

William (Bill) D. Peterson, with
300-Year SNF Disposal &
3-Year Recovery Plan,
413 Vine Street,
Clearfield, Utah 84015,
Tel 801-825-3123, Email paengineers@juno.com

**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

333 Constitution Avenue, NW, Room 5523
Washington, DC 20001-2866
Phone: 202-216-7290 Facsimile: 202-219-8530

William (Bill) D. Peterson, P.E., Engineer for	!	
300-Year SNF Disposal Solution &	!	MOTION
3-year Fuel Independence Plan	!	
Plaintiff –Appellant	!	
vs.	!	Case No. <u>10-1007</u>
	!	
United States of America	!	Ref: July 9, 2004 order
Nuclear Regulatory Commission et al.*	!	in
Atomic Safety and Licensing Board	!	No. 01-1258
Defendant – Appellees	!	

* Spent Nuclear Fuel plan Defendant – Appellee parties are: NRC - Nuclear Regulatory Commission, DOE - Department of Energy, EPA - Environmental Protection Agency, NAS - National Academies of Science, and NEI - Nuclear Energy Institute.

* Fuel and Economic recovery plan Defendant – Appellee parties are: DOC - Department of Commerce, DOL - Department of Labor, DOT - Department of the Treasury, FTC -Federal Trade Commission, and the TPCC - Trade Promotion Coordinating Committee

* Other Federal Administrative parties of interest are: Former Nuclear Waste Negotiator, Idaho Congressman Richard Stallings, and President Barack Obama.

MOTION

1) In the matter of NRC Docket No. 63-001 HLW the U.S. Department of Energy (DOE) is contesting (vs.) with the U.S. Nuclear Regulatory Commission (NRC) for NRC to issue a license for continuing construction of the Yucca Mountain nuclear waste geological repository (YM). 2) In doing this, DOE and NRC are not adhering to a July 9, 2004 court order of the U.S. Court of Appeals

for the District of Columbia Circuit, wherein the matter of the Nuclear Energy Institute (NEI) vs. Environmental Protection Agency (EPA) the court ordered that National Academies of the Sciences (NAS) was to study the matter and make recommendations to EPA. 3) Then in consideration of NAS's directives, EPA is to decide and say how SNF is to be disposed of.

4) In the matter of NRC Docket No. 63-001 HLW, NAS has not recommended YM and EPA has not required the YM solution. 5) So YM is the wrong solution and the Congress is the wrong source of authority and DOE v NRC are the wrong parties. 6) Also, DOE and NRC do not have a plan for U.S Oil independence and schedule for doing it.

7) Peterson motions that the July 9th order in Case No. 01-1258 is the right source of law, EPA's decision considering recommendations from NAS will require the right solution, and an engineer should provide a plan and schedule.

8) An accompanying memorandum will show that the U.S. Court of Appeals for the District of Columbia Circuit is the right venue and source of law for seeing this by the right parties.

9) An accompanying Affidavit shows that Applicant Peterson has rightly appealed and postured the matter for the right parties, appealing it from NRC Hearing Docket No. 63-001 HLW to the Court of Appeals for the D C Circuit Docket No. 10-1007.

10) Dated this 11th Day of March, 2010.

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William (Bill) D. Peterson, P.E., Engineer for	!	
300-Year SNF Disposal Solution &	!	MEMORANDUM
3-year Fuel Independence Plan	!	
Plaintiff –Appellant	!	
vs.	!	Case No. <u>10-1007</u>
	!	
United States of America	!	Ref: July 9, 2004 order
Nuclear Regulatory Commission et al.*	!	in
Atomic Safety and Licensing Board	!	No. 01-1258
Defendant – Appellees	!	

MEMORANDUM

**MOTION FOR SCOPE OF APPEAL
TO INCLUDE ALL CONROVERTED ISSUES
AND ALL RELEVANT PARTIES**

11) In Peterson’s pleadings he presents a list of 24 Differences, Controverted Issues and Contentions, none which NRC has disputed. 12) In her pleading of March 2nd, 2010, Attorney Liaw puts forth rhetoric of why the NRC hearing cannot see Peterson’s issues. 13) Taken out of context from her pleading are fourteen (14) EXERTS that make the point that the NRC hearing cannot deal with the most fundamental (most all) of the issues of relative matters that should be dealt with.

14) Peterson has offered a plan for a 300-year permanent disposal of spent nuclear fuel (SNF). 15) If implemented it would enable disposal of currently stored SNF and SNF from 50 new nuclear power plants, needed to be built to make fuel for 10% of our nation's vehicular transportation. 16) In addition, the plan would have 40% of our vehicles converted to natural gas (CNG) for fuel. 17) Then hopefully the U.S. could provide enough domestic gasoline and diesel to power the other 50% for a few years, until 450 more power plants could be built to get all vehicles running on our U.S. fuel, instead of foreign oil.

18) Yucca Mountain (YM) deep repository type SNF storage is not usable for SNF processing SNF for making nuclear fuel for powering America. 19) Deep burial of fission waste containing cesium and strontium creates overwhelming heat problems. 20) SNF in YM type deep burial is not accessible for processing to recover the 97% of SNF that is usable for future fuel. 21) The 10,000 to one million years of storage time required in YM is unreal. 22) For now, YM is being closed. 23) With this pleading Peterson provides a comparison sheet with a list of features showing the benefit of the 300-year SNF disposal solution over YM type geological burial.

