTIFICATION OF OTHER WITNESSES: CERTIFICATION OF NO ADDITIONAL OTHER WITNESSES</b>  No additional witness identified</p>	<p>NRC STAFF UPDATED IDENTIFICATION OF WITNESSES RELATED TO SER VOLUME 1  No additional witness identified</p>
Date	November 1	Nov 4	
	<p><b>WHITE PINE COUNTY OTHER WITNESS IDENTIFICATION UPDATE</b>  Pursuant to the September 30, 2009 CAB Case Management Order #2 ("Order"), White Pine County provides notification that it has identified no additional Other Witnesses.</p>	<p><b>THE STATE OF NEVADA'S NOTICE OF CHANGE OF ADDRESS OF ATTORNEY OF RECORD</b>  Please take notice that the address of one of the State of Nevada's attorneys of record in this proceeding, Charles J. Fitzpatrick, has changed. Mr. Fitzpatrick's telephone number, facsimile and email address remain unchanged. Mr. Fitzpatrick's new street address is: 1777 N.E. Loop 410, Suite 600, San Antonio, Texas 78217.</p>	