

January 26, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
U. S. DEPARTMENT OF ENERGY)
)
(High-Level Waste Repository))

Docket No. 63-001

CORRECTED NRC STAFF ANSWER TO THE STATE OF NEVADA'S
MOTION TO AMEND PETITION TO INTERVENE AS A FULL PARTY

INTRODUCTION

The Staff of the Nuclear Regulatory Commission (Staff) hereby files this answer in opposition to the State of Nevada's January 16, 2009 Motion to Amend Petition to Intervene as a Full Party. (Motion). The Motion seeks authority to amend Nevada's contention NEV-SAFETY-03.

DISCUSSION

The last date for the timely filing of petitions to intervene and requests for hearing with contentions was Dec. 22, 2008. *U.S. Dep't. of Energy* (High-Level Waste Repository: Pre-Application Matters), CLI-08-18, 68 NRC __, __ (slip op. at 11) (Aug. 13, 2008); *U.S. Dep't. of Energy* (High-Level Waste Repository), CLI-08-25, 68 NRC __ (Oct. 17, 2008) (73 Fed. Reg. 63,029, (Oct. 22, 2008)). Since Nevada's Motion was not filed until January 16, 2009, it is subject to 10 CFR § 2.309(f)(2) governing admission of amended contentions. *Shaw Areva Mox Services* (Mixed Oxide Fuel Fabrication Facility), LBP-07-14, 66 NRC 169, 210 n.95 (2007).

Pursuant to 10 C.F.R. §2.309(f)(2) after the initial filing, contentions may be amended only with leave of the presiding officer based on a showing that:

- i) . . .

ii) The information upon which the amended or new contention is based is materially different than information previously available; and

iii) . . .

Nevada's Motion should be denied because it fails to show that the information upon which the amended contention is based is materially different than information previously available. Although Nevada claims that ". . .the information upon which the amendment to its contention is based is materially different from information previously available. . ." Motion, at 1, a comparison of the content of NEV-SAFETY-03, as filed, with the document referred to the Motion shows that the information upon which the amended contention is based is not materially different from the information that is already included in NEV-SAFETY-03.

In NEV-SAFETY-03, as it was originally filed, Nevada describes what it alleges are previous quality assurance program inadequacies and then goes on to offer Nevada's view of the current and future inadequacy of DOE's implementation of its QA program. Nevada Petition to Intervene as a Full Party, January 16, 2009 p. 58. The Motion argues that the document upon which it is based, close-out information regarding DOE's Condition Report CR-6330, demonstrates that "DOE's QA shortcomings have persisted to the present day, well beyond submission of. . .[DOE's]. . .LA." Motion at 5. At the same time, the Motion asserts that NEV-SAFETY-03, as filed, discussed the "**current** status of DOE's deficient quality assurance program, continuing **after** the time it filed its LA. . ." Motion, at 1 (Emphasis in the original). Thus, as Nevada itself acknowledges, the information upon which the amended contention is based is not materially different from the information that was previously available in NEV-SAFETY-03, since both claim to demonstrate that alleged failings in DOE's quality assurance program have continued into the period after DOE submitted its license application. Therefore, the Motion should be denied.

CONCLUSION

For the reasons stated above, the Staff respectfully requests the Board to deny Nevada's Motion to amend its contention NEV-SAFETY-03 because the Motion fails to fulfill the requirement of 10 C.F.R. § 2.309 (f)(2)(ii) to show that the information upon which it is based is materially different from information previously available.

Respectfully submitted,

Signed (electronically) by

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Dated at Rockville, Maryland
This 26th day of January, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of the CORRECTED NRC STAFF ANSWER TO THE STATE OF NEVADA'S MOTION TO AMEND PETITION TO INTERVENE AS A FULL PARTY in the above-captioned proceeding have been served on the following persons this 26th day of January, 2009, by Electronic Information Exchange.

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