

September 27, 2005

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Pre-License Application Presiding Officer Board

In the Matter of	)	Docket No. PAPO-00
	)	
U.S. DEPARTMENT OF ENERGY	)	ASLBP No. 04-829-01-PAPO
	)	
(High Level Waste Repository:	)	DEN-01
Pre-Application Matters)	)	

AGREED MOTION OF THE U.S. DEPARTMENT OF ENERGY  
TO CONTINUE THE SEPTEMBER 29 CASE MANAGEMENT CONFERENCE

The U. S. Department of Energy (“DOE”) hereby moves for a continuance until October 13, 2005 or later, of the September 29 case management conference, and in support thereof states as follows:

1. On September 9, this Board issued a Memorandum and Order scheduling a case management conference for September 29 to discuss issues and procedures relating to various kinds of documents containing Sensitive Information in the Yucca Mountain proceeding. In a subsequent Memorandum and Order dated September 19 (the “Sensitive Information Order”), the Board set forth 23 separately numbered questions, most with subparts, such that the total number of questions is approximately 70, plus at least one instruction to DOE to produce documents. The Sensitive Information Order further instructed DOE, the NRC Staff and the State of Nevada (collectively, the “Participants”) to consult with respect to answers to these questions.

2. DOE and the other Participants, and representatives of the United States Naval Nuclear Propulsion Program (“NNPP”), have been working to address the Board’s questions and have conferred with each other on several occasions since September 19 in an effort to develop common answers to as many of them as possible, and to narrow and focus differences where agreement among them may not be possible. This task is a substantial one, given the number and complexity of the questions, and is not yet complete. DOE is currently attempting to compile consolidated answers to the Board’s questions, which requires coordination among several branches within DOE, including various Security offices, headquarters and NNPP personnel. Only after that effort is complete can coordination be achieved, as the Board requested, with the NRC Staff and Nevada.

3. In addition, certain technical questions relative to issues raised by the Sensitive Information Order have arisen, and the Participants are considering requesting, by separate communication, that the Board permit them to consult with the Board’s technical consultant on security information issues prior to the case management conference. The continuance of the case management conference being requested here would permit such communication, if it were acceptable to the Board, to occur, with the possibility of narrowing or clarifying certain technical issues.

4. On the afternoon of September 22, the Board issued another Memorandum and Order, granting the State of Nevada’s motion to compel DOE to produce certain drafts of the intended License Application for Yucca Mountain (the “LA Order”). The LA Order, 53 pages long, raises, in DOE’s view, complex and important issues for the future course of the Yucca Mountain proceeding. DOE, after careful review, is preparing an appeal of the LA Order to the

Commission. DOE's papers, including its brief, are due to be filed with the Commission on Monday, October 3. 10 CFR § 2.1015(b).

5. The combination of these two substantial, overlapping obligations has produced a significant hardship for DOE's attorneys in attempting to comply with both of them simultaneously. The ten-day appeal period includes two weekends, leaving only six normal work days to work on the appeal papers. Preparation of the appeal on this short time frame further complicates preparation for the case management conference. Despite the willingness and intention of counsel to subordinate personal plans for the needs of work,<sup>1</sup> there is a significant question whether, under this schedule, the work can be adequately done in the time presently allotted.

6. DOE has requested the views of the other Participants. Neither the NRC Staff nor the State of Nevada has any objection to the relief requested. Nevada states that its counsel are available on October 6, and any time beginning October 12. DOE counsel, DOE Security and NNPP personnel are available at any time beginning October 13.

7. DOE respectfully submits that no prejudice will occur to any participant from the requested continuance of the September 29 case management conference.

WHEREFORE, for the reasons stated above, DOE respectfully moves the Board to reschedule the case management conference currently scheduled for September 29 until a date convenient for the Board any day on or after October 13.


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<sup>1</sup> One of DOE's counsel has already canceled plans to attend the out-of-town wedding this weekend of a child of a colleague and friend of over 30 years' standing.

Respectfully submitted,

U.S. DEPARTMENT OF ENERGY

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**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD**

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Pre-Application Matter)	)	

**AGREED MOTION OF THE U.S. DEPARTMENT OF ENERGY  
TO CONTINUE THE SEPTEMBER 29 CASE MANAGEMENT CONFERENCE  
CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing AGREED MOTION OF THE U.S. DEPARTMENT OF ENERGY TO CONTINUE THE SEPTEMBER 29 CASE MANAGEMENT CONFERENCE in the above captioned proceeding have been served on the following persons this 27th day of September 2005 by Electronic Information Exchange.

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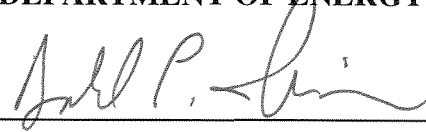
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