

April 26, 2008

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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

_____)	
In the Matter of)	
)	Docket No. PAPO-01
U.S. DEPARTMENT OF ENERGY)	
)	
(High-Level Waste Repository:)	
Pre-Application Matters))	
_____)	

**EUREKA COUNTY’S RESPONSE TO ADVISORY PAPO
BOARD’S QUESTIONS REGARDING CONTENTION FORMAT**

Pursuant to the Advisory Pre-Application Presiding Officer (“Advisory PAPO”) Board’s Memorandum (Requiring Input from Potential Parties on Format for Contentions) (April 4, 2008) (“Memorandum”), Eureka County hereby provides its response to the Board’s questions regarding the appropriate format for contentions.

Single Issue Contentions

At the outset, the Memorandum sets forth two “overarching principles” on which the Board bases its questions to the participants. The first principle is that:

in any HLW proceeding, the purposes of the contention review process, adherence to the language of the controlling regulations, and efficient case management will all best be served if the parties submit single issue contentions.

Memorandum, slip op. at 3. This principle is not directly addressed in the Board’s questions, and yet it is an important organizational concept. Therefore Eureka County addresses it here.

Eureka County believes that it would be reasonable to require separate contentions for each governing statute under which they arise (the two principal applicable statutes being the

Atomic Energy Act (“AEA”) and the National Environmental Policy Act (“NEPA”). In order to avoid lengthy duplication of the same facts, however, the parties should be allowed to provide a statement of facts in one contention and incorporate it by reference into another contention. The Board should also allow a single contention to reference multiple regulations that implement the same statute with respect to the same subject matter, for the same purpose of avoiding a great amount of repetition. For instance, in presenting a claim that the environmental impact statement (“EIS”) for the proposed Yucca Mountain Repository is defective because it lacks an adequate discussion of alternatives, it would be unreasonable to require a separate contention for each alternative (or type of alternative) that was not considered, or to require a separate contention for each claim regarding a violation of a NEPA implementing regulation related to the adequacy of the discussion, *i.e.*, with respect to thoroughness, scientific basis, or whether quantitative information should have been required.

In short, while it is appropriate to place some limits on the number of issues that can be raised in a single contention, to require the division of issues into their finest possible subparts would result in extremely lengthy and unnecessarily repetitive pleadings. It would also prevent the ASLB from examining the interrelatedness of issues.

Labeling and Format for Contentions

The specific questions in the Board’s Memorandum are addressed to the second governing principle, that:

to facilitate briefing and decisions concerning the admissibility of potentially hundreds or even thousands of contentions, it would be helpful if contentions were submitted initially in a uniform format, employing a uniform protocol for demonstrating compliance with the criteria for admissibility and a uniform system for referencing or attaching all supporting materials.

Id. Eureka County believes that within limits, a uniform format for contentions would be helpful. It is reasonable, for instance, to require the labeling of contentions of omission, and to require contentions to be identified by their governing statute or regulation. Eureka County also suggests that where a single contention invokes several implementing regulations related to the same statute, listing those regulations in the title or a preface to the contention might be a useful way to identify the controlling law for a contention without having to break related claims, relevant to one set of facts, into a large number of “single issue” contentions.

In response to Question A.2, Eureka County believes that a requirement to separately address each element of 10 C.F.R. § 2.309(f)(1)(i)-(iv) would be burdensome and unmanageable, requiring participants to submit long and repetitive contentions without adding much to the Licensing Board’s ability to judge the contentions’ admissibility.

In response to Question A.4, Eureka County does not see the feasibility or utility of requiring participants to separately designate contentions that are purely legal. When a party asserts in a contention that the facts are undisputed, it is not generally clear that is the case until after the applicant and NRC Staff have responded and the Board has evaluated the competing claims. In any event, the County respectfully submits that this question can be resolved at the summary disposition stage.

In response to Questions B.1-3 and Attachment A, Eureka County believes the most useful categories for labeling of contentions are their governing statutes, the general nature of the subject matter, and the identity of the sponsoring party. Thus, Eureka County favors Option 2.C in Appendix A. Designation of the part of the application from which a contention is drawn seems overly burdensome, since a contention may rely on statements taken from several parts of

the application, including both safety-related and environmental-related documents. In fact, some contentions may point out contradictions between various licensing documents.

Finally, Eureka County wishes to suggest a third principle that should govern any order issued by the Advisory PAPO Board with respect to the labeling of contentions: that any shorthand formulas used for the purpose of identifying and sorting contentions should not also be used to judge their admissibility. For instance, a party should not be penalized if the shorthand formula it uses to identify a contention does not identify every portion of the application on which the contention relies, or every regulation that is referenced in the contention.

Referencing and Attaching Documents

In response to Question C, Eureka County believes that it would be reasonable to require the attachment of non-LSN documentary material, expert analysis, and all other materials. URLs should not be relied on because they are often unreliable as long-term sources of information. With respect to LSN documentary material, it should be sufficient to provide the LSN accession number.

Respectfully submitted,

Eureka County

/s/

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CERTIFICATE OF SERVICE

I certify that on April 26, 2008, I served the foregoing EUREKA COUNTY'S RESPONSE TO ADVISORY PAPO BOARD'S QUESTIONS REGARDING CONTENTION FORMAT on the parties to this proceeding by submitting it electronically to the NRC adjudicatory Electronic Information Exchange. It is my understanding that recipients are the same individuals on the list below, which is copied from the Advisory PAPO Board's April 16, 2008, Memorandum (Logistics for Conference).

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