

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARDS

Before Administrative Judges:

BOARD CAB-01
ASLBP No. 09-876-HLW
William J. Froehlich, Chairman
Thomas S. Moore
Richard E. Wardwell

BOARD CAB-02
ASLBP No. 09-877-HLW
Michael M. Gibson, Chairman
Alan S. Rosenthal
Nicholas G. Trikouros

BOARD CAB-03
ASLBP No. 09-878-HLW
Paul S. Ryerson, Chairman
Michael C. Farrar
Mark O. Barnett

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

March 18, 2009

ORDER

(Terms, Logistics, and Questions for Oral Argument)

In a February 12, 2009 notice, the three construction authorization boards (CABs) scheduled oral argument in Las Vegas for March 31, April 1, and April 2, 2009, on the twelve petitions to intervene filed in response to the Commission's October 22, 2008 notice of hearing on the June 3, 2008, license application (LA) by the Department of Energy (DOE) to construct a geologic repository at Yucca Mountain in Nye County, Nevada.¹ Intervention petitions were filed by (1) Caliente Hot Springs Resort, LLC; (2) State of California; (3) Clark County, Nevada; (4) Churchill, Esmeralda, Lander, and Mineral Counties, Nevada (Four Counties); (5) Inyo County, California; (6) Native Community Action Council; (7) State of Nevada; (8) Nuclear Energy Institute; (9) Nye County, Nevada; (10) Timbisha Shoshone Tribe; (11) Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation; and (12) White Pine County, Nevada. In

¹ See [HLW] Notice (Setting Date for Argument on Admissibility of Contentions) (Feb. 12, 2009) (unpublished); [HLW] Notice of Hearing and Opportunity to Petition for Leave to Intervene on an Application for Authority to Construct a Geologic Repository at a Geologic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).

addition, Eureka County, Nevada and Lincoln County, Nevada filed requests to participate as interested governmental bodies under 10 C.F.R. § 2.315(c) and, pursuant to 10 C.F.R. § 2.1001, DOE and the NRC Staff are designated parties to the proceeding.

At least one counsel for each petitioner and party who has filed an appropriate notice of appearance shall attend the oral argument in Las Vegas. Because the participation of Eureka and Lincoln Counties is unopposed,² counsel for those counties are welcome to attend but will not be permitted to participate in oral argument.

A. Terms of Oral Argument

1. Times and Location

Unless otherwise announced, oral argument will begin each morning at 9:00 a.m. PDT at the Las Vegas Hearing Facility (LVHF), Pacific Enterprise Plaza, Building 1, 3250 Pepper Lane, Las Vegas, Nevada. Counsel should expect a 90-minute lunch break each day and the Boards will strive to conclude each session by 5:00 p.m., but the arguments might go later.

The oral argument will be open to the public and will be webstreamed. In any event, the Digital Data Management System (DDMS) will be utilized for the argument. In addition, members of the public and other interested counsel and representatives may observe the oral argument on the hearing room monitors in the Atomic Safety and Licensing Board Panel's hearing room, third floor, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland beginning at 12:00 noon, EDT, on each of the three mornings.

² See Answer of [DOE] to Eureka County, Nevada's Request to Participate as Interested Governmental Participant (Jan. 15, 2009) at 2; Answer of [DOE] to Lincoln County, Nevada's Corrected Request to Participate as Interested Governmental Participant (Jan. 15, 2009) at 2; NRC Staff Answer to Intervention Petitions (Feb. 9, 2009) at 32.

2. Structure of Argument

As indicated in the notice establishing the Licensing Boards,³ the Chief Administrative Judge has yet to make a final allocation among the three CABs of the intervention petitions and proffered contentions. Therefore, counsel for all petitioners and parties should prepare thoroughly with regard to their respective pleadings. Each CAB will sit separately for one of the three days of argument. All counsel should be prepared to answer questions about any subject in their respective pleadings on any of the three days of argument before any one of the three CABs.

Because of the number of intervention petitions and proffered contentions and the near universal opposition to the hundreds of proffered contentions by DOE and the Staff, the argument each day likely will not be rigidly structured with each counsel presenting argument from the podium in a predetermined set order with a reserved time for rebuttal. Rather, each CAB will be directing questions to counsel at the counsel table and focusing upon a specific number of overarching issues. Further, the CABs' questions regarding proffered contentions likely will be general or generic in the context of the application of the overarching issues.

