

February 24, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ASLB BOARD 09-876-HLW-CAB01 William S. Froelich, Chair Thomas S. Moore Richard E. Wardwell	ASLB BOARD 09-877-HLW-CAB02 Michael M. Gibson, Chair Lawrence G. McDade Nicholas G. Trikouros	ASLB BOARD 09-878-HLW-CAB03 Paul S. Ryerson, Chair Michael J. Farrar Mark O. Barnett
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In the Matter of)
)
U.S. DEPARTMENT OF ENERGY) Docket No. 63-001
)
(High-Level Waste Repository:)
Pre-Application Matters))
_____)

**EUREKA COUNTY’S MOTION FOR LEAVE TO FILE
REPLY TO OPPOSITIONS BY THE U.S. DEPARTMENT
OF ENERGY AND THE NRC STAFF TO ADMISSION OF CONTENTIONS
ON WHICH EUREKA COUNTY INTENDS TO PARTICIPATE**

Pursuant to 10 C.F.R. §§ 2.323 and 2.315(c), Eureka County hereby moves for leave to reply to some of the arguments made by the U.S. Department of Energy (“DOE”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff against the admission of contentions on which Eureka County has an interest in participating as an Interested Governmental Participant (“IGP”) pursuant to 10 C.F.R. § 2.315(c). This motion is supported by a Certificate of Counsel Pursuant to 10 C.F.R. § 3.323(b), attached.

While Eureka County has not made a determination regarding the precise contentions on which it intends to participate and does not intend to do so until 45 days after the issuance of a decision regarding the admissibility of contentions (*see* Order by the NRC Secretary dated January 15, 2009), the County has identified three categories of issues on which it intends to

participate: environmental issues related to transportation, emergency planning issues, and safety and environmental issues regarding the long-term integrity of the proposed Yucca Mountain repository. The County seeks the Board's leave to reply to the DOE and the NRC Staff with respect to some of their general arguments in opposition to the admission of contentions that fall into these three categories. If the DOE and the Staff were sustained with respect to these broad arguments, a significant portion of the issues on which Eureka wishes to participate would not be admitted to the proceeding.

Eureka respectfully submits that it should be permitted to submit the attached Reply under 10 C.F.R. § 2.315(c), which entitles IGPs a "reasonable opportunity to participate in a hearing." While Eureka does not constitute a "requester/petitioner" who is entitled to file a reply under 10 C.F.R. § 2.309(h)(2), it would be "reasonable" under § 2.315(c) to give the County an opportunity to advocate for the admission of contentions on which it has an interest. That opportunity is important to Eureka County's ability to participate in the proceeding in a meaningful way, because the County will only be able to participate in the hearing with respect to issues that are admitted to the case.

For these reasons, the ASLB should permit Eureka County to submit the attached Reply.¹

Respectfully submitted,

Eureka County

(Electronically signed by)

Diane Curran

Harmon, Curran, Spielberg, & Eisenberg, LLP

1726 M Street N.W. Suite 600

Washington, D.C. 20036

dcurran@harmoncurran.com

February 24, 2009

¹ In a telephone conversation, the NRC Staff informed counsel for Eureka County that it intends to object to this motion on the ground of lateness, *i.e.*, that Eureka was required by 10 C.F.R. § 2.323(a) to submit the motion within ten days of receiving the DOE's and NRC Staff's responses to contentions. Eureka County respectfully submits that it would not be appropriate to apply the ten-day rule of § 2.323(a) in these circumstances, because the time-frame for filing replies to the DOE's and NRC's responses has already been established by the Commission in Appendix B to 10 C.F.R. Part 2, as modified by the Yucca Mountain hearing notice, 73 Fed. Reg. 63,029 (October 22, 2008).

**CERTIFICATE OF COUNSEL
PURSUANT TO 10 C.F.R. § 2.323(b)**

Pursuant to 10 C.F.R. § 2.323(b), I certify that on February 20, 2009, I sent an e-mail message to counsel for the parties in this proceeding, in a sincere attempt to resolve the issues raised in the foregoing motion. The States of Nevada and California, Churchill County, Clark County, Lander County, Mineral County, Esmeralda County, Inyo County, and Nye County, stated that they would not oppose the motion. Counsel for the U.S. Department of Energy stated that it would oppose the motion. Counsel for the NRC Staff said that it would oppose the motion on grounds of timeliness. Counsel for the Nuclear Energy Institute stated that it has no objection to the motion, but requires an opportunity to review the reply itself before taking a position on its merits. Counsel for Lincoln County stated that Lincoln County took no position on the motion.

Eureka County did not receive a response to its e-mail from White Pine County, the Timbisha Shoshone Tribe, the Native Community Action Council, or Caliente Hot Springs Resort.

(Electronically signed by)
Diane Curran

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