

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED 11/16/07

ATOMIC SAFETY AND LICENSING BOARD

SERVED 11/16/07

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

November 16, 2007

ORDER

(Terms, Logistics, and Questions for Oral Argument)

In an October 31, 2007, notice, the Pre-License Application Presiding Officer (PAPO) Board scheduled oral argument for December 5, 2007, at 9:00 a.m. PST, on the State of Nevada's Motion to Strike the United States Department of Energy's (DOE) October 19, 2007, Licencing Support Network (LSN) certification.<sup>1</sup> The Digital Data Management System (DDMS) will be utilized for this proceeding. The oral argument will be open to the public and will be held at the Nuclear Regulatory Commission's (NRC) Las Vegas Hearing Facility (LVHF), located in the Pacific Enterprise Plaza, Building 1, 3250 Pepper Lane, Las Vegas, Nevada. In addition, members of the public, counsel, and representatives of record (except those presenting argument, as specified below) may attend this oral argument via a video conference link with the Atomic and Safety Licensing Board Panel's Rockville Hearing Room (RHR) located on the third floor of Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The PAPO Board

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<sup>1</sup> Licencing Board Notice (Scheduling Oral Argument) at 1 (Oct. 31. 2007) (unpublished).

understands that current plans call for Cox Communications, Las Vegas, to broadcast the proceeding live on its local access channel, Cox 96.

This order specifies key information about the conduct and logistics associated with the oral argument. It also poses several questions that DOE is to answer in writing by November 30, 2007.

Moreover, the Board may conduct a short case management conference following the oral argument. This order invites potential parties who have duly entered an appearance in the proceeding to propose any topics they may have for such a conference.

A. Security, Early Arrival Encouraged

1. Las Vegas Hearing Facility

Upon arrival at the front entrance of the LVHF, all persons seeking to enter the building will be required to present at least one form of photo identification and then undergo a security screening process. This will include walking through a magnetometer and having handbags, briefcases, packages, and similar articles subjected to x-ray screening.

Given that LVHF security procedures permit only a limited number of individuals to occupy the lobby at one time, people seeking entrance may temporarily need to wait outside. Thus, people seeking to avoid an extended wait are encouraged to arrive at the LVHF in advance of the oral argument by at least one-half hour. Counsel and representatives of the litigants should arrive even earlier to ensure they do not disrupt the beginning of the oral argument.

2. Rockville Hearing Room

For those persons viewing the argument via video link at the RHR, upon arrival at the main entrance to the NRC Headquarters' Two White Flint North building, all participants and members of the public will be required to present photo identification and undergo security screening. All attendees at the RHR should allow adequate time for the required security

procedures, and plan to arrive well in advance of 12:00 p.m. EST on December 5, 2007.

Individuals seeking to expedite their entry to the NRC headquarters complex should send an email (with the subject line stating "Registration"), containing the names of the persons planning to attend the oral argument at the RHR to Patricia Harich ([pah@nrc.gov](mailto:pah@nrc.gov)) on or before November 30, 2007.<sup>2</sup> The subject line of the email must contain the word "Registration."

B. Terms for Oral Argument and Case Management Conference

1. Date, Time, and Location

Oral argument shall be heard on December 5, 2007, at 9:00 a.m. PST in the LVHF.

Should a case management conference be held, the PAPO Board will adjourn for a short break after the oral argument and then reconvene. The oral argument and any case management conference will be video linked with the RHR beginning at 12:00 p.m. EST.

2. Participants, One Representative of Each Briefing Party, Attendance

The oral argument shall be limited to counsel or other duly authorized representatives who have filed a notice of appearance on behalf of a party or potential party that filed a timely brief (Briefing Party) with respect to the motion being argued.<sup>3</sup> Only one counsel or representative from each Briefing Party shall be allowed to argue. All counsel and any representative presenting argument, must attend the oral argument in person, at the LVHF. On or before November 27, 2007, each of the Briefing Parties shall file a notice via the EIE informing the Board of the name of the individual presenting argument on its behalf.

