

February 23, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDS

In the Matter of)	
)	Docket No. 63-001-HLW
U. S. DEPARTMENT OF ENERGY)	
)	ASLBP Nos. 09-876-HLW-CAB01
(High-Level Waste Repository))	09-877-HLW-CAB02
)	09-878-HLW-CAB03
)	

CALIENTE HOT SPRINGS RESORT LLC's (CHS)
REPLY TO U.S. DEPARTMENT OF ENERGY'S (DOE) ANSWER TO CHS'
PETITION TO INTERVENE

In accordance with 10 C.F.R. Section 2.309, CHS files its Reply to the Answer to the Petition to intervene (Petition).

I. FAILURE TO FILE TIMELY ELECTRONICALLY

CHS' counsel (counsel) is not experienced in matters before this Commission and apologizes to the Commission that, although CHS's Petition was mailed (December 19, 2008) and received by the Commission timely (December 22, 2009), it was not filed timely electronically (filed electronically on January 5, 2009).

On December 19, 2009, after filing the Petition by U.S. Mail, counsel for CHS left for Montana to visit remote locations without computer access. Counsel was able to speak to NRC staff after December 22, 2009 and before January 1, 2009 by telephone from Montana in response to two voice mail messages from NRC staff concerning the need for CHS to file electronically. At that time, counsel informed staff that he would not have physical access to his computer to make an electronic filing until January 5, 2009, which was done.

The basis for late filing was not included in the Petition because counsel did not know that the Petition required electronic filing.

CHS respectfully requests the Commission through its Presiding Officer in this matter to allow CHS pursuant to the authority of 10 C.F. R. Section 2.309(c)(1) to proceed in this matter in accordance with the contention stated in the Petition as a reasons therefor states as follows:

- (i) The causes of the late filing of the Petition were counsel's inexperience in the

procedure and practices of the NRC and counsel's lack of physical access to his computer from the time of filing by mail and filing electronically at his first reasonable opportunity on January 5, 2009.

(ii) CHS' only property is the historic Caliente geothermal hot springs and resort-spa that will be damaged and destroyed by the granting of the license and the construction and operation of the railroad that will be constructed by DOE to operate Yucca Mountain Repository pursuant to the proposed license. The property is substantial (in excess of \$3 million value), physically unique (drinking water quality geothermal water that is 106°F), and irreplaceable.

(iii) The effect of the granting of a license will be devastating to CHS' property and the health and welfare of the residents and property owners of Caliente, Nevada put at serious risk.

(iv) CHS knows of no other means than a full hearing of CHS' Contention that will suffice to protect CHS, its property and the health and safety of the residents and property owners in Caliente, Nevada.

(v) No other party will represent the issues stated in CHS' petition. CHS is the only petitioner that has raised the issues of the damage that will be done to the Caliente Hot Springs, the resort and spa, the Caliente Geothermal Field, Meadow Valley Wash and associated wetlands and critical and endangered species habitat. No other party will likely represent such significant and important values and interests.

(vi) CHS' Contention will not unreasonably broaden the issues or delay the proceedings, being focused on the Eccles vs. Caliente Segments, in terms of the impacts on CHS, the Caliente Hot Springs, the resort-spa, the Caliente Geothermal Field, the residents and property owners of Caliente, or the wetlands and riparian habitat of Meadow Valley Wash that courses through Caliente.

(vii) CHS' participation will assist in developing a sound record as it is important for a complete and adequate record. In choosing to pursue a Yucca Mountain Repository, for which operation Congress required a railroad, Congress did not intend that such a railroad be built over the top of anyone in any city or town or on any wetlands, or important and commercial geothermal field, or any business, when such could be reasonably avoided, no matter what a single town mayor might say he personally wants. It is one thing to use an existing railroad through many cities and towns. It is quite another to build new track to haul high-level nuclear waste through town when town can reasonably and beneficially be avoided.

II. LSN OBLIGATIONS

CHS has no documents to place on the LSN and all documents to which CHS referred in its petition are on the LSN and were placed there by either DOE or the State of Nevada or others. CHS has completed and filed a certificate this date to such effect. CHS is a small company with one property and not any great volume of documents such as DOE and other large Governmental agencies. Even a relatively small town or county has a great volume of documents compared to any that CHS might access.

In this matter, DOE filed some 1800+ pages in answer to one State's petition, resulting in a nearly 450 page reply. Today, CHS' counsel received 23 three-ring binders from DOE relating to these proceedings. Understandably, it has taken CHS and counsel time to try to get their feet on the ground in this proceeding.

CHS and counsel apologize to the Commission, the Presiding Officer and to DOE and the other parties that CHS and counsel have had to begin fresh and learn and have not been timely previously with regard to LSN certification ask respectfully request that CHS be allowed to continue in this proceeding for the same reasons stated in Section I above.