24) The U.S. Government has been politically influenced and from a scientific view has mistakenly and wrongly committed to YM. 25) The commitment has made it so the Government has not been able to work on other options like Peterson's 300-year permanent disposal solution. 26) NRC's response to Peterson's pleadings reflects the very limited scope NRC, DOE, and EPA have had to be functioning in. 27) In its response to Peterson's pleadings the U.S. Government December 14, 2009, pleading in context says:

28) EXERT 1

pg 2-ln 5 the NRC Construction Authorization Board is to preside over new or amended contentions,

29) EXERT 2

pg 3-ln 12 Peterson's petition requests relief outside the jurisdiction of this proceeding

30) EXERT 3

pg 3-ln 15 Persons not admitted as parties to a proceeding may not participate beyond the limits stated in the NRC's Rules of Practice and the Notice of Hearing. See 10 C.F.R. § 2.315(a); Notice of Hearing, 73 Fed. Reg. at 63,032

31) EXERT 4

pg 4-ln 11 Commission's jurisdiction is limited to those matters delineated by Congress.

32) EXERT 5

pg 4-ln 19 The Commission, however, cannot direct other federal agencies in the manner that Peterson has requested, and cannot make the proposed policy decisions

33) EXERT 6

pg 4-ln 22 NRC is not a legislative body and it lacks discretion to act on the basis of issues that are not within the scope of the laws established by Congress

34) EXERT 7

pg 5-ln 6 Peterson's motion requests relief outside the scope of this adjudicatory proceeding, and it does not comply with Commission pleading requirements.

35) EXERT 8

pg 5-ln 15 The Motion also requests relief outside the scope of this adjudication.

36) EXERT 9

pg 5-ln 16 DOE's license application for issuance of a construction authorization, and does not encompass the "SNF disposal solution" proposed by Peterson

37) EXERT 10

pg 6-ln 2 Peterson's motion does not allege error by the Board.

38) EXERT 11

pg 6-ln 5 Peterson's motion requests relief outside the scope of this proceeding, and does not comply with Commission pleading requirements

39) EXERT 12

pg 6-ln 11 Peterson similarly proposed to build a combination 300-year spent-fuel storage and reprocessing facility

40) EXERT 13

pg 6-ln 20 Peterson's Motion, whether considered a motion or an appeal, does not comply with Commission regulations and requests relief outside the scope of this proceeding and the Commission's jurisdiction

41) NRC, DOE, and EPA have ignored the July 9th 2004 order in NEI v EPA Case Docket No. 01-1258. In its order, the Court explains that YM was only a suggested target for SNF disposal. 42) The Court ordered that the National Academies of Science (NAS) to make recommendations that EPA is to consider, then EPA is to say how SNF is to be disposed of. 43) NAS has issued opinions, but they have been ignored by EPA, DOE, and NRC. 44) NAS actually has not recommended YM type storage,

45) The State of Washington which has the Hanford project and the State of South Carolina which has the Savannah River project have last week on March 3rd and 4th petitioned to intervene and salvage the Docket No. 63-001-HLW disposal project for their needs. 46) Likewise, Peterson has petitioned to salvage transuranics and U238 uranium from SNF with his 300-year solution and his 3-year fuel independence plan and economy restructuring and trade balancing plan.

47) In NRC November 14, 2009 pleading contrasting what they were attempting to do with YM compared to Peterson's 300-year SNF disposal plan.

SO WHAT IS A PARTY IN NRC DOCKET NO. 63-001-HLW

48) As for Peterson being a party in NRC Docket No. 63-001-HLW, Peterson has been a party; now the Hearing Judges are saying that he is not. 49) Actually it probably no longer makes any difference. 50) The NRC Hearing is not a court of law. 51) Would the rule of law apply? 52) With different things going on, as they are, would not NRC be needing to be making new rules all the time? 53) After all, the Congress has probably laid down some guidelines, but aren't NRC's mostly self-made and self imposed? 54) Has not NRC made and uses it's own rules? 55) NRC possibly does not have to comply with the 1st Amendment? 56) A list of six items was recently put out by an NRC clerk that the Commissioners have yet to deal with. 57) Peterson's appeal is apparently not on that list. 58) So be it? 59) If it needs to be an issue, Peterson can appeal it to this Circuit Appellant Court. 60) As for the recent pleadings of states of Washington and South Carolina to intervene, they are certainly invited by Peterson to join with him in Case No. 10-1007

61) Peterson moves that it be clear that all 14 items of Peterson's list be dealt with in his appeal Case Docket No. 10-1007. 62) Then if the State of Washington and the State of South Carolina become joint petitioning plaintiffs with Peterson their issues would need to be included. 63) The State of Washington brings issues associated with Hanford. 64) The State of South Carolina would rightly bring in issues of Savanna River. 65) As Peterson has previously said, for what NRC and DOE are trying to do they are not dealing with the right law and they are not the right parties. 66) The fundamental law to resolve this matter are in the July 9th 2004, court order in Case Docket No. 01-

1258, issued by this Court - the U.S. Court of Appeals for the District of Columbia.

67) In the court order of July 9th 2004, Case Docket No. 01-1258 the court spells out the intent of the Congress is that the Environmental Protection Agency (EPA) supported by the National Academies of the Sciences (NAS) are to determine and specify how spent nuclear fuel (SNF) is to be disposed of. 68) EPA apparently does not recognize the July 9th 2004 order from the Nuclear Energy Institute (NEI) v EPA case Docket No. 01-1258, nor does DOE or NRC. 69) EPA with NAS has not recommended Yucca Mountain (YM) as required by the Congress.

70) This court's order in its Case No. 01-1258 makes sense. 71) It's only "common-sense" that EPA with the help of the nations best scientists via NAS would determine and then recommend the fate of SNF. 72) Not even being a party in NEI v EPA Case No. 01-1258, it could be that NRC and DOE have not known of the July 9th 2004 court order. 73) Like they cannot expect Peterson to continually monitor the *Federal Register*, maybe it would not be unreasonable for them to not monitor what NEI and EPA are doing to dispose of SNF. 74) After all, the three of them are twelve (12) years beyond the date which the congress require that they have a solution for SNF disposal and take possession of SNF and free the nuclear utilities from the responsibility.