Should a case management conference be held, any counsel and representatives of record not attending the argument in Las Vegas may participate in the conference from the RHR via the video link with the LVHF.

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<sup>2</sup> Attendee pre-registration is not applicable to the LVHF.

<sup>3</sup> For purposes of the motion to strike being heard on December 5, 2007, the only Briefing Parties are the State of Nevada, the DOE, the NRC Staff, the Nevada Nuclear Waste Task Force, and the Nuclear Energy Institute.

### 3. Time Allocation

Oral argument will be divided between (a) those Briefing Parties, including the movant, supporting the motion (Proponents), (b) those Briefing Parties, including DOE, opposing the motion (Opponents), and (c) the NRC Staff. The Proponents and Opponents shall each have a total of 60 minutes to argue their respective positions. The NRC Staff shall have 15 minutes. The Proponents shall confer concerning the allocation of their assigned time and, if agreement cannot be reached, the State of Nevada will decide, and may allocate 100 percent of the time to itself. Likewise, the Opponents shall confer concerning the allocation of their assigned time and, if agreement cannot be reached, DOE will decide, and may allocate 100 percent of the time to itself.

### 4. Sequence of Oral Argument

The oral argument will proceed in the following sequence: Proponent direct, Opponent, NRC Staff, Proponent rebuttal. At the outset of the Proponent direct, lead counsel for the Proponent will announce the amount of time, up to 20 minutes, the Proponent will reserve for rebuttal.

### 5. Counsel Tables<sup>4</sup>

For purposes of the oral argument, counsel tables in the well of the LVHF will only be assigned to and used by representatives of Briefing Parties who have filed a proper notice of appearance. Each Briefing Party shall be assigned one table, accommodating two individuals. No other persons will be in the well of the LVHF during oral argument. The tables directly behind the well are reserved for the litigation support team of the Briefing Parties. Should a case

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<sup>4</sup> Counsel tables, conference rooms, and reserved parking spaces are limited and cannot be permanently reserved. They will be made available and assigned to duly authorized potential parties on a per-session basis ( i.e., made available to those potential parties that have filed notices of appearance and are actively involved in the specific motion or issues before the PAPO Board on the specific day in question). Thus, depending on the issue or motion before the Board, entirely different potential parties may be assigned counsel tables, conference rooms, or parking spaces from one day to the next.

management conference be held, counsel tables will be assigned on a space available basis to representatives of each party, and any interested governmental entity, Indian Tribe, and potential party who have filed a notice of appearance on or before November 27, 2007, and have followed the applicable steps below.<sup>5</sup>

#### 6. Conference Rooms

If a Briefing Party needs use of a LVHF conference room in connection with the oral argument, it should submit a written request to Joe Deucher, Facility Manager, at [DDMSwebmaster@nrc.gov](mailto:DDMSwebmaster@nrc.gov), on or before November 27, 2007. The email should also identify each of the individuals who will need access to the conference room. If a request is granted, Mr. Deucher will provide the Briefing Party with additional guidance concerning use of, access to, and security restrictions applicable to the LVHF conference rooms and area.<sup>6</sup> Failure to abide by these procedures will result in the denial of the request. If a request is granted, access to the conference room area is limited to a maximum of eight (8) authorized individuals who are part of the Briefing Party's litigation team. Access and use is limited to the time period starting one hour prior to the oral argument and ending one hour after the Board has adjourned for the day. Conference rooms cannot be locked and should not be considered secure repositories for important and sensitive documents, briefcases, purses, or other valuables. In addition, access to the conference room area will require each authorized individual to obtain an access badge and four-number PIN to be used on, and only on, December 5, 2007, as well as compliance with

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<sup>5</sup> If the number of potential parties seeking tables exceeds the tables available, the Board will allocate space, and may require potential parties to consolidate or share tables.

