



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SECRETARY

November 20, 2007

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0168

TITLE: DENIAL OF RULEMAKING PETITION REQUESTING AN  
AMENDMENT TO 10 CFR 2.314(b) REGARDING  
REPRESENTATION OF AFFECTED UNITS OF LOCAL  
GOVERNMENT PARTICIPATING IN THE HIGH-LEVEL  
WASTE PROCEEDING

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 20, 2007.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", with a horizontal line underneath.

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
OGC

SECY NOTE: This Commission Voting Record will be released to the public 5 working days after dispatch of the letter to the petitioner.

VOTING SUMMARY - SECY-07-0168

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X					10/4/07
COMR. JACZKO	X					10/17/07
COMR. LYONS	X				X	10/2/07

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and Commissioner Lyons provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 20, 2007.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** CHAIRMAN KLEIN

**SUBJECT:** SECY-07-0168 – DENIAL OF RULEMAKING  
PETITION REQUESTING AN AMENDMENT TO 10  
CFR 2.314(b) REGARDING REPRESENTATION OF  
AFFECTED UNITS OF LOCAL GOVERNMENT  
PARTICIPATING IN THE HLW PROCEEDING

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached \_\_\_ None XX

  
\_\_\_\_\_  
SIGNATURE

10/4/07  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** COMMISSIONER JACZKO

**SUBJECT:** SECY-07-0168 – DENIAL OF RULEMAKING  
PETITION REQUESTING AN AMENDMENT TO 10  
CFR 2.314(b) REGARDING REPRESENTATION OF  
AFFECTED UNITS OF LOCAL GOVERNMENT  
PARTICIPATING IN THE HLW PROCEEDING

Approved  X  Disapproved   Abstain

Not Participating

**COMMENTS:** Below   Attached   None  X

  
\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

10/17/07

Entered on "STARS" Yes  X  No

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary


**FROM:** COMMISSIONER LYONS

**SUBJECT:** SECY-07-0168 – DENIAL OF RULEMAKING  
PETITION REQUESTING AN AMENDMENT TO 10  
CFR 2.314(b) REGARDING REPRESENTATION OF  
AFFECTED UNITS OF LOCAL GOVERNMENT  
PARTICIPATING IN THE HLW PROCEEDING

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

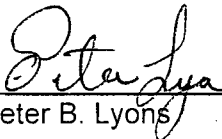
10/2/07  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Commissioner Lyons' Comments on SECY-07-0168**

I approve the staff's recommendation to deny the rulemaking petition submitted by Lincoln County, Nevada on the basis that the rulemaking the county seeks is unnecessary. The Office of the General Counsel has prepared a well-reasoned, detailed analysis in the draft response to the Petition that carefully explains that the county may be represented in the HLW proceeding by any duly-authorized individual under the current regulations. I affirm the ability of an affected unit of local government (AULG) to have the option of participating in adjudicatory proceedings through any duly-authorized representative, which could include a non-attorney consultant.

I note that the PAPO came to the opposite conclusion as that set forth in the draft denial of the rulemaking petition. Therefore, some reasonable minds may come to opposite conclusions as to what the rule in 10 C.F.R. § 2.314(b) means. For this reason, I would like to know the precedential value and legal weight that attaches to the analysis and the conclusion contained in the denial of the petition for rulemaking (*i.e.*, AULGs may participate in NRC proceedings through any duly-authorized representative) - not just for Lincoln County, but for any future AULG seeking the similar representation. I would like to be sure that the analysis and conclusion set forth in the denial of the petition for rulemaking has the same legal weight had the petition been granted and the rulemaking process resulted in a rule amendment. If it does not, I may seek reconsideration of this matter.

  
Peter B. Lyons      10/2/07  
Date