Insofar as possible, counsel with common interests should try to agree among themselves on lead responsibility for particular issues, so as to minimize duplicative arguments. So there is no misunderstanding, however, all counsel should be prepared to answer questions from any Board about any overarching issue implicated in its pleadings and specific questions about the contentions in its filings. At the beginning of argument, each CAB chairman will announce any particular procedures the Board will follow that day.

On Tuesday, March 31, CAB-03 will sit and, inter alia, focus upon the overarching issues involved in contentions raising issues under the National Environmental Policy Act (NEPA),

³ See [HLW] Establishment of Atomic Safety and Licensing Boards, 74 Fed. Reg. 4477 (Jan. 26, 2009).

including the application of 10 C.F.R. § 51.109 and 10 C.F.R. § 2.326. In that regard, the Board also will examine the overarching issues presented by the various challenges to the transportation aspects of DOE's environmental documents. The Board will address the various overarching issues concerning the numerous challenges to the models employed by DOE in its safety analysis report (SAR). Finally, the Board will consider the Nuclear Energy Institute's standing. Certain subject areas and questions that CAB-03 wishes counsel to be prepared to address are set forth in Appendix A to this Order.

On Wednesday, April 1, CAB-02 will sit and, inter alia, focus upon the various overarching issues involved with the form, adequacy, and sufficiency of the affidavits and declarations filed by the petitioners, including the adequacy of references and analysis set forth in the affidavits and declarations of the petitions. The Board will also be examining the issues involved in the application of the reasonable expectation standard in 10 C.F.R. § 63.31(a) in the context of postclosure uncertainties for the geologic repository. Finally, CAB-02 will be inquiring of counsel about the various issues surrounding the claims of petitioners Native Community Action Council, the Timbisha Shoshone Tribe, and the Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation. Additional subject areas and questions that CAB-02 wishes counsel to be prepared to address are set forth in Appendix B to this Order.

On Thursday, April 2, CAB-01 will sit and, inter alia, focus upon the various overarching issues involved in the provisions of 10 C.F.R. § 2.1012(b) regarding compliance with the requirements of the Licensing Support Network (LSN) and orders of the Pre-License Application Presiding Officer Board. Additionally, the Board will examine the issues regarding the so-called heightened standard for contention admissibility argument posited by DOE in its answers to most of the intervention petitions. Certain subject areas and questions that CAB-01 wishes counsel to be prepared to address are set forth in Appendix C to this Order.

3. Participants

Oral argument shall be limited to counsel who have filed an appropriate notice of appearance on behalf of a petitioner or party.⁴ For purposes of oral argument, counsel tables in the well of the LVHF are reserved for counsel and will be assigned to each petitioner and party. No other persons will be allowed in the well of the LVHF during oral argument. The tables directly behind the well are reserved for the litigation support teams of the petitioners and parties. Although normally licensing boards permit only one counsel to present argument, because of the number of proffered contentions filed by the State of Nevada (Nevada) in its Petition, the CABs will permit two counsel for Nevada as well as two counsel for DOE and the Staff to present argument on any day.

4. DDMS

Every filing in Docket No. 63-001-HLW that is available on the Electronic Hearing Docket (EHD) is capable of being displayed by the Clerk of Court on the computer monitors in the LVHF. Thus, all petitions, answers, and replies are available on the DDMS in the hearing room. Further, upon request, the Clerk of Court will quickly retrieve for display on the DDMS individual contentions, answers, and replies to the individual contention. Access to the LA, however, is limited solely to those specific provisions referenced in contentions, answers, and replies cited in accordance with the directions set forth in [HLW] Order (Addressing Procedural Matters) (Jan. 15, 2009) at 3 (unpublished) and [HLW] CAB Case Management Order #1 (Jan. 29, 2009) (unpublished).

⁴ See 10 C.F.R. § 2.314; [HLW] CAB Case Management Order #1 (Jan. 29, 2009) at 2 (unpublished); [HLW] Memorandum and Order (Agenda for Telephonic First Prehearing Conference) (Mar. 4, 2009) at 1-2 (unpublished).

