

alternative plan to reprocess the fuel.³ After the NRC Staff pointed out that Mr. Peterson is not a party to this proceeding,⁴ Mr. Peterson filed a late petition to intervene on October 5, 2009,⁵ more than nine months after the published deadline to file intervention petitions.⁶ Mr. Peterson's petition stated his reasons for filing out of time,⁷ and articulated an interest in this proceeding stemming from his attempts to promote his alternative plan for reprocessing spent fuel rather than disposing of it at the proposed Yucca Mountain repository.⁸ His contentions consisted of various arguments why his proposed alternative would be better for the U.S. economy, the environment, and national security, than geologic disposal.⁹

CAB-04 denied Mr. Peterson's petition on the grounds that it was not timely, failed to establish standing for Mr. Peterson, and offered no contention admissible in this proceeding.¹⁰ After the Board ruled, Mr. Peterson submitted an additional pleading, styled a "supplement" to

³ *Motion* (Sept. 22, 2009). Mr. Peterson also stated in this filing that he "moves to compel" the Staff to make available on the Licensing Support Network (LSN) all documents claimed as privileged. However, he offered no substantive challenge to the Staff's claims of privilege.

⁴ *NRC Staff Answer to "Motion" of William Peterson* (Sept. 29, 2009).

⁵ *Petition for Admission* (Oct. 5, 2009) (Peterson Petition).

⁶ 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).

⁷ Mr. Peterson stated that he is busy, does not read the *Federal Register*, and was not personally informed of the proceeding. Peterson Petition at 5-6.

⁸ *Id.* at 1-4.

⁹ *Id.* at 6-15.

¹⁰ U.S. Department of Energy (High Level Waste Repository), Order (Denying Intervention Petition) (Oct. 28, 2009) (unpublished) (October 28 Order). Because Mr. Peterson's petition failed for these reasons, the Board did not address his failure to show compliance with the LSN requirements in 10 C.F.R. § 2.1012(b)(1), or his failure to submit contentions in the form prescribed by the Pre-License Application Presiding Officer's June 20, 2008 order. See *id.* at 8 n.32.

the petition, which expanded on his theory that the U.S. Environmental Protection Agency (EPA) has the authority to adopt Mr. Peterson's alternative disposal plan if it chooses.¹¹ CAB-04 treated this pleading as a motion for reconsideration, but denied it because it pointed to no "compelling circumstances" warranting reconsideration.¹²

In a filing dated November 12, 2009, Mr. Peterson filed the instant appeal together with his "waiver request." Shortly thereafter, he filed with us a pleading styled a "Motion for a Plan and Schedule."¹³

II. DISCUSSION

The procedural rules governing this proceeding in 10 C.F.R. Part 2, subpart J, do not provide for the appeal of a Presiding Officer's ruling on a late-filed intervention petition. In particular, 10 C.F.R § 2.1015(a) provides that *no appeals* may be taken from any Presiding Officer order or decision, except as otherwise permitted by the rule. Section 2.1015(b) provides for appeals from certain specified decisions of the Pre-License Application Presiding Officer and the Presiding Officer. Section 2.1015(c) provides for appeals of an initial decision or partial initial decision of the Presiding Officer. Finally, section 2.1015(d) permits the Board to refer

¹¹ *Supplement to Petition to Enter* (Nov. 5, 2009).

¹² Order (Denying Motion for Reconsideration) (Nov. 10, 2009) (unpublished) (citing 10 C.F.R. § 2.323(e)).

¹³ Thereafter, Mr. Peterson filed yet another motion before CAB-04. *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* (Dec. 23, 2009). CAB-04 denied the motion. See Order (Denying William D. Peterson Motion) (Dec. 30, 2009) (unpublished). In addition, on December 29, 2009, Mr. Peterson filed with CAB-04 a "Notice of Intent to Appeal" indicating an intent to file a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). On January 4, 2010, Mr. Peterson filed a "Notice of Appeal" via the NRC's Electronic Information Exchange, which appears to be directed to the DC Circuit. On January 21, 2010, Mr. Peterson filed a *Motion for Hydrogen Fuel Independence* with the D.C. Circuit under docket no. 10-1007. Mr. Peterson continues to file various pleadings with the D.C. Circuit with copies to the NRC. See *Motion to Consolidate the Right Issues with the Right Parties* (Feb. 22, 2010), filed with the D.C. Circuit (copy to NRC); *Motion to Find Activity of the NRC, DOE & EPA is Unlawful* (Feb. 22, 2010), filed with the D.C. Circuit (copy to NRC).

certain rulings to the Commission, and permits certain participants in the proceeding to request that the Presiding Officer certify to the Commission rulings not otherwise immediately appealable pursuant to section 2.1015(b). None of these provisions contemplates an appeal of the type of decision at issue here.

