

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

Before Administrative Judges:

William J. Froehlich, Chairman
Thomas S. Moore
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-876-HLW-CAB01

March 4, 2009

MEMORANDUM AND ORDER
(Agenda for Telephonic First Prehearing Conference)

In a February 9, 2009 order, the Chief Administrative Judge designated construction authorization board (CAB01) to conduct the first prehearing conference called for in 10 C.F.R. § 2.1021 and noted in the Commission's schedule for the proceeding in CLI-08-25, 68 NRC __, __ (Oct. 17, 2008), 73 Fed. Reg. 63,029, 63,032 (Oct. 22, 2008). Pursuant to the Chief Administrative Judge's designation order, CAB01 issued a notice on February 10, 2009 scheduling a telephonic prehearing conference for 1:00 p.m. EDT, March 12, 2009.¹ This order sets forth the details and agenda for the conference.

At least one counsel for each of the parties, petitioners, or interested governmental participants who have filed a notice of appearance fully compliant with 10 C.F.R. § 2.314 and the January 29, 2009 CAB Case Management Order #1 (adopting, inter alia, Part II.C. of the July 6, 2007 [PAPO] Revised Second Case

¹ The notice of conference call misstated the time of the conference as 1 p.m. Eastern Standard Time (EST). Recognizing that Daylight Savings Time begins on March 8, 2009, the telephone conference will start at 1 p.m. EDT.

Management Order) in the High Level Waste Repository Proceeding, Docket No. 63-001-HLW, shall participate in the teleconference. Counsel should contact by e-mail the Licensing Board's law clerk, Erica LaPlante at erica.laplante@nrc.gov no later than 5:00 p.m. EDT March 10, 2009 in order to obtain the telephone conference number and passcode for the teleconference. The e-mail shall state the name or names of counsel for the party, petitioner, or interested governmental participant who will be participating in the conference, whom such counsel represents, participating counsel's affiliation, and the date each participating counsel filed a notice of appearance. Any member of the public desiring to listen to the conference may telephone Ms. LaPlante at (301) 415-5165 between 9:00 a.m. and 5:00 p.m. EDT on March 9 or March 10, 2009 to obtain the telephone conference number and passcode for listening to the conference.

Pursuant to 10 C.F.R. § 2.1021, counsel shall be prepared to discuss the following issues:

- (1) The process and schedule for joining or consolidating admitted contentions. For example, during the period following oral argument, counsel may wish to confer and seek to reach agreement on a recommended approach and schedule for joining or consolidating contentions. Obviously, no final determination can be reached before the Licensing Boards' determinations on the admissibility of contentions. It may be practicable, however, for counsel to reach a tentative agreement on what proffered contentions should be joined or consolidated and then eliminate contentions that are not admitted rather than await the Boards' decisions before initiating the process. Further, any schedule should take into account the short period for the filing of the briefs appealing the Licensing Boards' prehearing conference orders.
- (2) The negotiation of a schedule for the conduct of discovery pursuant to 10 C.F.R. §§ 2.1018-1020 on admitted contentions. Again, counsel may wish to confer and, to the extent practicable, seek to reach agreement on a recommended approach for proposing a discovery schedule that takes into account all joined or consolidated contentions.

In addition, counsel for the Department of Energy (DOE) should be prepared to explain to the Licensing Board and other counsel the significant differences, if any, between the June 2008 DOE License Application (LA) (Rev. 0) and the updated version

(Rev. 1) recently filed. In accordance with the Chief Administrative Judge's January 15, 2009 order, counsel for DOE should explain with respect to the recently filed updated version of the LA the manner in which DOE complied with 10 C.F.R. § 63.22. Further, counsel for DOE should be prepared to represent whether DOE complied with the directions of the Chief Administrative Judge's order that "DOE shall maintain the section numbering sequences from the June 3, 2008 application to the maximum extent practicable" and that "DOE shall clearly identify in all section heading labels the sections that have been revised . . . [by] mark[ing] the changed text with bar indicators."² Further, counsel for the NRC Staff should be prepared to inform the Licensing Board and other counsel when the updated version of the DOE LA will be placed on ADAMS and whether it will also be made available on the EHD.

Any counsel who wishes to raise additional issues at the conference should file, via the EIE, a concise statement of the issue along with any other information necessary for a reasonable understanding of the issue by 12:00 noon EDT, Tuesday, March 10, 2009. Although the Licensing Board will decide which, if any, additional issues merit discussion at the conference, all counsel should be prepared to address the issues filed by other counsel.

Because of the number of counsel participating in the telephone conference and the difficulty such circumstances present for the court reporter to make an accurate transcription, the Licensing Board reminds all counsel that they must, without fail and in every instance, first identify themselves before speaking. Only in that way will there be a pellucid record. The Board is confident that with the full cooperation of counsel, the conference will be able to be run smoothly and efficiently.

² Order (Addressing Procedural Matters) (Jan. 15, 2009) at 2 (unpublished).

Finally, the construction authorization boards will issue a subsequent order setting forth the terms and conditions for the March 31, April 1, and April 2, 2009 oral arguments. It is the current intention of the Boards to identify in that order a number of issues and questions that the Boards wish counsel to address on each of the oral argument dates.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman

Rockville, Maryland
March 4, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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U.S. DEPARTMENT OF ENERGY) Docket No. 63-001-HLW
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(High-Level Waste Repository))
)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing MEMORANDUM AND ORDER (Agenda for Telephonic First Prehearing Conference), dated March 4, 2009, have been served upon the following persons by Electronic Information Exchange.

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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MEMORANDUM AND ORDER (Agenda for Telephonic First Prehearing Conference)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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