

July 13, 2004

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Executive Director  
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Dear Ms. Treichel and Ms. Johnson:

Your letter of June 9, 2004 concerning guidance on the development of high quality and acceptable contentions for the Commission's adjudicatory proceeding on a potential license application from the Department of Energy for a high-level waste repository at Yucca Mountain has been referred to me for response. As you noted in your letter, the Commission intends that the licensing process be fair and open to those organizations and individuals who meet the Commission's requirements for participation in the proceeding. We also believe that high quality contentions that conform to the NRC's regulatory requirements for admission of contentions will promote a thorough and efficient examination of the important issues that may be the subject of this proceeding. Accordingly, I am providing some background information that I think you will find useful with regard to the requirements for contentions.

I also would like to clear up a possible misimpression that you might have of the NRC staff's role in the licensing proceeding. The NRC staff's role in the proceeding is to review the license application to determine whether it complies with the pertinent NRC regulations and to present the staff views on the admitted issues.

The Commission's requirements for admissible contentions are stated in Section 2.309 of the Commission's recently revised rules of practice, in 10 CFR Part 2, for the NRC's hearing process. The requirements on contentions were previously contained in Section 2.1014 of the Commission's regulations. Section 2.309(f) requires a petition for intervention in a licensing proceeding to address a number of factors in regard to each contention that is offered for consideration. I have summarized these as follows:

- a specific statement of the issue to be raised;
- a brief explanation of the bases for the contention;
- a demonstration that the contention is within the scope of the proceeding;

- a demonstration that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;
- a concise statement of the facts or expert opinion supporting the contention on which the petitioner intends to rely, together with references to specific supporting sources and documents; and,
- sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including reference to the specific portions of the application in dispute and identification of alleged omissions of legally-required information.

Additional information on these requirements is provided in Section 2.309(f) and in the Federal Register notice publishing the amended Rules of Practice. See "Final Rule: Changes to the Adjudicatory Process," 69 Federal Register 2182 (January 14, 2004).

It would be difficult to speculate on whether a particular contention would be admitted to a proceeding for two basic reasons. First, judgment is involved as to whether, for example, sufficient factual information has been provided to show that a genuine dispute exists on a material issue of law or fact. Second, a decision on whether a particular contention would be admitted in the high-level waste licensing proceeding must be made in the context of the actual licensing proceeding and the actual license application.

Nonetheless, prior NRC adjudicatory decisions provide some guidance or insight as to the admissibility of proposed contentions. A summary of some adjudicatory decisions related to contentions is contained in NUREG-0396, Digest 12 -- the "Nuclear Regulatory Commission Staff Practice and Procedure Digest" -- which can be accessed on the NRC website (<http://www.nrc.gov/reading-rm/doc-collections/NUREGS/staff/sr0386/sr0386-digest12.pdf>) or purchased from the U.S. Government Printing Office or from the National Technical Information Service. A discussion of contentions and contention pleading requirements is contained in sections 2.10.5.1 through 2.10.5.6 of the Digest.

I trust that these references will be helpful. If you have further questions, please contact Ms. Janice Moore, Assistant General Counsel for the High-Level Waste Repository Program. Ms. Moore can be reached at 1-800-368-5642, extension 1354.

Sincerely,

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Stephen G. Burns  
Deputy General Counsel

cc: Governor Kenny Guinn  
Senator Harry Reid  
Senator John Ensign  
Representative Shelley Berkley  
Representative Jim Gibbons  
Representative Jon Porter