5. To Help Facilitate an Accurate Transcript

To ensure a readable and accurate transcript of the oral argument, the participants and parties, to the extent practicable, should prepare and serve via the EIE, by noon on Friday, March 27, 2009, a list of specialized terms and their pronounced acronyms (e.g., Office of Civilian Radioactive Waste Management-OCRWM; Reasonably Maximally Exposed Individual-RMEI; Quality Assurance Requirements and Description-QARD; Geologic Repository Operations Area-GROA) and technical words (e.g., paleoclimate, anthropogenic, microbial denitrification, anaerobic respiration) used in their contentions, answers, and replies that likely will be used by counsel at argument.

B. Logistics

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. Given that LVHF security procedures permit only a limited number of individuals to occupy the lobby at one time, people seeking entry may temporarily need to wait outside. Thus, everyone is encouraged to arrive at the LVHF well in advance of the beginning time for oral argument. Counsel should arrive even earlier to ensure that they are present and ready to begin the oral argument at the designated time.

Members of the public seeking to view the argument in the Rockville hearing room will be required to present photo identification and undergo security screening upon arrival at the main entrance to the NRC Headquarters' Two White Flint North building. All Rockville attendees should allow adequate time for the required security procedures and plan to arrive in advance of 12:00 p.m. EDT on March 31, April 1, and April 2, 2009. Individuals seeking to expedite their entry to the NRC headquarters complex should send an email (with the subject line stating

“Registration-HLW Proceeding”), containing the names of the persons planning to attend the oral argument at the Rockville hearing room to Ms. Karen Valloch (karen.valloch@nrc.gov) no later than March 27, 2009.

2. Conference Rooms

Because there are only eight (8) conference rooms in the LVHF, the rooms are assigned as follows. DOE, NRC Staff, and Nevada will each have their own conference room. The remaining conference rooms will be shared by petitioners as follows: (1) Nuclear Energy Institute and Caliente Hot Springs Resort, LLC; (2) Nye County, Inyo County, and Native Community Action Council; (3) Clark County and Timbisha Shoshone Tribe; (4) Four Counties and White Pine County; and (5) the State of California and Timbisha Shoshone Yucca Mountain Oversight Program Non-Profit Corporation. Eureka and Lincoln Counties are not assigned a conference room because they will not be participating in the oral argument. Use of the assigned conference rooms is, of course, voluntary.

Access to the conference room is limited to a maximum of eight (8) authorized individuals who are part of the litigation team for the petitioner and parties. Each petitioner and party who wishes to use an assigned conference room must email Ms. Karen Valloch (karen.valloch@nrc.gov) on or before March 25, 2009 and provide a list of all individuals who will need access to the conference room. Access and use is limited to the time period starting one hour prior to the oral argument and ending one hour after the CAB 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, March 31, April 1, and April 2, 2009, and to comply with applicable 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 CAB Boards, their law clerks and staff, and other LVHF staff. For more detailed information and restrictions on conference room access, counsel and their litigation teams should consult the attached LVHF Policy and Procedures for Participants (see Appendix D).⁵

2. Parking

Counsel, including counsel for Eureka and Lincoln Counties, may obtain a reserved parking space at the LVHF in connection with the oral argument. To do so, counsel should submit a request to Ms. Karen Valloch (karen.valloch@nrc.gov) on or before March 25, 2009. Use of such reserved parking spaces for the oral argument will be limited to a maximum of two vehicles for each petitioner or party and is limited to the time period starting one hour prior to the oral argument and ending one hour after the CAB has adjourned for the day. Significant security restrictions apply and must be followed. Counsel seeking use of a reserved parking space must provide Ms. Valloch a list identifying the driver and an alternate individual responsible for the vehicle. Counsel and their litigation teams should refer to the LVHF Policies and Procedures for

⁵ Additionally, the Policy and Procedures for Participants can be found on the Licensing Support Network at:
<http://www.lsnnet.gov/download/lasvegasfacilitypoliciesproceduresparticipants0309final.pdf> (last accessed March 18, 2009).

