

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of	)	Docket No. PAPO-00, PAPO-0001
	)	
U.S. DEPARTMENT OF ENERGY	)	ASLBP No. 04-829-01-PAPO
	)	ASLBP No. 08-861-01-PAPO-BD01
(High Level Waste Repository: Pre-Application Matters)	)	August 25, 2008

**STATE OF NEVADA COMMENTS IN RESPONSE TO THE COMMISSION'S
AUGUST 13, 2008 MEMORANDUM AND ORDER CLI-08-18**

In *U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters)*, CLI-08-18, __ NRC __ (Aug. 13, 2008), the Commission responded to Nevada's request for a more reasonable deadline for filing of contentions by granting an additional thirty days, one-fifth of what Nevada had requested.¹ At the same time, the Commission *sua sponte* doubled the time permitted for filing answers to contentions and replies to answers, and also extended by a modest amount the time allotted to the Licensing Boards to hold the first Prehearing Conference and issue the first Prehearing Conference Order. The potential parties and the Atomic Safety and Licensing Board Panel ("Panel") were asked to comment.

The Panel responded in a Memorandum dated August 22, 2008. The Panel agreed it was "reasonable and, indeed, advisable" to extend the time for filing of contentions. It did not expressly endorse the Commission's modest 30-day extension, but "has no objection" to it. The Panel advised that the extensions for time for the first Prehearing Conference and the first Prehearing Conference Order were warranted. With respect to the proposed time for filing of answers and replies, the Panel urged further extensions, so that DOE and NRC Staff would have

¹ The Commission noted that "the [then existing] 30-day time limit provided for intervention petitions for a high-level waste repository construction authorization proceeding is half the time accorded participants in nearly all other NRC adjudicatory proceedings, most of which are narrower in scope and less complex than we would anticipate a high-level waste repository proceeding to be." CLI-08-18 at p. 5.

at least 60 days for the filing of answers and petitioners would have at least 45 days for the filing of replies.

Nevada continues to believe that its request for a 150-day extension of time for the filing of contentions was justified, and therefore Nevada cannot support the Panel's "no objection" to the Commission's modest 30-day extension. However, Nevada supports the Panel's other thoughtful observations about the "Herculean" task DOE, NRC Staff, and the petitioners will face in this first-of-a-kind licensing proceeding. While Nevada is therefore tempted not to object to affording both DOE and NRC Staff, with their "teams of attorneys and supporting experts" (Memorandum at p. 3), a full 60 days to file answers, there is a countervailing consideration, at least in the case of DOE. In its March 24, 2008 Response to the Advisory Pre-License Application Presiding Officer ("APAPO") Board's request for information, DOE bragged that "it can submit responsive and reasoned Answers to each range of contentions specified in the Board's Notice and Memorandum (up to as many as 3000 contentions and perhaps more contentions) within the 25-day period set forth for Answers in 10 C.F.R. Part 2, Appendix D" (DOE Response at p. 2). Nevada respectfully suggests that DOE be held to its word, if for no other reason than to serve as a cautionary lesson that applicants are presumed to mean what they say.²

In its March 24, 2008 Response to the same APAPO Board's request for information, Nevada advised that its best, good faith estimate of the time realistically required to file answers was six months, assuming 250-500 replies would be needed at an average rate of four replies for every working day (Nevada Response at p. 2). This is still Nevada's best, good faith, and realistic estimate. If the Commission believes that meeting an artificial Yucca Mountain schedule is too important to allow time off for weekends or holidays, then Nevada would still

² In its March 24, 2008 Response to the APAPO Board's request for information, NRC Staff advised that it would need only 40 days to answer 501-1000 contentions (NRC Staff Response at p. 2).

need about 120 days to file replies. Accordingly, Nevada respectfully asks that it be allowed at least 120 days to file replies to answers, rather than the 45 days recommended by the Panel. As the Panel noted (Memorandum at p. 3), the better part of one week will be required to complete the enormous task of copying, sorting, organizing, and binding the electronically filed contention materials. Logically, the same amount of time will be needed for copying, sorting, organizing, and binding the electronically filed *answer* materials. Under the Panel's 45-day schedule for replies, this leaves less than 40 days for Nevada to prepare and file replies which, as the panel observes, are "the primary opportunity a petitioner has to defend its proffered contentions against arguments advanced by the staff and DOE" (Memorandum at p. 4). Assuming, as did the Panel, that Nevada will need to respond effectively to 450 contention answers in order to preserve its right to a hearing, this means that Nevada, which unlike DOE and NRC Staff does *not* have "teams of attorneys," would need to generate replies at a rate of about eleven per day. This is far too little time for Nevada to file the "well-reasoned, adequately explained, and clearly written responses" the Panel expects. Even the Panel observed that "whether 45 days will be sufficient in the circumstances is questionable" (Memorandum at p. 4). One hundred and twenty days, with replies prepared at an average rate of four per day, is the bare minimum that is required for a fair hearing.

Respectfully submitted,

(signed electronically)

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(High-Level Waste Repository:	)	
Pre-Application Matters)	)	August 25, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Nevada's Comments in Response to the Commission's August 13, 2008 Memorandum and Order CLI-08-18 has been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (*)).

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