

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

ASLBP BOARD 09-876-HLW-CAB01 William J. Froehlich, Chairman Thomas S. Moore Richard E. Wardwell	ASLBP BOARD 09-877-HLW-CAB02 Michael M. Gibson, Chairman Lawrence G. McDade Nicholas G. Trikouros	ASLBP BOARD 09-878-HLW-CAB03 Paul S. Ryerson, Chairman Michael J. Farrar Mark O. Barnett
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In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

January 29, 2009

CAB CASE MANAGEMENT ORDER #1

On January 16, 2009, the Chief Administrative Judge established three licensing boards, denoted construction authorization boards (CABs), to, inter alia, preside over the proceeding involving the United States Department of Energy's (DOE) application for construction authorization of a high-level waste repository at Yucca Mountain in Nye County, Nevada.<sup>1</sup> Pursuant to the Commission's October 17, 2008 notice of hearing<sup>2</sup> and 10 C.F.R. § 2.319(g), (q), and (r), the three Licensing Boards issue this CAB case management order setting forth requirements and procedures applicable to the proceeding.

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<sup>1</sup> See [HLW] Establishment of Atomic Safety and Licensing Boards, 74 Fed. Reg. 4477 (Jan. 26, 2009).

<sup>2</sup> See [HLW] Notice of Hearing and 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).

#### A. Adoption of Prior Orders

During the earlier pre-application phase of the proceeding involving document discovery under the Licensing Support Network, the Pre-License Application Presiding Officer (PAPO) Board issued a series of case management orders prescribing both general and specific provisions and procedures for the conduct of that phase of the proceeding. Those orders remain generally applicable to this proceeding, except where the circumstances and context clearly and obviously indicate the inapplicability of a provision. Accordingly, the Licensing Boards adopt and will apply the following PAPO case management orders: the July 6, 2007 Revised Second Case Management Order (RSCMO); the August 16, 2007 Order Amending Appendix H of RSCMO; the August 30, 2007 Third Case Management Order; the October 5, 2007 Fourth Case Management Order; and the November 1, 2007 Fifth Case Management Order.<sup>3</sup>

In its hearing notice, the Commission indicated that petitioners seeking to intervene in the proceeding must comply with the procedural requirements set forth in the June 20, 2008 Advisory Pre-License Application Presiding Officer (APAPO) Board's Memorandum and Order, LBP-08-10, 67 NRC \_\_ (2008)<sup>4</sup> and its order of September 29, 2008.<sup>5</sup> Because these two APAPO Board orders prescribe pleading requirements beyond those applicable solely to petitioners, the Licensing Boards also adopt the provisions of the APAPO Board orders and will apply their provisions. In its hearing notice, the Commission further indicated that "a petition for leave to intervene, and all

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<sup>3</sup> All of these orders, like all filings and orders in the proceeding are available on the NRC's Electronic Hearing Docket (EHD) at: <http://hlwehd.nrc.gov/Public/HLW-EHD/home.asp>. Similarly, the filings and orders in the proceeding are available on ADAMS. In the same order as they appear in the text, the ADAMS numbers for the orders are: ML071900146, ML072280246, ML072420327, ML072780527 and ML073050557.

<sup>4</sup> 73 Fed. Reg. at 63,029. The ADAMS number of the order is ML081720154.

<sup>5</sup> Adams ML082730764.

filings in the adjudicatory proceeding, must be filed electronically in accordance with 10 C.F.R. § 2.1013(c)(1).<sup>6</sup>

Before the establishment of the three construction authorization boards, the Chief Administrative Judge, on January 15, 2009, issued an order setting forth a number of procedural requirements applicable to the proceeding, including a standardized format for citations to DOE's June 3, 2008 construction authorization application.<sup>7</sup> Although the Chief Administrative Judge's order contained a number of generic examples, the Appendix to this order includes additional examples to aid all filers.

Because DOE, pursuant to 10 C.F.R. § 63.22(c), may file updates and supplements to its June 3, 2008 application, the Licensing Boards direct that all pleading citations to subsequently filed DOE applications conform to the standardized format set forth in the Chief Administrative Judge's January 15, 2009 order and the Appendix attached to this order.

#### B. Rules Concerning New or Amended Contentions

1. Consolidated Filing. A petitioner or party that seeks to file a new or amended contention shall file an appropriate motion and the proposed contention simultaneously.<sup>8</sup> Within twenty-five (25) days after service of the motion and proposed contention, the answer shall be filed, responding to both the motion and the contention. Within seven (7) days after service of the answer, the movant may file a reply.

2. Timeliness. Notwithstanding the time period specified in 10 C.F.R. § 2.323(a), such motion and proposed contention shall be deemed timely under 10 C.F.R. § 2.309(f)(2) if filed within 30 days of the date when the new and material information on which it is based first became available. If a participant requests additional time to file

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<sup>6</sup> 73 Fed. Reg. at 63,030.

