UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:	)	January 15, 2009
U.S. Department of Energy	)	
(License Application for Geologic Repository at Yucca Mountain)	)	Docket No. 63-001

ANSWER OF THE U.S. DEPARTMENT OF ENERGY TO EUREKA COUNTY, NEVADA'S REQUEST TO PARTICIPATE AS INTERESTED GOVERNMENTAL PARTICIPANT

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I. INTRODUCTION

In accordance with 10 C.F.R. Parts 2 and 63, and the Advisory Pre-Application Presiding Officer (PAPO) Board Order of June 17, 2008, the U.S. Department of Energy (DOE or the Department) hereby files its Answer to "Eureka County, Nevada's Request To Participate As Interested Governmental Participant" (Request) pursuant to 10 C.F.R. § 2.315(c), filed on December 22, 2008. The Request responds to the U.S. Nuclear Regulatory Commission's (NRC or Commission) Notice of Hearing and Opportunity to Petition for Leave to Intervene on an Application for Authority To Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, published in the *Federal Register* on October 22, 2008 (73 Fed. Reg. 63,029) (Hearing Notice). The Hearing Notice concerns DOE's License Application for authorization to construct a geologic repository at Yucca Mountain, Nevada for the disposal of spent nuclear fuel and high-level radioactive waste.

To participate in the proceeding under 10 C.F.R. § 2.315(c), Eureka County must: (1) be in substantial and timely compliance with the Licensing Support Network (LSN) requirements

imposed by 10 C.F.R. § 2.1003 at the time of its request for participation in the proceeding as provided in 10 C.F.R. § 2.1012(b)(1); (2) comply with all orders of the PAPO Board regarding electronic availability of documents; and (3) meet the requirements under 10 C.F.R. § 2.315(c). As discussed below, DOE has no objection to Eureka County's Request.

II. COMPLIANCE WITH LSN OBLIGATIONS

As a threshold matter, an interested governmental body seeking to participate in the licensing proceeding must demonstrate that it has complied with the NRC's LSN requirements. Specifically, 10 C.F.R. § 2.1012(b)(1) states that:

> A person, including a potential party given access to the [LSN] under this subpart, may not be granted party status under [10 C.F.R.] § 2.309 or *status as an interested governmental participant under* [*10 C.F.R.*] *§ 2.315, if it cannot demonstrate substantial and timely compliance with the requirements of* [*10 C.F.R.*] *§ 2.1003* at the time it requests participation in the HLW licensing proceeding under § 2.309 or § 2.315.

Emphasis added.

DOE has no reason to believe that Eureka County is not in substantial and timely compliance with its LSN obligations at this time. Accordingly, DOE has no objection to its participation on this basis.

III. COMPLIANCE WITH 10 C.F.R. § 2.315(c)

Based upon Eureka County's status as an Affected Unit of Local Government, as defined in the Nuclear Waste Policy Act of 1982, as amended, DOE has no objection to Eureka County's request to participate in the proceeding as an interested governmental body pursuant to 10 C.F.R. § 2.315(c) and not as a party under 10 C.F.R. § 2.309.

IV. CONCLUSION

For these reasons, DOE has no objection to Eureka County's participation in this proceeding as an interested governmental body pursuant to 10 C.F.R. § 2.315(c).

Respectfully submitted,

Signed electronically by Donald J. Silverman

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Dated in Washington, D.C.
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ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "**ANSWER OF THE U.S. DEPARTMENT OF ENERGY TO EUREKA COUNTY, NEVADA'S REQUEST TO PARTICIPATE AS INTERESTED GOVERNMENTAL PARTICIPANT"** have been served on the following persons this 15th day of January, 2009 by the Nuclear Regulatory Commission's Electronic Information Exchange.

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