

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE ADVISORY PRE-LICENSE APPLICATION  
PRESIDING OFFICER BOARD**

<b>In the Matter of</b>	)	<b>Docket No. PAPO-001</b>
	)	
<b>U.S. Department of Energy</b>	)	<b>ASLBP No. 08-861-01-PAPO-BD01</b>
	)	
<b>(High Level Waste Repository:</b>	)	
<b>Pre-License Application Matters</b>	)	
<b>Advisory PAPO Board)</b>	)	

Nye County Response to Advisory PAPO Board MEMORANDUM  
(Requesting Input from Potential Parties on Format for Contentions)

1.     Introduction

Nye County, Nevada (“Nye County”) is the unit of local government with jurisdiction over the site of the proposed repository at Yucca Mountain, Nevada, and as such is entitled to intervene as a matter of right under 10 CFR 2.309(d)(2)(iii), so long as the requirements of paragraph (f) of that section are satisfied with respect to at least one contention.

Nye County is an affected unit of local government under §§116 and 117 of the Nuclear Waste Policy Act, 42 USC 10136 & 10137, and has maintained an active and aggressive oversight program for virtually the entire history of the Yucca Mountain Program. In addition, since 1992 Nye County has conducted an Independent Scientific Investigations Program that has been acclaimed by all parties, and has produced, and continues to generate, data and information that will likely be used by all parties to the Yucca Mountain proceeding, including the Department of Energy and the NRC staff.

Nye County intends to intervene, and to participate fully, in the Yucca Mountain licensing proceedings, and makes this submission in response to the Board's April 4, 2008 request for information from all potential parties.

2. Format of Contentions

In accordance with the Advisory PAPO Board's ("Board") April 4, 2008 Memorandum, Nye County provides the following input and responses:

**Format of Contentions, Paragraph A**

Paragraph A asks for the parties' input on a uniform format for contentions suggested by the Board.

**Paragraph A.** Nye County agrees that the interests of efficiency and ease of response are best served if parties submit single issue contentions, and that those contentions be consistent with a single, uniform format.

**Paragraph A 2.** Nye County is not presently aware of any organizational format that would be superior to that set forth in 10 CFR § 2.309(f)(1)(i)-(vi); nor does the County believe that articulating a response to each of the subparts of such rule will impose an unreasonable burden upon the parties.

**Paragraph A 3.** Nye County strongly supports the proposal that 1) contentions of omission be clearly identified as such, and that such contentions should specify what statute, regulation, or case precedent requires inclusion of the allegedly missing

information or material; and 2) that contentions asserted under NEPA be clearly identified as such.

**Paragraph A 4.** Nye County strongly supports the proposal that contentions asserting only legal issues be clearly identified as such.

#### **Format of Contentions, Paragraph B**

Paragraph B asks for the parties' input on the labeling of contentions.

**Paragraph B.** Nye County agrees that the various parties should be required to clearly label their contentions on the first page of each such contention in a manner that will facilitate allocating the contentions between and among multiple licensing boards, as well as among counsel with primary responsibility for preparing answers.

**Paragraph B 1.** Nye County believes contentions should be labeled following the format and subject headings in the LA Table of Contents, or, if related to NEPA issues, the Table of Contents in the Final Environmental Impact Statement (FEIS) or Supplemental EIS (SEIS), as appropriate. This method would directly relate the filed contentions to the basic documents under NRC review, and on which the NRC, and the licensing board, will make their decisions.

**Paragraph B 2.** Nye County believes that in order for the parties to be able to timely respond to the various contentions it is critical that the contention include a reference to the specific document from which the contention is drawn, including a reference to the

specific sub-section, down to the level of specificity necessary to direct the parties to the actual cited text.

**Paragraph B 3.** Nye County believes that the proposed labeling system set forth on Exhibit A to the Memorandum generally is acceptable, but believes that a three digit number designation for each party is neither necessary nor preferable, since the total number of parties submitting contentions and actively involved in the hearing process will likely be fairly limited and the actual name of the individual party or a short form of that name should be more than adequate to identify the party proposing each contention (e.g. Nye County, or Nye, NEI, NRC Staff, Nev (for the State of Nevada), ), etc.