Participants in Appendix D for more detailed information about parking access and other parking alternatives. Failure to abide by these procedures will result in the denial of such a request.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARDS

/RA/

William J. Froehlich, Chairman, CAB-01
ADMINISTRATIVE JUDGE

/RA/

Michael M. Gibson, Chairman, CAB-02
ADMINISTRATIVE JUDGE

/RA/

Paul S. Ryerson, Chairman, CAB-03
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 18, 2009

APPENDIX A

March 31, 2009 (CAB-03)

I. NEPA contentions

A. Specific regulatory pleading requirements

1. 10 C.F.R. § 51.109
2. 10 C.F.R. § 2.326

B. Effect of Notice of Hearing on regulatory pleading requirements

C. Effect of Nuclear Energy Institute v. Env't Prot. Agency, 373 F.3d 1251, 1313-14 (D.C. Cir. 2004) on regulatory pleading requirements

D. Standard for NRC review of DOE environmental documents

1. What is the proper standard?
2. Does standard for merits adjudication affect admissibility of contentions?

E. Must all environmental contentions be supported by one or more affidavits?

II. NEPA/transportation contentions

A. What are NRC's responsibilities under NEPA with respect to transportation of nuclear waste to the proposed repository?

B. Must NRC analyze all environmental effects of the proposed repository, or merely the effects of activities over which NRC has direct regulatory control?

C. Are the proposed repository and the transportation of waste to the proposed repository inextricably linked?

D. Res judicata and jurisdictional issues (see, e.g., Nev. v. Dep't of Energy, 457 F.3d 78 (D.C. Cir. 2006))

1. For Nevada
2. For other petitioners

III. TSPA model-based contentions

A. Which party has the burden of demonstrating the effect of an alleged deficiency upon the TSPA?

- B. Is there a factual dispute concerning petitioners' ability to replicate the TSPA?
- C. If so, must such a dispute be resolved in petitioners' favor at the contention admissibility stage?
- D. In the NRC cases on which DOE relies (see, e.g., DOE Opposition to Nevada's Petition at 53-57), did petitioners allege violations of specific regulatory requirements?

IV. Standing of Nuclear Energy Institute

APPENDIX B

April 1, 2009 (CAB-02)

I. Evaluating Materiality under 10 C.F.R. § 2.309(f)(iv)

- A. Reasonable Assurance under 10 C.F.R. § 63.31(a)(1)
- B. Reasonable Expectation under 10 C.F.R. § 63.31(a)(2)
- C. Effect of Nuclear Energy Institute v. Env't Prot. Agency, 373 F.3d 1251, 1300 (D.C. Cir. 2004) on evaluating Reasonable Assurance and Reasonable Expectation
- D. Effect of EPA Rulemaking on Evaluating Reasonable Assurance and Reasonable Expectation Standards
- E. Burden of Pleading

II. Tribal Issues

- A. Appropriate Entity(ies) to Represent Tribes
- B. Basis for Standing of Any Entity Representing Tribal Members That Is Not Deemed to Represent a Tribe Itself
- C. Probable Dates for Final Resolution of Tribal Representation Claims being Litigated in Other Forums
- D. Ripeness of Tribal Consultation Claims
- E. Claims Arising from Treaty of Ruby Valley, from Land Use (Tribal Law and Custom), and from Water Rights
- F. Claims Based on Sensitive Population Not Represented in DOE's Data
- G. Pending Motions Seeking Relief from NRC Pleading Rules
- H. LSN Compliance

III. Sufficiency of Factual Support under 10 C.F.R. § 2.309(f)(v)

- A. What is needed to satisfy the standards of contention admissibility?
- B. What format may affidavits take to satisfy minimal standards of contention admissibility?

IV. Allegedly Inaccurate, Outdated, Inappropriate, or Missing Analyses

- A. To what degree is the alleged DOE use of inaccurate, outdated, or inappropriate analyses, by itself, a violation of Part 63 regulations and therefore a material challenge that raises a genuine dispute?
- B. To what degree does an allegation that the application has not considered a specific issue demonstrate a material challenge that raises a genuine dispute?
- C. To what degree does an allegation that the application has not considered a structure, system, or component that is not important to safety or not important to waste isolation, where there is no dispute in the contention or reply of the classification of the subject structure, system, or component, demonstrate a material challenge that raises a genuine dispute?
- D. To what degree does an allegation that the application has not considered deficiencies in the Performance Margin Analysis, insofar as DOE is not using the PMA to demonstrate compliance with Part 63, demonstrate a material challenge that raises a genuine dispute?
- E. To what degree does an allegation that the application has erroneously applied a post-closure standard to a pre-closure obligation demonstrate a material challenge that raises a genuine dispute?

