

February 25, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 63-001
)	
U.S. DEPARTMENT OF ENERGY)	ASLBP Nos. 09-876-HLW-CAB-01
)	09-877-HLW-CAB-02
(High-Level Waste Repository))	09-878-HLW-CAB-03

NRC STAFF ANSWER TO NATIVE COMMUNITY
ACTION COUNCIL'S MOTION FOR EXTENSION OF TIME

INTRODUCTION

The staff of the Nuclear Regulatory Commission (Staff) hereby files this answer in opposition to the Motion for Extension of Time (Motion) filed by the Native Community Action Council (NCAC) on February 24, 2009. The Motion seeks an extension of time of 15 days, until March 11, 2009, for NCAC to file its reply to the "Answer of the United States Department of Energy to the Native Community Action Council Petition to Intervene as a Full Party" filed on January 15, 2009.

DISCUSSION

While NCAC claims that it has good cause for the request for the extension, its justification hinges on the 65-page length of DOE's answer and NCAC obtaining legal counsel within the past few days. Motion at 1. However, it is not apparent why the 65-page length of DOE's response constitutes good cause for an extension or why it could not retain legal counsel sooner. Further, many petitioners in Commission proceedings face issues relating to limited resources, such as trouble retaining legal counsel, but the Commission has not found such reasons adequate for constituting good cause. See, e.g., *Detroit Edison Co.* (Fermi Unit 3), CLI-09-04, 68 NRC __ (Feb. 17, 2009) (slip op. at 2) ("[M]any, if not most, groups that seek to

intervene in NRC proceedings are organizations that rely on volunteers and must draft contentions while also balancing other obligations.”). Moreover, NCAC does not explain why, even if an extension is warranted, 15 days is an appropriate amount of time. NCAC argues that the “short, 15-day extension will not prejudice the rights of any other party, nor delay the disposition of this proceeding.” Motion at 1-2. However, the Commission provided 14 days total for responses to answers, so the 15-day extension is more than double the original time period contemplated by the Commission. *U.S. Dep’t of Energy* (High Level Waste Repository), CLI-08-25, 68 NRC __ (Oct. 17, 2008) (slip op. at 11). Under its proposed extension, NCAC’s response would be filed the day before the first prehearing conference on March 12, 2009. “Notice of Conference Call (Schedule for Telephonic First Prehearing Conference)” (Feb. 10, 2009) (slip op.). The Staff notes that a filing deadline so close to the prehearing conference could adversely impact the Board’s schedule and agenda for the teleconference.

CONCLUSION

For the reasons set forth above, the Staff opposes NCAC's Motion for Extension of Time as NCAC has neither demonstrated good cause for the extension itself nor the length of the extension.

Respectfully submitted,

Signed (electronically) by

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Dated at Rockville, Maryland
this 25th day of February, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO NATIVE COMMUNITY ACTION COUNCIL'S MOTION FOR EXTENSION OF TIME" in the above-captioned proceeding have been served on the following persons this 25th day of February, 2009, by Electronic Information Exchange.

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