III. LEGAL STANDING

Patently, CHS' injury, which will result from approval of the Application, can be redressed by the Commission's requiring a complete and adequate EIS pursuant to the mandates of NEPA, rather than adopting the insufficient EIS that has been completed to date.

Very recently, this was exactly the case with groundwater.

People residing in Caliente, the Caliente Hot Springs Resort and spa, the Caliente geothermal field, and the wetlands and riparian habitat of Meadow Valley Wash are at least as important. CHS believe that the Commission agrees that people are are more important than concerns about potential impacts to groundwater, and impacts to groundwater are not more important that impacts to geothermal groundwater, but people, property, geothermal water and riparian habitat in Caliente have received inadequate concern, consideration, study and reporting in the Final EIS.

EPA told DOE that as a condition for EPA approval of the FEIS, DOE needed to develop a detailed riparian habitat mitigation plan *prior* to adoption of a record of decision on the FEIS. DOE failed to do as directly by EPA in a rush to get an Application filed during the Bush Administration.

If President Barak Obama has determined (as has been reported in the national media) what Senator Harry Reid, the Majority Leader in the Senate, has said is true, that Yucca

Mountain Repository is “dead”, then the President should direct the Secretary of Energy to withdraw the Application to avoid any further expense, loss of time and treasure, and waste of talent and resources by this Commission, DOE, other federal, State and local agencies and by CHS. Before the Commission goes any further, considering the taxpayers and the environment, the Commission should require the Secretary of Energy to make a clear statement that the present Administration will not withdraw next month or next year or in 3 years so that we are all secure that we are not wasting ourselves and our Nation. None of us can afford that now.

V. THE NEPA CONTENTION

Certainly it is admissible. Only an ostrich writing in Washington D.C. Would argue seriously that riparian habitat is not a “significant environmental issue” or that the contention that a detailed riparian habitat restoration plan might not lead to a whole change in DOE's rail alignment or, at least, removing to the Eccles Segment. In Nevada, we have a tiny fish, not longer than one's small finger called the pupfish.

CHS respectfully requests that the Commission require DOE to come clean, study and report adequately the environmental, health and welfare issues posed by proposed new, high-level radioactive waste haul rail by DOE, to be built in and through the heart of Caliente. These are values that have been swept under the rug or deferred to later treatment by DOE as a *matter of record*.

If the work is not done now, then the failing will simply be a festering sore that will grow until that time, perhaps years from now, when a federal court again tells a federal agency that it screwed-up, cut a few corners that seemed at the time to be small, but which were in fact quite large.

VI. CONCLUSION

CHS and counsel respectfully request that CHS be allowed to maintain CHS' Contention without regard to the tardiness of its electronic filings or the fact that it has no volume of paper to add to the LSN.

It will make for a fairer proceeding and better record if the problems stated in CHS' Contention get open-minded treatment and solutions are found before the Commission adopts DOE's “consolation prize” that resulted when the Walker Lake Paiutes did a 180 on the Mina Route (DOE's preferred route and the “preferred alternative”), thereby leaving DOE to chase the Caliente Alternative (non-preferred or substandard route). Everyone knows that the Caliente Route to Yucca Mountain is substandard and not preferred: DOE said so in its FEIS, just

exactly that in no uncertain terms. But, there does not have to be a complete muck-up.

The proceedings and project can be made better through CHS's involvement.

Both can be made better by the Commission sending DOE back to look again at Caliente, the geothermal waters, and Meadow Valley Wash and to make a better, more rigorous comparison with Eccles Segment. CHS is confident that such will result in removal of the rail proposal out of town to the Eccles Segment and away from the people, the geothermal water, the resort and spa, and away from Meadow Valley Wash.

More broadly, we all know that Americans need to regain faith and respect for the institutions of their Government. CHS thinks that Americans want to regain faith, but that it has to be earned.

If the Commission takes the view that, in review of the Application, the Commission cannot consider the railroad when the railroad is part and parcel to Yucca Mountain, being mandated by Congress or, if the Commission takes the view that DOE needs to study groundwater impacts a little more but not the impacts to the people of Caliente, CHS, and Meadow Valley Wash habitat and species, then the Commission should understand that the process will be flawed and trust lost. If the people do not trust you to hear the whole thing and hold DOE to the measure, they will not trust you to provide the safety they deserve.