APPENDIX C

April 2, 2009 (CAB-01)

I. LSN Compliance

- A. Who has the burden of demonstrating substantial and timely compliance with LSN procedures in accordance with 10 C.F.R. § 2.1012(b)?
- B. What kind of showing is necessary under 10 C.F.R. § 2.1012(b) to demonstrate substantial and timely compliance with the requirements of 10 C.F.R. § 2.1003?

II. Existence of the LSN

- A. What legal support exists for the proposition that the availability of the LSN creates a heightened obligation to proffer well pled and adequately supported contentions?
- B. How would the “heightened obligation” for contention admissibility that DOE argues exists because of the LSN be applied in evaluating a petitioner’s contentions?

III. DOE’s Character/Management Issues

- A. Where in Section 182a of the Atomic Energy Act of 1954 (AEA), 42 U.S.C. § 2011 et. seq., or its statutory history discussing character of a licensee, does the statute exempt DOE?
- B. Does DOE fall within the definition of “person” in Section 11(s) of the Atomic Energy Act?
- C. Are there any other independent regulatory agencies which have regulatory authority over executive departments like DOE?

IV. Climate Change Related to Human Activity

- A. What effect does the Commission’s recent amendment of the Part 63 rules (specifically §§ 63.305 and 63.342) (74 Fed. Reg. 10,811 (Mar. 13, 2009)) have on the admissibility of contentions relating to climate change from human activity for the first 10,000 years of the post-closure period?
- B. What effect does the Commission’s recent amendment of the Part 63 rules (specifically §§ 63.305 and 63.342) (74 Fed. Reg. 10,811 (Mar. 13, 2009)) have on the admissibility of contentions relating to climate change from human activity for the post-closure period after the first 10,000 years?

APPENDIX D

Policies and Procedures for Participants
Attending Adjudicatory Proceedings
Conducted at the
NRC Las Vegas Hearing Facility



NRC Las Vegas Hearing Facility
Pacific Enterprise Plaza, Building 1
3250 Pepper Lane; Las Vegas, NV 89120

MARCH 2009

Policies and Procedures for Participants Attending Adjudicatory Proceedings
Conducted at the NRC Las Vegas Hearing Facility

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Policies and Procedures for Participants Attending Adjudicatory Proceedings Conducted at the NRC Las Vegas Hearing Facility (LVHF)

This handbook provides guidance regarding accessing and using the LVHF for participants in the Yucca Mountain proceeding.

I. How to Get to the LVHF

A. Public Transportation

The Las Vegas Hearing Facility (LVHF) is located at 3250 Pepper Lane, Las Vegas, Nevada. The LVHF is near several public transportation routes including the 111 (Green Valley/Pecos) and 212 (Sunset) Regional Transportation Commission (RTC) of Southern Nevada bus routes, both of which have stops within two blocks of the facility. (See <http://www.rtcsonthernnevada.com/cat/routes/index.php>.) Buses on these RTC routes are scheduled to run at intervals of approximately 30 minutes on weekdays.

B. Private Transportation – Parking for Automobiles

For those participants wishing to drive to the facility, there is **limited** curbside parking in the vicinity of the facility that is available on a first-come, first-served basis. Appendix A to this handbook shows the currently available public parking within reasonable walking distance of the LVHF. In addition, a limited number of spaces located in a gated lot directly in front of the facility are available on an assigned basis for the use of participants in adjudicatory proceedings conducted at the facility. Requests for this reserved parking should be submitted as outlined in Section V.A below.

Handicapped parking is also available in this gated reserved lot for hearing participant vehicles displaying a handicapped license plate, hang-tag, or placard.

Although there is a large parking lot in the business complex to the south of the LVHF, this parking is restricted to those working or having business in the buildings surrounding that lot during weekday business hours. Other vehicles might be ticketed and/or towed.