75) All of the federal government agencies were barred from doing anything else with SNF but YM by an order of the Congress. 76) So they have had their hands tied behind their backs, a mask put over their eyes, and tape put over their mouths. 77) Normally they would be subcontracting out the work

anyway, to an engineer like Peterson. 78) Private Engineer Peterson has not been subject to the same restrictions as has the departments in the government. 79) So Peterson has spent twenty years working on and has developed a disposal solution for SNF. 80) The money to do SNF disposal is being collected from the utilities and put into a nuclear waste deposit fund. 81) So there is money to pay Peterson to do SNF disposal. 82) But they have asserted that they cannot contract to Peterson because of their restriction to YM. 83) So the work of SNF disposal needs to be contracted to the likes of an engineer like Peterson. 84) He should be applying for the NRC licensing, not the DOE. 85) Peterson should be the one dealing with State and County governments, not the NRC. 86) It's only "common-sense".

THE ANTICIPATION AND PROCEDURE OF YUCCA MOUNTAIN CLOSURE

87) Politically, has energy ever been respected for its goodness? 88) Or has it always represented political power and terror? 89) Has anyone but Peterson and his cohorts looked at spent nuclear fuel (SNF) for its opportunity, instead of looking at it with fear and scorn? 90) Many look at YM as a symbol of end of nuclear power. 91) And that is just what YM was intended to be. 92) It was politically conceived for a political ending for nuclear power. 93) So in the public's eyes, nuclear energy is more scorned today than it was 40 years ago. 94) It's a shame. 95) It may be that it is the only thing that can save the American industry and its economy. 96) It's wrongly been the political target far too long. 97) Twenty years ago when Peterson first tried to talk to senator Hatch about energy and the economy the federal deficit was about three \$3 trillion dollars. 98) Today

its approaching \$13 trillion dollars. 99) YM's closure is happening fast. 100)

Peterson's appeal to be a party in the NRC's Docket No. 63-001-HLW in view of

YM's closure is a moot issue. 101) Below are dates for closures of issues:

102) **December 22, 2009, indication of forthcoming withdrawing of construction authorization application.** 103) Thomas S. Moore, Chairman, ADMINISTRATIVE JUDGE, served an order (Concerning **LSNA** Memorandum), by NRC's Docket No. 63-001-HLW system of electronic information exchange, upon the 140+ persons registered with the NRC construction licensing of Yucca Mountain (YM) matter, including William D. Peterson, listed on the Service List. 104) The paper said it was questionable whether the LSN system - including the current LSN portal website **as it is operated by the LSN Administrator - could be restored once it has been decommissioned for any extended period of time. To resurrect the LSN portal site alone likely would require five years and multiple millions of dollars.**

105) **December 29th, 2009, Peterson's notice of intent of appealing DOE v NRC Docket No. 63-001-HLW to the United States Court of Appeals for the District of Columbia Circuit,** which court wrote and issued the July 9, 2004, order in Court in Case No. 01-1258. 106) The order stipulated that the U.S. Environmental Protection Agency (EPA) was given charge by the Congress to determine how spent nuclear fuel (SNF) was to be disposed of, provided recommendations of the National Academies of Sciences were considered. 107) This order of the Circuit Court of Appeals was being ignored in the DOE v NRC Hearing.

108) **January 4, 2010, Peterson's notice of appeal to the United States Court of Appeals for the District of Columbia Circuit** and all **persons registered** as participants in the NRC Docket No. 63-001-HLW system of electronic information exchange. 109) Included in the pleadings was a list of twenty-two (22) contentions which Peterson maintains must be done, but which are not being addressed and most cannot be done in NRC's Docket No. 63-001-HLW hearing. 110) That they cannot do these things has not been disputed by NRC's Attorney Stephanie N. Liaw

111) **February 1, 2010, per DOE's motion to stay the proceeding, "all funding** for development of the YM facility will be **eliminated"** for fiscal year 2011. In **In accord** with these determinations, DOE has advised the undersigned counsel that **DOE intends to withdraw the pending application with prejudice.**

112) March 1, 2010, President Obama announced future funding for YM is withdrawn. 113) Tel 801-825-3123, Email paengineers@juno.com

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3-year Fuel Independence Plan |
Plaintiff –Appellant |
vs. | Case No. 10-1007
|
United States of America | Ref: July 9, 2004 order
Nuclear Regulatory Commission et al.* | in
Atomic Safety and Licensing Board | No. 01-1258
Defendant – Appellees

**AFFIDAVIT
SPENT NUCLEAR FUEL DISPOSAL
AND EXTENDED ISSUES
ALL IN THIS COURT MATTER**

114) Engineer William (Bill) D. Peterson works to do a 300-year spent nuclear fuel (SNF) permanent disposal solution which enables a three-year plan for oil independence, balanced trade and a workable economy. 115) Peterson has strong reservations of the Yucca Mountain (YM) concept of SNF disposal. 116) The heat from the cesium and strontium, the deep burial end to end in tunnels, not having provisions to access the SNF to process the SNF to recover the 97% part of SNF that is potential fuel, and the one million years of storage time requirement are overwhelming problems which all can be avoided by using

the 300-year SNF disposal solution instead of YM. 117) It's simply "common-sense" to use the 300-year solution and avoid the YM insurmountable problems, by just doing disposal differently.

118) In mid September 2009 Peterson petitioned to enter late into the DOE v NRC Hearing Docket No. 63-001 HLW. 119) September 20th 2009, Peterson was assigned his PIN number and Password. 120) As a participant Peterson asserted that YM was the wrong way to dispose of SNF and YM did not have the required recommendation of the National Academies of the Sciences (NAS) and was not a choice of EPA as required per a July 9th 2004, court order in U.S. Court of Appeals for the District of Columbia Circuit in the matter of the Nuclear Energy Institute (NEI) v the U.S. Environmental Protection Agency, (EPA) Case Docket No. 01-1258.