<sup>6</sup> Should a case management conference be held, it will be of limited duration and scope and will not require the use of conference rooms. Therefore, no conference rooms will be assigned to anyone other than the Briefing Parties.

other security restrictions. Authorized individuals shall not allow non-authorized individuals to enter the conference room area. Authorized individuals shall have no access to those areas of the LVHF used and occupied by the PAPO Board, its law clerks and staff, and other LVHF staff.

#### 7. Parking

A Briefing Party may obtain a reserved parking space at the LVHF in connection with the oral argument. To do so, the Briefing Party should submit a written request to Mr. Deucher at [DDMSwebmaster@nrc.gov](mailto:DDMSwebmaster@nrc.gov) on or before November 27, 2007. Use of such reserved parking spaces for the oral argument will be limited to a maximum of three vehicles for each Briefing Party and is limited to the time period starting one hour prior to the oral argument and ending one hour after the Board has adjourned for the day. Significant security restrictions apply and must be followed. A Briefing Party seeking use of a reserved parking space must provide Mr. Deucher a list identifying the driver and an alternate individual responsible for the vehicle. Mr. Deucher will provide the Briefing Party with instructions concerning use of, access to, and security restrictions applicable to the reserved parking spaces. Failure to abide by these procedures will result in the denial of such a request.

#### 8. Exhibits During Oral Argument

If a Briefing Party intends to use, refer to, or direct the PAPO Board's attention to, any exhibits during the oral argument, it shall do so via the DDMS. Hard copies of the exhibits shall not be used for display purposes.

#### C. Suggestions for Topics for Case Management Conference on December 5, 2007

Should the PAPO Board hold a short case management conference after the oral argument, any Briefing Party, interested governmental entity, Indian Tribe, or potential party that has filed a notice of appearance may suggest topics for discussion. Such suggestions shall be filed with the PAPO Board via the EIE, on or before November 27, 2007.

D. Questions to be Answered by DOE Before Oral Argument

On or before November 27, 2007, DOE shall file written answers, to the following questions:

DOE, in its Response to the State of Nevada's Motion to Strike, indicates that its LSN collection "contains numerous documents intended to be *cited or relied on in the LA* [License Application] as well as *extensive underlying calculations, data, and other materials* on which those documents are based." DOE Response at 5 (emphasis added). DOE also specifies that there is a "limited amount of remaining material" that will be made available on the LSN when completed. Id.

1. By DOE's best approximation, indicate how many of the "limited amount" of documents, to be made available on the LSN between certification and LA filing, are "intended to be cited or relied on in the LA" versus those that are "extensive underlying calculations, data, and other material"?

2. Of the "limited amount" of documents made available on the LSN between certification and LA filing to be "cited or relied on", what is DOE's best approximation of the number of those documents that will be used to directly support the LA?

3. By DOE's best approximation, how many of these "limited amount" of documents that will be promptly placed on the LSN between certification and LA filing does DOE consider simply confirmatory rather than direct fundamental support for the LA?

DOE's answers shall be signed by at least one attorney of record in this proceeding, whose signature shall constitute a certification that, to the best of the signor's knowledge,

information, and belief, formed after a reasonable and thorough inquiry of persons with direct knowledge of the pertinent facts, the answers are complete and correct as of the time they are made.

It is so ORDERED.

For the Pre-license Application  
Presiding Officer Board

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 16, 2007



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PAPO BOARD ORDER (TERMS, LOGISTICS, AND QUESTIONS FOR ORAL ARGUMENT) have been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (\*)).

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Docket No. PAPO-00  
 PAPO BOARD ORDER (TERMS, LOGISTICS, AND  
 QUESTIONS FOR ORAL ARGUMENT)

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[Original signed by R. L. Giitter]  
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 Office of the Secretary of the Commission

Dated at Rockville, Maryland  
 this 16<sup>th</sup> day of November 2007