

**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: Pre-License Application Matters Advisory PAPO Board)</b>	)	

Nye County Response to Comments of  
Other 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 29, 2008 Memorandum, Nye County provides the following additional input concerning comments submitted by other parties:

**Format of Contentions, Paragraph C**

With the exception of the Department of Energy,<sup>1</sup> there seems to be some general consensus that either an active, publicly accessible internet universal resource locator (URL), an LSN accession number for a document, or both should suffice for referencing supporting documents that are either publicly available or already in some party's LSN collection. Granted, it is possible that a party may run into potential problems retrieving some supporting documents from the LSN. However, the potential for a retrieval problem should not justify abandoning the LSN from its agreed intended purpose – providing a repository for documentary evidence and supporting information and material so that the parties would not have to attach copies of everything to their various pleadings or contentions.

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<sup>1</sup> DOE Response at pages 13-14.

Simply stated, the party offering a contention has the affirmative duty to support that contention with appropriate evidence and documentary material. If a party submits a contention without factual or evidentiary support, that contention is subject to being summarily stricken. Similarly, if a party elects to support its contention by using a citation to a URL link or LSN ascension number, that link is supposed to work and point to the correct document. If not, the party will have effectively submitted a contention with no support and that contention should be summarily stricken. The risk of failing to adequately support a contention falls squarely upon the submitting party. Neither DOE nor any other party should be obligated to search for the intended supporting document or information.

At first blush, this appears somewhat punitive. However, since each party already possesses the burden to verify that their URL links and citations to the LSN are accurate, enforcing that existing burden should not really be a surprise to anyone. Additionally, Nye County can envision a situation where a party might intentionally submit inaccurate citations to the LSN or bad links to URL information for the specific purpose of impeding another party's ability to respond to a contention. This type of gamesmanship should not be permitted or condoned. Moreover, as noted by DOE, this result is mandated by virtue of the massive volume of contentions and supporting information with which all of the parties will be forced to contend.

Nye County is not proposing that the parties be prohibited from attaching supporting documents to their contentions. Parties should be permitted to support their contentions by attaching supporting documents to their petition for intervention if they choose to do so; they should not be compelled to do so. Accordingly, Nye County believes that the parties should be required to



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U.S. DEPARTMENT OF ENERGY ) Docket No. PAPO-001  
)  
) 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 Comments of Other Potential Parties on Format for Contentions, dated May 2, 2008, has been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (\*)).

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