121) In DOE v NRC Docket No. 63-001 HLW Peterson further sought to participate as a third party plaintiff petitioner to rectify issues of the right parties, the right laws and the right solution. 122) Peterson did not prevail and so never attained the status as a plaintiff. 123) On December 30th 2009, the NRC Hearing Judges issued a final order that Peterson could not be a plaintiff party. 124) The Court ordered as sternly as it could that Peterson is not a party and will not be a party, with every excuse she can. 125) Attorney Stephanie Liaw's contention is that Peterson is a party in NRC Docket No. 63-001 HLW . 126) But as sternly as three hearing judges can say it, Peterson is ordered not to be a party in 63-001 HLW. 127) Admittedly Peterson has petitioned to be a party. 128) Admittedly Peterson believes that he should be a party. 129) But admittedly Peterson admits

he is not. 130) In the December 30th 2009 order, the three Judges of the Court have ordered the following:

Pg 2, ln 1, 131) **Mr. Peterson is not a party to the proceeding, he has no right or entitlement to file any pleadings, regardless of how captioned, in Docket No. 63-001-HLW**

Pg 2, ln 11, 132) **By order dated November 10, 2009, the Board denied the motion for reconsideration**

Pg 3, ln 4, 133) **his failure to be admitted as a party to the High Level Waste Repository Proceeding precludes him from participating in any manner in the formal ongoing proceeding.**

Pg 3, ln 9, 134) **we hereby bar Mr. Peterson from filing any further pleadings in the High Level Waste Repository Proceeding, Docket No. 63-001-HLW.**

Pg 4, ln 1, 135) **we instruct the Secretary of the Commission to strike any pleadings filed by Mr. Peterson in derogation of this order.** 136) **It is so ORDERED.** 137) December 30, 2009

Signed: Thomas S. Moore, Chairman, ADMINISTRATIVE JUDGE
Paul S. Ryerson, ADMINISTRATIVE JUDGE
Richard E. Wardwell, ADMINISTRATIVE JUDGE

PETERSON AGREES TO CONCUR
WITH U.S. DOE's MOTION TO
STAY THE PROCEEDING

138) February 1, 2010, DOE advised NRC Hearing Docket No. 63-001 participating counsel that DOE intends to withdraw it's pending application for a

Construction Permit with prejudice. 139) DOE has motioned to stay the proceeding. DOE counsel has made a sincere attempt to confer with counsel for the parties prior to filing its motion, including holding telephone conferences. 140) As a result of the consultations parties have agreed to concur with DOE's motion. 141) **Peterson agrees to concur with DOE's motion** to stay the proceedings.

AFFIDAVIT

142) I, William D. Peterson, have since last August been receiving many pleadings and have submitted several pleadings in the NRC Hearing Matter, Docket No. 63-001 HLW by NRC's via the Electronic Information Exchange system. 143) I thought I had participated as a party. 144) I have a 300-year SNF permanent disposal solution that I have developed that I believe may be the only way SNF can be disposed of in real time. 145) I have wanted to be a party. 146) However I have been instructed by the Hearing Judges that I am not a party. 147) In fact I have been instructed that I have never been a party. 148) I have appealed to become a party. 149) If I have done something wrong, I apologize. 150) If the NRC Commissioners accept my appeal and allow me to become a party, or if I am still a party or if I am not a party, in any party status, I do agree to concur with DOE's Motion to stay the proceedings of this matter Docket No. 63-001 HLW. 151) However, I expect that this would not alter my further seeing this matter in the U.S. Court of Appeals for the District of Columbia Circuit, in Case No. 10-1007 where I have appealed in hopes of applying my 300-year SNF disposal solution to further nuclear power, to replace America's use of oil with nuclear-power-made electricity and hydrogen, to make the U..S. independent of importing oil, to balance trade, to enable the U.S. to have total balance of trade,

to fix the U.S. deficit which I believe is a consequence, and actually is the imbalance of trade.

152) This Affidavit signed this _____ day of March, 2010.

William D. Peterson
300-year SNF permanent disposal solution
and 3-year plan for oil independence
and start for balanced trade

153) In Peterson's Dec. 29, 2009 letter to Judge Thomas S. Moore,
Peterson wrote:

154) Possibly only I could make such an appeal since I have the real time solution of 300-year SNF permanent disposal. 155) May I discuss with you my idea of appealing DOE v NRC Docket No. 63-001-HLW to the United States Court of Appeals for the District of Columbia Circuit, who wrote the July 9th 2004, order in Court in Case No. 01-1258.

Sincerely yours,

William (Bill) D Peterson
300-year SNF permanent disposal solution
413 Vine St, Clearfield, Utah 84015
Tel 801-825-3123, Email paengineers@juno.com

156) WDP file: c:/oldharddrive/p/NUC/L/Apl-DCcircuit09/-Mot aff Mem 3910.doc

Differences, Controverted Issues, List of Contentions
Ref § 2.309 (f)

FEATURE / ISSUE	300-Yr Solution	Yucca Mountain (YM)
Supports Peterson 3-year plan for U.S. fuel independence and Major start for balancing trade for U.S. economic recovery.	Yes	No
Complies with July 9 th 2004 Court Order Court of Appeals D.C. Circuit No. 01-1258	Yes	No
The National Academies of Sciences, (NAS) will recommend to EPA how SNF is to be disposed of. EPA will decide.	Yes	No
SNF stored underground	12 feet / concrete	> 900 feet / earth
Near a railroad spur	yes < 1 mile	no, 200 miles
Each canister assessable	yes, crane lift cap	no, end to end tunnels
Efficiently cooled in storage	yes, convection air	no, 10,000 HP air fans
Protective from missile attack	yes, underground	yes, deep underground
Protective from aircraft impact	yes, underground	yes, deep underground
SNF processed	yes, 5-9s separation	no (97% fuel wasted)
Finite storage period	yes, 300 + 500 yrs	no, one million years
Fission waste disposed of as Class-C	yes, in 300 years	no
Fission waste disposed of as Class-A	yes, in 800 years	no
Transuranics used in new fuel	yes, >1% of SNF	no
U-238 uranium recovered	yes, 96% of SNF	no
Facility construction cost	~\$6 billion	\$60 billion
Time to construction completion	~4 years	10 years
Time until public allowed re-entry	800 years	never, > million years
Percentage of fuel initially used	~ 3 %	~ 3 %
Percentage of fuel ultimately used	~ 100 %	~ 3 %
Percentage of fuel wasted	~ 0.0 %	~ 97 %
Would have capacity for GNEP	yes	no
NRC license application ever submitted	yes, twice	no
Is a solution for SNF for Nuc-hydrogen	yes "300-yr method"	no, YM lacks capacity