II. Entering and Using the LVHF

A. Entering the Facility Through the Lobby Security Checkpoint

Under Federal Protective Service (FPS) and NRC security requirements, each time a person wishes to enter the LVHF to attend an adjudicatory session, the individual must come into the building through the building's front entrance located on Pepper Lane and go through a security screening process in the building lobby. There individuals must walk through a metal detector, and all handbags, brief cases, packages, boxes, etc., will be subject to screening. NRC employees will be required to undergo this same security screening process unless they display their agency-issued identification badges to the security guard on duty, in which case

they will be permitted to enter the facility following the same procedures used at NRC headquarters.

Items prohibited inside the facility include:

- Firearms of any type (including those for which the individual has a state-issued carry permit) and explosives of any type
- Knives or any implements that have a blade or other sharpened surface
- Hazardous or toxic substances (e.g., chemicals)
- Sticks, poles or similar devices
- Signs, banners, posters, or displays

Because there are no storage facilities available on or around the LVHF, an individual attempting to bring these items into the facility will not be permitted to enter.

Given the possibility that numerous individuals may wish to observe the proceedings, coupled with the fact that everyone is subject to security screening, participants should make every effort to arrive at the LVHF **WELL IN ADVANCE** of the time the hearing is scheduled to begin or resume.

B. Post-Security Screening Facility Access for Hearing Participants

1. Hearing Room-Area Access

Once the security screening process is completed, the hearing participant is free to move about in the large ante-room space outside the hearing room (which includes restroom facilities) and enter the hearing room. If a participant has been given access to conference room space for a particular adjudicatory session in accordance with Sections II.B.2 and IV.A below, the participant also may access the conference room.

Any individual observed in other portions of the LVHF without authorization from the presiding officer (including any portion of the LVHF's second floor or outdoor areas not open to hearing participants) may be escorted from the building and refused further entry, as appropriate.

2. Hearing Participant Conference Space Access

Hearing conference room space will be made available to a hearing participant and a limited number of individuals associated with that participant (e.g., participant counsel/representatives and those assisting them in the proceeding, including administrative personnel and witnesses). The conference room space is located off a limited-access corridor on the east/right-hand side of the LVHF.

After going through the initial security screening process, participants and those individuals associated with hearing participants who have been given access to a conference room must identify themselves to security personnel to obtain an access badge and the four-number PIN to be used for that hearing session. By entering the four-number PIN into a door-side keypad, a participant can then enter the conference room corridor through the doorway (1) on the east/right-hand side of the LVHF's main lobby area; or (2) on the east/right-hand side of the hearing room (near the information technology (IT) control booth). (Security personnel can provide instruction on use of the keypad, if necessary.) Once in the conference room area, an individual generally should move between the conference room area and the hearing room using the door on the east/right-hand side of the hearing room that goes directly into the hearing room from the conference space (rather than going back through the main lobby/security screening area).

To ensure their own security, hearing participants having access to the hearing conference room area must not allow individuals who have not been authorized to use the conference room area to gain entry to that space by "tailgating" or other means, i.e., hearing participants with access to this conference room area should ensure that anyone following them into this conference room space has an appropriate access badge. Anyone authorized to access the conference room area who allows an unauthorized person to enter the conference room space may have his/her conference room access revoked.

While in the conference room space, participants are prohibited from entering the IT control rooms adjacent to the northeast corner of the hearing room. Additionally, and except in an emergency (e.g., fire alarm), participants are prohibited from accessing (1) the restricted corridor area adjacent to the northwest corner of the hearing room, which is controlled by a door with a panic bar that will sound an alarm if opened; and (2) the fenced, outdoor courtyard area just to the east of the LVHF, which is controlled by the door located across the hall from the door leading into the front/lobby security screening area. Any individual observed within these restricted portions of the facility without authorization may have his/her conference room space access revoked. Corridors in the conference room area are monitored by security cameras on a continuous basis.

C. Use of Tobacco Products In and Around the LVHF

Use of tobacco products inside the LVHF is prohibited. Use of tobacco products on the grounds outside of the facility is permitted only in those areas designated for smoking in the front of the building.