<sup>7</sup> ADAMS Accession No. ML090150521.

<sup>8</sup> See 10 C.F.R. §§ 2.309(c), (f)(2) and 2.323(a), (b).

before such thirty-day period expires, however, then the motion and contention may also be considered timely upon a Board finding that there has been an adequate showing of need for the additional time requested. Otherwise, such motion and proposed contention shall be deemed nontimely and will be considered under 10 C.F.R. § 2.309(c).

3. Special Rule Concerning EPA Standards-Related Issues. Pursuant to the Commission's hearing notice, amended contentions on EPA standards-related issues will be deemed timely for admissibility purposes if filed within sixty (60) days after the Federal Register publication of the NRC rules implementing the new EPA standards. Within fifty (50) days after service of the amended contention, the answer shall be filed. Within fourteen (14) days after service of the answer, the petitioner may file a reply.

#### C. Citation to NRC or Licensing Board Decisions

All pleadings in this proceeding citing agency decisions shall include the full NRC Reporter citation, including the case name, the CLI, ALAB, LBP or DD designation, volume, first page of the decision, cited page, year of the decision, and any subsequent appellate action, e.g., U.S. Dep't of Energy (High-Level Waste Repository), LBP-08-1, 67 NRC 37 (2008), aff'd, CLI-08-12, 67 NRC \_\_ (June 17, 2008).

#### D. Filing to All Boards

Pursuant to 10 C.F.R. § 2.1013(c), all filings, until further notice, shall be served on the members of all three CABs. Under the current EIE system, the HLW docket contains only one available designation for all filings and it includes all of the CAB members (e.g., "HLW License Application 63-001 All CABs").

#### E. Certification of Service

Pursuant to 10 C.F.R. § 2.1013(c)(4), "[p]roof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by -- (i) [e]lectronic acknowledgment ('delivery receipt');

(ii) [t]he affidavit of the person making the service; or (iii) [t]he certificate of counsel.<sup>9</sup>

Hence, to be compliant with the regulations, a certification of service accompanying an EIE filing must, at a minimum, list the individual names and addresses of (1) the representative(s) of each potential party or party, based on the service list in the E-Filing system as of the time of filing; (2) the Licensing Board members; and (3) the Office of the Secretary. A certificate of service that merely recites that it is counsel's understanding that the pleadings were served on the same parties who are listed on a service list that was posted on the NRC website does not comply with the requirements of 10 C.F.R. § 2.1013(c)(4).<sup>10</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARDS

*/RA/*

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*/RA/*

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Michael M. Gibson, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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Paul S. Ryerson, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
January 29, 2009

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<sup>9</sup> The provisions of 10 C.F.R. Part 2, Subpart J are uniquely applicable to this proceeding. Subject to certain exceptions not applicable here, the rules of Subparts C and G of Part 2 also generally apply. See 10 C.F.R. § 2.1000; Subpart C, specifically 10 C.F.R. § 2.305(c)(4) contains a similar, although not identical, certification of service provision.

<sup>10</sup> Such a recitation in a certificate of service would not comply with the similar requirements of 10 C.F.R. § 2.305(c)(4).

## APPENDIX

The DOE Safety Analysis Report (SAR)	
SAR Chapter x.	SAR Chapter x at page(s) etc.
SAR Section x.x.x.x	SAR Section x.x.x.x etc.
SAR Figure x-x	SAR Figure x-x etc.
SAR Table x-x	SAR Table x-x etc.
SAR Appendix x	SAR Appendix x etc.

The DOE General Information (GI)	
GI Chapter x.	GI Chapter x at page(s) etc.
GI Section x.x.x.x	GI Section x.x.x.x etc.
GI Figure x-x	GI Figure x-x etc.
GI Table x-x	GI Table x-x etc.
GI Appendix x	GI Appendix x etc.

The DOE Final Environmental Impact Study (FEIS)	
FEIS Chapter x.	FEIS Chapter x at page(s) etc.
FEIS Section x.x.x.x	FEIS Section x.x.x.x etc.
FEIS Figure x-x	FEIS Figure x-x etc.
FEIS Table x-x	FEIS Table x-x etc.
FEIS Appendix x	FEIS Appendix x etc.
FEIS Volume x	FEIS Volume x etc.

The DOE Final Supplemental EIS (FSEIS)	
FSEIS Chapter x.	FSEIS Chapter x at page(s) etc.
FSEIS Section x.x.x	FSEIS Section x.x.x.x etc.
FSEIS Figure x-x	FSEIS Figure x-x etc.
FSEIS Table x-x	FSEIS Table x-x etc.
FSEIS Appendix x	FSEIS Appendix x etc.
FSEIS Volume x	FSEIS Volume x etc.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing CAB CASE MANAGEMENT ORDER #1, dated January 29, 2009, have been served upon the following persons by Electronic Information Exchange.

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[ Original Signed by Linda D. Lewis ] \_\_\_\_\_  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 29<sup>th</sup> day of January 2009