#### **Format of Contentions, Paragraph C**

Paragraph C seeks party input organizing materials that support the parties' individual contentions.

**Paragraph C 1 and 2.** Nye County believes that a uniform system of referencing supporting materials for each contention is critical to efficiently reviewing and responding to a party's contentions. At a minimum, the offering party should provide either an active, publicly accessible internet universal resource locator (URL), an LSN accession number for the document, or both.

Nye County understands that parties, including Nye County itself, are still finalizing reports and conducting scientific analysis, so every possible document that a party might

rely upon for a contention is not currently available in the LSN. Additionally, the License Application (“LA”) will likely create one or more unanticipated issues that will require a party to supplement their LSN with additional information and documents. However, absent such finalizing processes or the otherwise unanticipated / unforeseen issue, all of the parties should have already included in their individual LSN sites documents that they know will be needed to support their contentions. Accordingly, between the documents that are currently available by URL and those that are in or should be added to the LSN in the near future, the vast majority of all documents should be readily available in an electronic format to the parties.

**Paragraph C 3, 4, and 5.** While the County strongly supports a uniform system of *referencing* supporting materials for each contention petition, the County believes that physically attaching such documents to the contentions will be unnecessary, voluminous, and ultimately untenable, given the Nuclear Regulatory Commission’s 50 megabyte limitation on document size. Many of the parties will be citing to and relying upon the same documents to support their contentions. Requiring each party to attach copies of each of these documents will create needless repetition and duplication, and expand the size of the electronic files to huge proportions. Nye County believes that the parties should attach copies of documents to their petition for intervention and contentions only as a last resort, when a document is neither readily available nor already included in some party’s LSN collection.

## **Format of Contentions, Paragraph D**

Paragraph D invites the parties' to comment on the State of Nevada's suggestions for organizing the hearing process, as well as any suggestions that a party may have concerning these matters.

**Paragraph D 2.** The State of Nevada ("Nevada") has asked that the NRC Staff limit the number and scope of amendments or supplements to the tendered LA before docketing. Nevada Response at 8-9. Nye County opposes this proposal. Simply stated, the NRC Staff's review of the tendered LA will require the number of amendments or supplements that it takes to give the NRC Staff the information they feel is necessary to docket the LA. The NRC Staff is not in the position to "predict" at this time how many that may be; it is unreasonable to expect that they could do so.

Nevada has also asked that the Board impose a limit on the number and scope of post-docketing amendments or supplements that DOE may file to the LA. Nevada Response at 9-10. Nye County opposes this proposal as well. Nye County understands that some of DOE's scientific analysis is not yet completed and that such analysis may not be fully completed prior to submission or possibly even docketing of the LA. In addition, new information will likely be provided by DOE in response to NRC staff review and requests for additional information. Nye County would have preferred that DOE complete all of its analysis before filing the LA. However, Nye County is, as a result of its own scientific program, aware that certain studies and analysis take longer to conclude than

others. The County is extremely interested in seeing the final analysis in all scientific studies performed by DOE. Accordingly, Nye County finds it clearly preferable that both the NRC Staff and the Commission have before it the most recent, complete analysis by DOE on all issues when the Staff issues its post-docketing Safety Evaluation Report on the LA and the NRC renders its decision on DOE's requested construction authorization.

Nevada seeks to have the Board limit participation by the NRC Staff (the "Staff").

Nevada Response at 10. The State's proposal is contrary to the plain language of 10 C.F.R. § 2.1001, and should be rejected. By Regulation, the Staff is afforded the same status and rights as all other participants to the LA proceeding. More importantly, Nye County believes that the NRC Staff's participation is critical, at the contentions phase and throughout the licensing process, because it brings a perspective different from any other party to the proceeding. Accordingly, Nye County believes that the Staff's participation inures to the benefit of all the participants in the proceeding, and, perhaps more importantly, the general public, and that the Staff's role should not be minimized.

April 23, 2008

Respectfully submitted,  
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NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
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	)	
	)	ASLBP No. 08-861-01-PAPO-01
(High-Level Waste Repository	)	
Pre-Application Matters:	)	
Advisory PAPO Board)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Nye County Response to Advisory PAPO Board Request for Input from Potential Parties on Format for Contentions, dated April 23, 2008, has been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (\*)).

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