WDP file: c:/oldharddrive/p/NUC/nrc/Lic-Brd/Doc63-001/Differences 022610.doc

CERTIFICATE OF SERVICE

On March 11 2010 I certify that a true and correct white paper copy of the foregoing MOTION, MEMORANDUM, AND AFFIDAVIT was sent by U.S. Mail, First Class to Stephanie Liaw at the U.S Nuclear Regulatory Commission, and an original and five white paper copies was sent by first class U.S. mail to the Court.

Also, I certify that a true and correct electronic Email copy of the foregoing was sent to the parties listed below electronically, i.e., were sent by Email to the internet addresses listed below:

NRC Commissioners Gregory Jaczko, Kristine Svinicki, & Dale Kline:		
via: Emile Julian	Emile.Julian@nrc.gov	301-415-1677
NRC Board Judges Thomas S. Moore, Paul S. Ryerson, & Richard E. Wardwell:		
via: Linda Lewis	Hearing.Docket@nrc.gov	301-415-1675
NRC counsel Stephanie Liaw	Stephanie.Liaw@nrc.gov	301-415-1354
DOE Atty. Ben McRae	ben.mcrae@hq.doe.gov	202-586-4331
EPA Scott Fulton	richard.ossias@epa.gov	202 564-7606
NAS James F. Hinchman	webmailbox@nas.edu	202.334.2440
NEI Mike Bauser	mab@nei.org	202-739-8144
DOC Art Aronoff	aaronoff@doc.gov	202-482-0937
DOL Craig Hukill	hukill.craig@dol.gov	202-692-5260
DOT Russell Munk	russell.munk@do.treas.gov	202-622-1899
TPCC Patrick Kirwan	patrick.kirwan@trade.gov	202-482-5455
FTC Willard K. Tom	wtom@ftc.gov	202-326-2424
Nuc Negotiator Richard Stallings	rstallings@allidaho.com	208 241 6049
President Obama via: Bob Bauer	whitehousecounsel@who.eop.gov	202-456-1258

William (Bill) D. Peterson, M.S., P.E. pro se
300-year Spent Nuclear Fuel disposal solution
3-year fuel independence plan and
balanced economy plan

Dec 30, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

Docket No. 63-001-HLW

U.S. DEPARTMENT OF ENERGY

ASLBP No. 09-892-HLW-CAB04

(High Level Waste Repository)

December 30, 2009

ORDER
(Denying William D. Peterson Motion)

158) Before us is yet another filing by William D. Peterson dated December 23, 2009 titled "PETERSON'S motion for a THREE (3) YEAR ECONOMY RECOVERY PLAN, PLAN FOR SNF DISPOSAL AND FUEL INDEPENDENCE, and plan for CO₂ reduction for slowing Global Climate Change" (Peterson Motion). 159) Although the purported subject of the filing, as the title suggests, covers a number of topics, the gist of the sought relief is illustrated by the last paragraph stating that:

160) Peterson moves the Hearing Judges find that as EPA has the responsibility of specifying how SNF is to be disposed of, DOC [Department of Commerce] would have the responsibility of specifying that U.S. commerce with other nations must balance. 161) Peterson moves EPA [Environmental Protection Agency] must work with DOE [Department of Energy] and NRC to achieve U.S. energy Independence. 162) Peterson likewise moves that the DOE must work with Treasury and Department of the Interior and regulate coin and commerce to fix the deficit. 163) Peterson moves for U.S. fuel independence in three years, then consideration of his plan (not herein provided) for fiscal independence.¹

164) Mr. Peterson's December 23, 2009 motion is denied. 165) The movant is not now and never has been a party to the High Level Waste Repository proceeding. 166)

Because **Mr. Peterson is not a party to the proceeding, he has no right or entitlement to**

¹ Peterson Motion at 5.

- 2 -

file any pleadings, regardless of how captioned, in Docket No. 63-001-HLW.

167) Mr. Peterson filed an intervention petition on October 5, 2009.² 168) In an order dated October 28, 2009,³ Construction Authorization Board 04 (CAB-04 or Board) denied that petition for being filed, without adequate excuse, over nine months past the 60-day deadline for intervention petitions set by the Commission's October 22, 2008 hearing notice.⁴ 169) In denying his intervention petition, the Board also found that Mr. Peterson had failed to establish his standing to intervene and that he had failed to proffer any admissible contentions. 170) – two additional essential prerequisites for the grant of an intervention petition.⁵ 171) On November 6, 2009, Mr. Peterson filed a purported supplement to his already denied intervention petition that the Board generously treated as a motion for reconsideration of its earlier order.⁶ 172) **By order dated November 10, 2009, the Board denied the motion for reconsideration**.⁷ 173) Thereafter, in pleadings ostensibly dated November 12 and 13, 2009, Mr. Peterson sought to appeal to the Commission

² Petition for Admission (Oct. 5, 2009).

³ CAB Order (Denying Intervention Petition) (Oct. 28, 2009) (unpublished).

⁴ See U.S. Department of Energy (High Level Waste Repository); 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, 73 Fed. Reg. 63,029, 63,030 (Oct. 22, 2008).

⁵ CAB Order (Denying Intervention Petition) (Oct. 28, 2009) at 1 (unpublished).

⁶ Supplement to Petition to Enter (Nov. 6, 2009).