Respectfully submitted,

By (signed electronically)
John H. Huston
Counsel for CHS
6772 Running Colors Avenue
Las Vegas, NV 89131

(702) 270-9290
johnhhuston@gmail.com

Dated at Las Vegas, NV
on the 23rd day of February, 2009.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDS

In the Matter of)	Docket No. 63-001-HLW
)	
U.S. DEPARTMENT OF ENERGY)	ASLBP Nos. 09-876-HLW-CAB01
)	09-877-HLW-CAB02
(High-Level Waste Repository))	09-878-HLW-CAB03

CERTIFICATE OF SERVICE

I hereby certify that copies of the "CALIENTE HOT SPRINGS RESORT LLC's (CHS) REPLY TO U.S. DEPARTMENT OF ENERGY'S (DOE) ANSWER TO CHS' PETITION TO INTERVENE" in the above-captioned proceeding have been served on the following persons this 23rd day of February, 2009, by Electronic Information Exchange.

CAB 01

William J. Froehlich, Chair
Thomas S. Moore
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: wjf1@nrc.gov
tsm2@nrc.gov
rew@nrc.gov

Charles J. Fitzpatrick, Esq.
John W. Lawrence, Esq.
Egan, Fitzpatrick & Maisch, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
E-mail: cfitzpatrick@nuclearlawyer.com
jlawrence@nuclearlawyer.com

CAB 02

Michael M. Gibson, Chair
Lawrence G. McDade
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: mmg3@nrc.gov
lgm1@nrc.gov
NGT@NRC.GOV

Martin G. Maisch, Esq.
Egan, Fitzpatrick & Maisch, PLLC
2001 K Street, N.W.. Suite 400
Washington, D.C. 20006
E-mail: mmaisch@nuclearlawyer.com

CAB 03

Paul S. Ryerson, Chair
Michael C. Farrar
Mark O. Barnett
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
E-mail: psr1@nrc.gov
mcf@nrc.gov
mob1@nrc.gov
mark.barnett@nrc.gov

Brian W. Hembacher, Esq.
Deputy Attorney General
California Attorney General's Office
300 South Spring Street
Los Angeles, CA 90013
E-mail: brian.hembacher@doj.ca.gov

Timothy E. Sullivan, Esq.
Deputy Attorney General
California Department of Justice
1515 Clay Street., 20th Flr.
P.O. Box 70550
Oakland, CA 94612-0550
E-mail: timothy.sullivan@doLca.gov

Kevin W. Bell, Esq.
Senior Staff Counsel
California Energy Commission
1516 9th Street
Sacramento, CA 95814
E-mail: kwbell@energy.state.ca.us

Bryce C. Loveland
Jennings Strauss & Salmon, PLC
8330 W. Sahara Avenue, Suite 290
Las Vegas, NV 89117-8949
Email: bloveland@jsslaw.com

Alan I. Robbins, Esq.
Debra D. Roby, Esq.
Jennings Strouss & Salmon, PLC
1700 Pennsylvania Ave, NW Suite 500
Washington, D.C. 20005
E-mail: arobbins@jsslaw.com
droby@jsslaw.com

Ethan I. Strell, Esq.
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005
E-mail: strell@clm.com

Donald J. Silverman, Esq.
Thomas A. Schmutz, Esq.
Thomas C. Poindexter, Esq.
Paul J. Zaffuts, Esq.
Alex S. Polonsky, Esq.
Lewis Csedrik, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
E-mail: dsilverman@morganlewis.com
tschmutz@morganlewis.com
tpoindexter@morganlewis.com
pzaffuts@morganlewis.com
apolonsky@morganlewis.com
csedrik@morganlewis.com

Malachy R. Murphy, Esq.
18160 Cottonwood Rd. #265
Sunriver, OR 97707
E-mail: mrmurphy@chamberscabte.com

Robert M. Anderson
Akerman Senterfitt
801 Pennsylvania Avenue N.W., Suite 600
Washington, DC 20004 USA
E-mail: robert.anderson@akerman.com

Martha S. Crosland, Esq.
Angela M. Kordyak, Esq.
Mary B. Neumayr, Esq.
Nicholas P. DiNunzio
James Bennett McRae, Esq.
U.S. Department of Energy
Office of the General Counsel
1000 Independence Avenue, S.W.
Washington, DC 20585
E-mail: martha.crosland@hq.doe.gov
angela.kordyak@hq.doe.gov
mary.neumayr@hq.doe.gov
nick.dinunzio@rw.doe.gov
ben.mcrae@hq.doe.gov

George W. Hellstrom
U.S. Department of Energy
Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
E-Mail: george.hellstrom@ymp.gov

Jeffrey D. VanNiel, Esq.
530 Farrington Court
Las Vegas, NV 89123
E-mail: nbrjdv@gmail.com

Barry S. Neuman, Esq.
Carter Ledyard & Milburn, LLP
1401 Eye Street, NW
Suite 300
Washington, DC 20005
E-mail: neuman@clm.com

Susan L. Durbin, Esq.
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
E-mail: susan.durbin@doj.ca.gov

