

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

	)	
In the Matter of	)	
	)	Docket No. 63-001 – HLW
U.S. DEPARTMENT OF ENERGY	)	
	)	September 30, 2013
(High-Level Waste Repository:	)	
Pre-Application Matters)	)	
	)	

**EUREKA COUNTY’S RESPONSE TO  
NRC SECRETARY’S AUGUST 30, 2013 ORDER**

As permitted by the August 30, 2013, Order of the Secretary of the U.S. Nuclear Regulatory Commission (“NRC”), Eureka County submits its views regarding the actions NRC should take in response to the U.S. Court of Appeals’ recent decision that NRC must resume the Yucca Mountain proceeding, albeit with a limited fund of \$11.1 million. *In re Aiken County*, No. 11-1271 (August 13, 2013). Eureka County advocates the following actions, in order of their priority:

- Hold a conference of the parties and the Atomic Safety and Licensing Board (“ASLB”) in Las Vegas;
- Ensure that the conference is webcast, and that out-of-town counsel can participate remotely;
- Restore the Licensing Support Network (“LSN”) document collection; and
- If sufficient funds remain to conduct a full and fair hearing on safety issues, complete and issue Volume 3 of the Safety Evaluation Report (“SER”).

Eureka County notes that its fourth bulleted recommendation above is conditional: completion of the SER should be contingent on the existence of sufficient funding to hold a hearing on the issues covered in the SER.

In the interest of conserving the parties’ and NRC’s resources, Eureka County also supports the recommendation by the State of Nevada that the Commission should postpone a

ruling on this issue until the U.S. Court of Appeals rules on its pending petition for rehearing *en banc*.<sup>1</sup>

## **BACKGROUND**

Pursuant to 10 C.F.R. § 2.315(c), Eureka County has been admitted to participate in this proceeding as an interested governmental body.<sup>2</sup> As permitted by the hearing notice in this proceeding and a subsequent clarifying order, the County has provided notice of its intent to participate with respect to a range of issues related to emergency response, transportation (including sabotage), repository safety and environmental impacts, seismic and volcanic risks, and alternative waste storage and land ownership.<sup>3</sup>

Throughout the proceeding, Eureka County has advocated the establishment of measures to enable full public participation and observation of Yucca Mountain-related proceedings. As a county government located hundreds of miles from Las Vegas, for instance, Eureka County successfully petitioned the NRC to webcast a case management conferences in Las Vegas, so that Eureka County officials could participate and observe them remotely.<sup>4</sup> In response to a petition by Eureka County, the ASLB also allowed out-of-town counsel to participate by videoconference in a subsequent case management conference held in Las Vegas.<sup>5</sup>

Eureka County also has sought to ensure that any technical review documents prepared by the NRC regarding the merits of the proposed Yucca Mountain repository will be subject to a

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<sup>1</sup> State of Nevada Comments in Response to the Secretary's August 30, 2013 Order (Sept. 30, 2013).

<sup>2</sup> *U.S. Department of Energy (High-Level Waste Repository)*, LBP-09-6, 69 NRC 367, 377 (2009).

<sup>3</sup> *See* Commission Order (Jan. 15, 2009); Eureka County's Notice Regarding Contentions on which it Intends to Participate (June 23, 2009).

<sup>4</sup> *See* Order (Terms, Logistics and Questions for Oral Argument), App. D at 4 (Mar. 18, 2009).

<sup>5</sup> *See* Order (Granting Motion to Participate by Videoconference and Request for Webcasting) (Aug. 25, 2009).

full and fair hearing. Thus, after the U.S. Department of Energy (“DOE”) filed a motion to withdraw the Yucca Mountain license application in 2010 and it therefore appeared that the hearing would be suspended, Eureka County supported a petition by the State of Nevada to suspend the completion and issuance of the final volume of the SER (Vol. 3).<sup>6</sup> Eureka County noted its interest in “preventing the issuance of any further government analyses regarding the safety of the proposed Yucca Mountain repository if there is no prospect that those analyses will be subject to the rigors of an adjudicatory hearing.”<sup>7</sup> By supporting Nevada’s petition, Eureka County sought to avoid the harm to its interests that might be caused “by providing decision-makers and the public with untested and incorrect information about the post-closure risks posed by the repository.”<sup>8</sup>

The NRC did not issue Volume 3 of the SER. In recent pleadings, some of the parties now are requesting the NRC to complete and issue it, whether or not sufficient funds are available for the hearing itself. But Eureka County remains concerned that its interest in the safety of the proposed repository would be compromised if the NRC issued the SER without also ensuring that its assumptions, analyses and conclusions could be tested in a public hearing.

## **DISCUSSION**

Eureka County respectfully submits that ensuring a full and fair public hearing on the adequacy of the Yucca Mountain license application should be the NRC’s paramount objective in deciding on its priorities for resumption of this proceeding. The first action taken by NRC, therefore, should be a case management meeting between the ASLB and parties, to discuss next

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<sup>6</sup> See Clark County, Nevada’s and Eureka County, Nevada’s Answer in Support of State of Nevada’s Petition for Relief With Respect to Possible Issuance of a Partial Safety Evaluation Report for Yucca Mountain (June 24, 2010).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

steps in the litigation. The meeting should be held in Las Vegas in order to maximize the opportunity to participate and observe it by affected members of the public.

In addition, recognizing that Eureka County and some other local government participants are located a great distance from Las Vegas, the NRC should maintain its previous commitment to webcast all Yucca Mountain conferences and to make them remotely accessible to out-of-town counsel. While a telephone connection would be acceptable, videoconferencing is preferable.

Third, the NRC should restore the LSN collection or its equivalent in a searchable format. While some parties have argued that restoration of the LSN collection is not necessary, it does not appear that any reasonable equivalent exists. The DOE now houses what is left of the LSN collection. As discussed in a recent report by the U.S. Nuclear Waste Technical Review Board (“TRB”), the LSN documents housed at the DOE are not readily obtainable, but instead must be requested through the Freedom of Information Act (“FOIA”).<sup>9</sup> In order to permit a meaningful opportunity for access to these discovery documents by the parties and other interested members of the public, therefore, the NRC would need to retrieve the collection from the DOE and post it on the NRC’s website in an accessible format. Under the circumstances, the NRC must reconstitute the LSN in order to allow meaningful discovery. The NRC should also provide a reasonable opportunity for all parties to update the LSN collection.

Finally, *if* sufficient funds remain to conduct a hearing on the issues discussed in the SER, the SER should be completed. In order to ensure that the SER can be evaluated in a public

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<sup>9</sup> See Cover letter from Rodney C. Ewing to Hon. John Boehner et al., enclosing Review of the U.S. Department of Energy Activities to Preserve Records Created by the Yucca Mountain Repository Project (August 2013).

hearing, however, no steps should be taken to finish or issue the SER unless the availability of sufficient funds for a hearing is confirmed.

## **CONCLUSION**

For the foregoing reasons, the NRC should take the following actions, which are set forth in the order of their priority:

- Hold a conference of the parties and the ASLB in Las Vegas;
- Ensure that the conference is webcast, and that out-of-town counsel can participate remotely;
- Restore the Licensing Support Network (“LSN”) document collection; and
- If sufficient funds remain to conduct a full and fair hearing on safety issues, complete and issue Volume 3 of the SER.

Respectfully submitted,

*/s/Diane Curran*

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September 30, 2013

## CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2013, copies of the foregoing Eureka County's Response to NRC Secretary's August 30, 2013 Notice were served upon the following persons by Electronic Information Exchange:

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*ASLBP (continued)*

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