⁷ CAB Order (Denying Motion for Reconsideration) (Nov. 10, 2009) (unpublished).

the denial of his intervention petition.⁸ That appeal is pending before the Commission along with a December 2, 2009 motion titled “MOTION FOR A PLAN AND SCHEDULE.”⁹

174) As is evident from Mr. Peterson’s latest filing, he apparently fails to understand, or refuses to accept the fact, that **his failure to be admitted as a party to the High Level Waste Repository Proceeding precludes him from participating in any manner in the formal ongoing proceeding.** 175) Further, in light of his earlier denied petition and subsequent pleadings, the Board is frank to state that it is exceedingly unlikely that Mr. Peterson could meet the Commission’s regulatory requirements for being admitted as a party to the proceeding. 176) Because he nevertheless continues to file pleadings, **we hereby bar Mr. Peterson from filing any further pleadings in the High Level Waste Repository Proceeding, Docket No. 63-001-HLW,** or 177) sending any emails to the Judges such as the one addressed to Judge Thomas S. Moore dated December 29, 2009,¹⁰ unless and 178) until the Commission reverses the Board’s October 28, 2009

179) ⁸ In a filing dated November 12, 2009, but apparently electronically submitted on November 13, 2009, Mr. Peterson sought to appeal the denial of his intervention petition and the subsequent denial of his motion for reconsideration. 180) Motion for Waiver Per 10 C.F.R. § 2.335 (Nov. 13, 2009). 181) This filing, although identified in two separate places as before the “Atomic and Safety Licensing Board,” notes in the caption that it is a “NOTICE OF APPEAL to the NRC Commissioners.” 182) In support of this appeal, Mr. Peterson filed another pleading, dated November 13, 2009, whose Certificate of Service carries various dates from November 5 through November 16, 2009, and which apparently was not electronically submitted until November 17, 2009. 183) Memorandum [in Support of Notice of Appeal] (Nov. 17, 2009). 184) Again, while this pleading identifies itself as before the “Atomic and Safety Licensing Board,” it is also captioned “MEMORANDUM in support of NOTICE OF APPEAL EPA is responsible for SNF” before the NRC Commissioners.

⁹ Motion for a Plan and Schedule (Dec. 2, 2009).

185) ¹⁰ Mr. Peterson's December 29, 2009 e-mail is attached to this order.

Order denying his intervention petition. 186) Further, by this order, **we instruct the**

Secretary of the

Commission to strike any pleadings filed by Mr. Peterson in derogation of

this order.

187) **It is so ORDERED.**

THE ATOMIC SAFETY
AND LICENSING BOARD

RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

RA/

Paul S. Ryerson
ADMINISTRATIVE JUDGE

RA/

Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 30, 2009

WDP file: c:/oldharddrive/p/NUC/nrc/Lic-Brd/Doc63-001/response/+Order denying marked
123009.doc

ATTACHMENT

From: William D Peterson [paengineers@juno.com]
Sent: Tuesday, December 29, 2009 8:53 AM
To: Moore, Thomas
Subject: May I appeal DOE v NRC Docket No. 63-001-HLW instead of it being Withdrawn

Judge Thomas S. Moore
Chair – Administrative judge

December 29, 2009

Ref: Request to consider appeal of DOE v NRC Docket No. 63-001-HLW to U.S. Court of Appeals for the District of Columbia Circuit, Case No. 01-1258

Honorable Judge Moore,

As Governor of the State of Utah from 1993 to 2003, Michael Leavitt did everything he could to foil storage of spent nuclear fuel. With the attitude he had against nuclear power, I don't see how he could possibly function as Administrator of EPA from 2003 to 2005. I don't believe his attitude of stopping nuclear power has ever changed. He should have implemented the July 9, 2004 court order in Case No. 01-1258. I believe that Leavitt sabotaged nuclear power by ignoring that order.

Pleadings that I have submitted show that DOE is attempting to seek a NRC license to pursue a disposal solution for spent nuclear fuel (SNF) without there being a solution recommendation from the Environmental Protection Agency (EPA) it being based upon a recommendation from the National Academies of Sciences (NAS) as required per a July 9, 2004 order of this Court in Case No. 01-1258.

2003-2005 EPA Administrator Michael Leavitt wrongly failed to implement the 2004 Court order, which failure to do has stalemated progress of SNF disposal and America's nuclear power development. Also, this appellant's 300-year SNF permanent disposal solution should at that time been considered over the one million year or 10,000-year storage requirement, which was previously the only options available.

Peterson's third party standing in DOE v NRC Docket No. 63-001-HLW is currently on appeal before the NRC Commissioners Gregory Jaczko, Kristine Svinicki, and Dale Klein. Peterson concurs with the NRC's attorney Adam Gendelman in his December 14, 2009 pleading, that certain matters, which would include a lack of a directive from EPA consistent with a recommendation from NAS cannot be pursued by NRC. These matters have been a subject of this Court in Case No. 01-1258 which now requires further clarification and amplification of the Court's 2004 order.

Possibly only I could make such an appeal since I have the real time solution of 300-year SNF permanent disposal. May I discuss with you my idea of appealing DOE v NRC Docket No. 63-001-HLW to the United States Court of Appeals for the District of Columbia Circuit, who wrote the order in Court in Case No. 01-1258.

Sincerely yours,

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300-year SNF permanent disposal solution
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Tel 801-825-3123, Email paengineers@juno.com

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB Order (DENYING WILLIAM D. PETERSON MOTION) dated December 30, 2009, have been served upon the following persons by Electronic Information Exchange.

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Hearing Docket

1

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
LB Order (DENYING WILLIAM D. PETERSON MOTION)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
LB Order (DENYING WILLIAM D. PETERSON MOTION)

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LB Order (DENYING WILLIAM D. PETERSON MOTION)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
LB Order (DENYING WILLIAM D. PETERSON MOTION)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
LB Order (DENYING WILLIAM D. PETERSON MOTION)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
LB Order (DENYING WILLIAM D. PETERSON MOTION)

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[Original Signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 30th day of December 2009.

