



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

70/31
COMSECY-07-0030

October 17, 2007

Approved, subject to
Commissioner Lyons' comments.

MEMORANDUM TO:

Chairman Klein
Commissioner Jaczko
Commissioner Lyons

Dale E. Klein 11/9/07

FROM:

E. Roy Hawkens *E. Roy Hawkens*
Chief Administrative Judge
Atomic Safety and Licensing Board Panel

SUBJECT:

REQUESTING AUTHORITY TO ISSUE CASE MANAGEMENT
ORDERS IN HIGH-LEVEL WASTE PROCEEDING PRIOR TO
THE ISSUANCE OF A NOTICE OF OPPORTUNITY FOR
HEARING

The purpose of this memorandum is to request that the Commission authorize me to issue and, if appropriate, to delegate authority to the Pre-License Application Presiding Officer (PAPO) Board to issue case management orders covering the broad range of procedural matters expected to accompany the upcoming adjudication regarding the Department of Energy's (DOE) application for authorization to construct a high-level waste (HLW) repository at Yucca Mountain, Nevada.¹

Such case management orders are needed to enable licensing boards to manage efficiently the more than one thousand contentions - many of which will be highly technical in nature - that are expected to be filed by the dozen or more potential parties to the proceeding a short time after DOE's license application (LA) is docketed. For such case management orders to be effective in materially expediting the process, they must be communicated to potential parties well before the Commission's Notice of Opportunity for Hearing. Failure to address these procedural issues prior to that Notice will likely have adverse consequences on the schedule.

If granted the requested authority, I will work with the judges on the Atomic Safety and Licensing Board Panel (Panel) to develop and issue a series of case management orders that will allow us (and concomitantly the parties) to, among other things, organize, label, and track contentions from the time the intervention petitions are filed until the last day of the proceeding. In particular, these orders will enable us to: (a) quickly organize the contentions for allocation among multiple licensing boards consistent with their respective technical expertise; (b) in accord with 10 C.F.R. § 2.309(f)(3), encourage the parties to file "joint" contentions or to adopt the contentions of other parties (rather than filing separate but essentially identical issue statements); and (c) identify and consolidate contentions filed by parties that address identical (or substantially identical)

¹ Because the PAPO Board's jurisdiction currently is limited to disputes regarding LSN documents, it would need further authorization to address the matters that are the subject of this memorandum. See 10 C.F.R. § 2.1010(a)(1); U.S. Department of Energy (High Level Waste Repository), CLI-04-20, 60 NRC 15, 18 (2004).

11/9/07 11:00:10



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REQUEST REPLY BY 10/31

MEMORANDUM TO: Chairman Klein
 Commissioner Jaczko
 Commissioner Lyons

FROM: E. Roy Hawkins *E Roy Hawkins*
 Chief Administrative Judge
 Atomic Safety and Licensing Board Panel

SUBJECT: REQUESTING AUTHORITY TO ISSUE CASE MANAGEMENT
 ORDERS IN HIGH-LEVEL WASTE PROCEEDING PRIOR TO
 THE ISSUANCE OF A NOTICE OF OPPORTUNITY FOR
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Approved. The Board should have a low threshold for certifying questions raised during this process to the Commission.

Gregory B. Jaczko 10/22/07
 Gregory B. Jaczko Date

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Input and suggestions from NRC staff and potential parties on proposed case management orders should be obtained. Orders should not be issued, however, until a proceeding is commenced.

MEMORANDUM TO: Chairman Klein
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Commissioner Lyons

FROM: E. Roy Hawkins *E Roy Hawkins*
Chief Administrative Judge
Atomic Safety and Licensing Board Panel

SUBJECT: REQUESTING AUTHORITY TO ISSUE CASE MANAGEMENT ORDERS IN HIGH-LEVEL WASTE PROCEEDING PRIOR TO THE ISSUANCE OF A NOTICE OF OPPORTUNITY FOR HEARING

Peter B. Lyons 11/6/07
Peter B. Lyons Date

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