CAB-04 made note of this, and suggested to Mr. Peterson that he also request Commission review as a matter of our discretion.¹⁴ Mr. Peterson made no such request, and, in any event, Mr. Peterson articulates no reason why we should take up his appeal on our own motion. Given that the applicable rules of practice do not permit Mr. Peterson's appeal, and absent a compelling reason to take up his appeal *sua sponte*, we need not consider it further. In any event, even if the appeal were properly before us, CAB-04's handling of Mr. Peterson's petition was entirely reasonable, and his brief on appeal points to no error of law or abuse of discretion that might serve as grounds for reversal of CAB-04's decision.

B. Request for Rule Waiver

A petition for rule waiver under 10 C.F.R. § 2.335(b) must show that "special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted."¹⁵ It must be accompanied by an affidavit that describes "with particularity the special circumstances" that justify the waiver. The petition and affidavit must set forth a *prima facie* case for rule waiver, whereupon the presiding officer will certify the matter directly to us for our consideration.¹⁶

¹⁴ See October 28 Order at 8.

¹⁵ 10 C.F.R. § 2.335(b).

¹⁶ 10 C.F.R. § 2.335(c).

Mr. Peterson's waiver request is deficient on its face. His request does not describe with particularity the circumstances justifying a waiver, as he does not inform us which rule or rules he seeks to waive. Mr. Peterson's motion is not accompanied by an affidavit. We cannot discern from his pleading whether he seeks a waiver of the rules regarding timeliness, standing, and contention admissibility (which resulted in the rejection of his intervention petition) or whether he seeks a waiver of one or more provisions of the 10 C.F.R. Part 63 rules concerning disposal of waste in a geologic repository. Aside from these procedural defects, even if we were to infer that Mr. Peterson seeks a waiver of both our Part 2 procedural rules and the Part 63 rules, he has not shown that any of them "would not serve the purpose for which the rule or regulation was adopted," which is the *sole* ground that can support such a waiver.¹⁷

Instead, Mr. Peterson's motion broadly argues that the country's need for his proposed "300-year storage solution" is a "special circumstance" that justifies the Commission's consideration of this alternative.¹⁸ His lack of particularity as to which regulation he seeks to waive stems from the fact – as CAB-04 found – that the gravamen of his complaint is with the Nuclear Waste Policy Act (NWPA) itself, and that statute's mandate of geologic disposal. Mr. Peterson's waiver request focuses on his proposal for an alternative method of high-level waste storage, which, as the Board observed, is a matter beyond the scope of this proceeding. Our rules implement the NWPA, and Mr. Peterson has not shown that those rules fail to serve their intended purpose. Mr. Peterson's waiver request is denied.

C. Motion for Plan

On December 2, 2009, after briefing on his appeal was completed, Mr. Peterson submitted to us his Motion for Plan. This "motion" reiterates the arguments made in his other pleadings, focusing on his proposal to reprocess and store spent nuclear fuel. But, as the Staff

¹⁷ 10 C.F.R. § 2.335(b).

¹⁸ See Appeal/Waiver Request at 2.

points out in its response, this pleading fails whether we consider it under our motions rule, or as a supplement to Mr. Peterson's appeal.¹⁹ At bottom, Mr. Peterson's request provides his views on U.S. energy policy, and proposes his plan for a reprocessing facility and spent fuel storage facility as an alternative to the proposed Yucca Mountain project.²⁰ This proposal is beyond the scope of this proceeding, which concerns only the adequacy the Department of Energy's request for construction authorization at Yucca Mountain. As we advised Mr. Peterson in the *Private Fuel Storage* proceeding, in which he made a similar proposal:

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.²¹

Further, as was the case in *Private Fuel Storage*, this proceeding "is not an open forum for discussing the country's need for energy and spent fuel storage."²² Mr. Peterson's Motion for Plan is therefore denied.

¹⁹ *NRC Staff Response to Peterson's Motion for a Plan and Schedule* (Dec. 14, 2009).

²⁰ In addition, Mr. Peterson's *Motion for a Plan*, his *Motion for Judgment*, and his *Motion to Enlarge List of Contentions* all suffer from fatal procedural defects. A person who has not been admitted as a party to a proceeding – such as Mr. Peterson here – is not entitled to make a motion in an ongoing proceeding. Nor does the motion comply with our rules regarding good faith efforts to resolve with the other parties the subject matter of the motion. See 10 C.F.R. § 2.323(b).

²¹ *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, CLI-04-7, 59 NRC 111, 112 (2004).

²² *Id.*

III. CONCLUSION

For the reasons stated above, we *decline to consider* Mr. Peterson's appeal, and *deny* both his waiver request and his Motion for Plan.

IT IS SO ORDERED.

For the Commission:

[NRC SEAL]

/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
this 11th day of March, 2010.