December 14, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High-Level Waste Repository))	ASLBP No. 09-892-HLW-CAB04
)	

NRC STAFF RESPONSE TO
PETERSON'S MOTION FOR A PLAN AND SCHEDULE

On December 2, 2009, Mr. William D. Peterson (Peterson) filed the instant "Motion for a Plan and Schedule" (Motion) before the Commission. For the reasons set forth below, the Motion should be denied.

BACKGROUND

On June 3, 2008, the Department of Energy (DOE) submitted the Yucca Mountain Repository License Application to the NRC, seeking authorization to construct a geologic repository at Yucca Mountain, Nevada, in accordance with the provisions of 10 C.F.R. Part 63.1 After the Staff docketed the License Application, the Commission published a notice of hearing in the *Federal Register*.² The Notice of Hearing provided that any person wishing to participate

¹ See Yucca Mountain; Notice of Receipt and Availability of Application, 73 Fed. Reg. 34,348 (June 17, 2008); Yucca Mountain; Notice of Receipt and Availability of Application; Correction, 73 Fed. Reg. 40,883 (July 16, 2008).

² In the Matter of U.S. Department of Energy (High-Level Waste Repository); 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, 73 Fed. Reg. 63,029 (Oct. 22, 2008) (Notice of Hearing); *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-08-25,

BACKGROUND

On June 3, 2008, the Department of Energy (DOE) submitted the Yucca Mountain Repository License Application to the NRC, seeking authorization to construct a geologic repository at Yucca Mountain, Nevada, in accordance with the provisions of 10 C.F.R. Part 63.1 After the Staff docketed the License Application, the Commission published a notice of hearing in the *Federal Register*.² The Notice of Hearing provided that any person wishing to participate

¹ See Yucca Mountain; Notice of Receipt and Availability of Application, 73 Fed. Reg. 34,348 (June 17, 2008); Yucca Mountain; Notice of Receipt and Availability of Application; Correction, 73 Fed. Reg. 40,883 (July 16, 2008).

2 In the Matter of U.S. Department of Energy (High-Level Waste Repository); 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, 73 Fed. Reg. 63,029 (Oct. 22, 2008) (Notice of Hearing); *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-08-25, 68 NRC 497 (2008).

- 2 -

as a party to this proceeding must petition for leave to intervene within sixty days of the notice. 73 Fed. Reg. 63,030.

Three Construction Authorization Boards (CABs or Boards) were established to preside over the petitions to intervene and requests to participate in this licensing proceeding.³ On June 19, 2009, the Chief Administrative Judge established **Construction Authorization Board**⁴ (the "Board") to **preside over**, among other things, matters concerning **new or amended contentions**.⁴

On October 5, 2009, Peterson filed a "Petition for Admission" (Petition). The Board denied the Petition on October 28, 2009, concluding that the Petition was untimely pursuant to 10 C.F.R. § 2.309(c), and that Peterson had not demonstrated standing, or proffered an admissible contention. *See* Order (Denying Intervention Petition), dated October 28, 2009 (unpublished) (October 28 Order), at 4.5 In the October 28 Order, the Board recommended "that any appeal from this Order both comply with 10 C.F.R. § 2.1015(b) and request review as a matter of the Commission's discretion." *Id.* at 8-9.

On November 5, 2009, Peterson filed a "Supplement to Petition to Enter" (Petition Supplement). Five days later, the Board, treating the Petition Supplement as a timely motion for reconsideration, denied the motion. *See* Order (Denying Motion for Reconsideration) (unpublished), dated November 10, 2009 (November 10 Order), at 2. The Board cited Peterson's failure "to demonstrate 'compelling circumstances, such as the existence of a clear

³ U.S. Department of Energy; Establishment of Atomic Safety and Licensing Boards, 74 Fed. Reg. 4477 (Jan. 26, 2009). ⁴ See Establishment of Atomic Safety and Licensing Board; Department of Energy, 74 Fed. Reg. 30,644 (June 26, 2009). ⁵ On September 22, 2009, Peterson filed a pleading entitled "Motion" that sought production of Staff documents and made several claims similar to those in the Petition. *See* Motion (Sep. 22, 2009). The Staff filed an answer in opposition to that "Motion" on September 29, 2009. *See* NRC Staff Answer to "Motion" of William Peterson (September 29, 2009). The Board's October 28 Order also disposed of Peterson's September 22, 2009 "Motion." October 28 Order at 1.

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DISCUSSION

The Motion is entitled "Motion for a Plan and Schedule," but it also references the Commission's appellate authority, and displays a pleading and service list caption indicating that Peterson views himself as a license "applicant" and "appellant." *See, e.g.*, Motion at 1, 8. If the filing is a motion, the Motion should be denied because (1) Peterson is not a party to this proceeding, (2) Peterson did not comply with Commission pleading requirements, and (3) the Motion requests relief that is beyond the jurisdiction of the Commission. If treated as an appeal

from the Board's denial of the Petition or Petition Supplement, the Motion should be denied because (1) it is untimely, (2) **it requests relief outside the jurisdiction of this proceeding**, and (3) it does not satisfy the Commission's pleading requirements.

Peterson is not a party to this proceeding,⁶ and is thus not entitled to participate as a party. **Persons not admitted as parties to a proceeding may not participate beyond the limits stated in the NRC's Rules of Practice and the Notice of Hearing. See 10 C.F.R. § 2.315(a); Notice of Hearing, 73 Fed. Reg. at 63,032.** Persons who are not parties to a proceeding may make oral or written limited appearance statements at the discretion of the presiding officer, but such persons "may not otherwise participate in the proceeding." See 10 C.F.R. § 2.315(a). Further, as the Board previously noted with respect to the Petition, Peterson has not demonstrated "substantial and timely compliance with the [Licensing Support Network]

⁶ See October 28 Order at 8; November 10 Order at 2.

