

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

DOCKETED 12/02/2005

SERVED 12/02/2005

Before Administrative Judges:

Thomas S. Moore, Chairman
Alex S. Karlin
Alan S. Rosenthal

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository:
Pre-Application Matters)

Docket No. PAPO-00

ASLBP No. 04-829-01-PAPO

December 2, 2005

ORDER

On October 27, 2005, the Pre-License Application Presiding Officer (PAPO) Board issued a notice informing all potential parties and interested governmental entities that the Atomic Safety and Licensing Board Panel (ASLBP) had scheduled a tour of the Department of Energy's (DOE) proposed high-level waste repository site at Yucca Mountain, Nevada.¹ Noting that the tour will replicate the public site tours DOE periodically conducts, the notice nevertheless indicated that space was being reserved for a few "representatives of potential parties and interested governmental entities who have indicated an interest in participating by having their representatives file a notice of appearance in the ongoing proceedings before the PAPO Board. See 10 C.F.R. § 2.314(b)."² Further, the notice stated that, "[b]ecause of the limits on the

¹ See Notice of Yucca Mountain Tour (Oct. 27, 2005).

² Id. at 1.

number of participants, only representatives of potential parties and interested governmental entities that have filed a notice appearance by November 21, 2005, will be permitted to join the tour.”³

On November 14, 2005, Mike L. Baughman, Ph.d., contacted the ASLBP requesting permission to participate as a representative of Lincoln County and White Pine County, Nevada. On November 16, 2005, Dr. Baughman was given the necessary tour forms and informed that neither Lincoln County nor White Pine County had filed a notice of appearance in the PAPO proceeding, but pursuant to the instructions in the notice they had until November 21, 2005 to file a notice of appearance pursuant to 10 C.F.R. § 2.314(b). On November 21, 2005, Mike Simon, Director of the White Pine County Nuclear Waste Projects Office, filed a pleading titled “Notice of Appearance,” indicating that Dr. Baughman of Intertech Services Corporation was authorized to represent White Pine County.

Section 2.314(b), entitled “Representation,” states in pertinent part that

A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States.

It is the current belief of a majority of the members of the PAPO Board that, in light of the provisions of section 2.314(b), a governmental entity such as White Pine County, Nevada, is not permitted to be represented in a Nuclear Regulatory Commission adjudicatory proceeding by other than an attorney-at-law, and that the notice of appearance designating Dr. Baughman (for purposes of the forthcoming December 7 ASLBP tour of the Yucca Mountain facility) fails, inter alia, to meet this standard. Given the lack of formal briefing or unanimity on this question, the

³ Id. at 1-2 (emphasis in original).

Board has further decided, however, to allow Dr. Baughman to participate in the December 7 tour solely as a matter of the Board's discretion. This will leave the ultimate resolution of the representation issue to another day when it might prove of greater practical significance to the conduct of the proceeding. Given the assigned basis for extending this invitation to Dr. Baughman, it should be understood by all concerned that no precedent is being established by this action.

It is so ORDERED.

For the Pre-License Application
Presiding Officer Board

[Original signed by]
Thomas S. Moore, Chairman
Administrative Judge

Rockville, MD

December 2, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(High-Level Waste Repository:)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PAPO ORDER (ADDRESSING THE DECEMBER 7 YUCCA MOUNTAIN TOUR) have been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (*)).

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[Original signed by R.L. Giitter]
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Dated at Rockville, Maryland
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