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requirements in accordance with 10 C.F.R. § 2.1012(b)(1), or with the Advisory Pre-License Application Presiding Officer Board's June 20, 2008 order governing the format for contentions in this proceeding." October 28 Order at 8, n. 32 (citing *U.S. Dep't of Energy* (High-Level Waste Repository), LBP-08-10, 67 NRC 450 (2008)).

If Peterson's filing is a "motion," it does also not contain the certification of good faith consultation required by 10 C.F.R. § 2.323(b) and the Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution), dated July 6, 2007, Section II.K, at 10, as adopted in this proceeding by CAB Case Management Order #1, dated January 29, 2009, at 1. Peterson has neither certified compliance with § 2.323, nor **has he consulted with the NRC Staff prior to filing the Motion.**

Further, the **Commission's jurisdiction is limited to those matters delineated by Congress.** *Sequoyah Fuels Corp. & General Atomics* (Gore, Oklahoma Site), LBP-94-17, 39 NRC 359, 361 (1994) ("NRC, like all other federal administrative agencies, is a statutory creature whose powers are controlled by legislative grants of authority."). Although the Motion lacks clarity, Peterson apparently requests that "Court[s] find EPA has responsibility over SNF [spent nuclear fuel]," Motion at 5, and that Federal agencies present his SNF proposal as national policy, Motion at 6 ("Now, at this time **EPA, NRC, and DOE in association with the organizations of NAS, NEI, working with Peterson and his scientific organization can have a good 300-year solution for SNF permanent disposal . . .**"). **The Commission, however, cannot direct other federal agencies in the manner that Peterson has requested, and cannot make the proposed policy decisions. See Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 1), CLI-85-9, 21 NRC 1118, 1154 (1985) ("NRC is not a legislative body and it lacks discretion to act on the basis of issues that are not within the scope of the laws**

established by Congress.”). Congress has determined, as reflected in Section 114 of the Nuclear Waste Policy Act, as amended (NWPA), that the Commission is responsible for making

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a licensing decision on a construction authorization for a facility proposed by DOE.⁷ Because Peterson is not a party to this proceeding, and because the Motion does not comply with Commission procedural requirements and requests relief beyond the Commission’s jurisdiction, the Motion should be denied.

If the Motion is an appeal from the Board’s denial of the Petition or Petition Supplement, the Motion should be denied because it is untimely, **it requests relief outside the scope of this adjudicatory proceeding**, and **it does not comply with Commission pleading requirements**. A notice of appeal “must be filed with the Commission no later than ten (10) days after service of the order.” 10 C.F.R. § 2.1015(b). The Board denied Peterson’s Petition in its October 28 Order. October 28 Order at 1,8. Therefore, a timely appeal from that order should have been filed on or before November 9, 2009. Because the Motion was filed on December 2, 2009, it should be denied as untimely. Even assuming the Petition Supplement tolled the time for filing an appeal, the Motion is untimely because the Petition Supplement was denied on November 10, 2009. See November 10 Order at 2.

The **Motion also requests relief outside the scope of this adjudication**. The scope of this proceeding is limited to consideration of **DOE’s license application for issuance of a construction authorization**, and **does not encompass the “SNF disposal solution” proposed by Peterson**. See Notice of Hearing, 73 Fed. Reg. 63,029 (delineating the subject matter of this proceeding to consideration of DOE’s application for a construction authorization); *see also* NWPA, Section 114(f)(6) (“[T]he Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, or

⁷ See NWPA Section 114(b), (d), 42 U.S.C. § 10134(b), (d) (2009) (“[T]he Secretary [of Energy] shall submit to the Commission an application for a construction authorization for a repository The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications”).

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nongeologic alternatives to such site.”) The Motion also fails as an appeal because it does not contain a notice of appeal as required by 10 C.F.R. § 2.1015, and **does not allege error by the Board**.

If considered an appeal from the Board’s denial of the Petition or Petition Supplement, the Motion should be denied because the Motion is untimely, **requests relief outside the scope of this proceeding, and does not comply with Commission pleading requirements**.

In essence, Peterson's goal to have federal agencies adopt his SNF disposal proposal as national policy exceeds the scope of these proceedings and the jurisdiction of the Commission. This is not the first time that Peterson sought to use a particular NRC proceeding as a forum to urge adoption of broad policy initiatives beyond the scope of a proceeding. In the *Private Fuel Storage* [PFS] proceeding, **Peterson similarly proposed to build a combination 300-year spent-fuel storage and reprocessing facility**. The Commission found his proposal to be improper for that venue, and noted:

The PFS licensing proceeding is not an open forum for discussing the country's need for energy and spent fuel storage. Our regulations provide procedures for qualified applicants to obtain licenses for safely operated nuclear facilities. If Peterson believes he is qualified to operate a nuclear storage or reprocessing facility, he must comply with those prescribed licensing procedures.

Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-04-07, 59 NRC 111, 112 (2004). Therefore, because **Peterson's Motion, whether considered a motion or an appeal, does not comply with Commission regulations and requests relief outside the scope of this proceeding and the Commission's jurisdiction**, it should be denied.

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CONCLUSION

Peterson has failed to provide any legal basis upon which the Commission should or could grant his requests. If his filing is treated as a motion, it should be denied because Peterson is not a party to this proceeding, because he requests relief outside the Commission's jurisdiction, and because the Motion does not comply with Commission pleading requirements. If treated as an appeal, the Motion should be denied because it is untimely, requests relief outside the scope of this construction authorization proceeding, and does not comply with Commission pleading requirements.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 14th day of December, 2009

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High-Level Waste Repository))	ASLBP No. 09-892-HLW-CAB04
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF RESPONSE TO PETERSON'S MOTION FOR A PLAN AND SCHEDULE" in the above-captioned proceeding have been served on the following persons this 14th day of December, 2009, by Electronic Information Exchange.