D. Medical or other Emergencies While in the LVHF

If a hearing participant suffers a medical emergency while in the LVHF, the individual or anyone else available should immediately contact one of the facility security personnel.

In the event that an emergency requires building evacuation, all hearing participants must exit the building promptly through one of the marked emergency exits, following any instructions given by the LVHF Facility Manager, security personnel, or the Atomic Safety and Licensing Board (Licensing Board) Chair.

III. Conduct in the Hearing Room

A. General Guidance During Hearings

Hearing participants are expected to conduct themselves with the same honor, dignity, and decorum they would before a court of law. All hearing participants are expected to follow the directions of the Licensing Board Chair, the LVHF Facility Manager, or security personnel regarding the use of the LVHF and their conduct in the hearing room. The ante-room area in front of the hearing room as well as the hearing room itself are monitored by security cameras on a continuous basis. During proceedings in which the Digital Data Management System (DDMS) is used, a digital audio/video record of the proceeding is available to other DDMS users, and that same signal may be webstreamed or broadcast by press/media outlets.

B. Food and Beverages

Consumption of food or beverages of any kind is prohibited in the hearing room. Hearing participants seated within the well of the hearing room will be provided with drinking water.

Hearing participants are advised that the LVHF does not contain any vending or other machines that dispense beverages or food. Water fountains are available in the ante-room off the hearing room, near the restrooms.

C. Use of Cameras/Audio Recording Devices

Hearing participants are not permitted to use cameras of any kind or audio recording devices in the hearing room while a hearing is in session. Use of cameras or audio recording is not permitted in the well of the hearing room at any time.

D. Use of Cell Phones and Other Wireless Communication Devices

Cell phones and other wireless communication devices (e.g., Blackberries) must be turned off or placed in vibrate mode while a hearing is in session.

E. Use of Laptop Computers/Note Taking

Hearing participants and their litigation support staff may be permitted to use laptop computers at the tables in the well of the hearing room or the designated tables along the row of bookcases that separate the hearing room well from the audience area for the purpose of taking notes, accessing or displaying hearing-related documents stored on the computer's hard drive, or conducting other hearing-related activities.

Use of a laptop computer for non-hearing-related activities is prohibited. While a hearing is in session, use of a laptop computer by a participant or litigation support staff member that is disruptive (e.g., noisy) or for conducting personal or non-hearing-related office business, such as accessing personal/office e-mail accounts, web-browsing, playing games, etc., may result in the user being denied further use of the laptop computer in the hearing room.

As is the case with conference room use of laptop computers, see Section IV.A.2 below, participants will need to have their own wireless internet service for their computer.

F. Handicapped-Access to Hearing Room Functions

The LVHF and the hearing room have been designed to accommodate handicapped individuals. Those with hearing, visual, or other handicaps who are planning to attend a hearing as participants should contact the LVHF Facility Manager as far in advance of the hearing as possible to discuss arrangements for making reasonable accommodations.

IV. Assignment and Use of Conference Rooms

A. Procedures for Obtaining a Conference Room

1. Securing a Conference Room Assignment

Hearing conference room space is assigned on a hearing session basis, i.e., a conference room assignment is valid for the period of a specific hearing activity before a Licensing Board. Conference room assignments will be made as follows:

- a. Prior to each hearing session, the Licensing Board (or its designee) will notify the appropriate potential participants about the schedule for the session and request that each participant indicate whether it will need conference room space during the session.
- b. A hearing participant that wishes to obtain conference room space for a particular hearing session must respond timely to this request to be considered for a conference room assignment for the session.
- c. The Licensing Board (or its designee) will review conference room requests and provide notice to the participant and LVHF security personnel if a conference room is assigned to the participant for use during the hearing session. If demand exceeds supply, a single conference room may be assigned to several hearing participants having similar interests. Hearing participants should act cooperatively and respectfully toward those with whom they are assigned to share a conference room.

2. Guidelines for Using an Assigned Conference Room

A LVHF conference room is intended to provide a participant with a place to store garments and documentary material and to hold discussions with those who are essential members of its litigation team. Each room is equipped with a telephone for making local calls, a data phone jack that will provide a local dial-up connection for laptop fax or internet capability, a conference table with six chairs, and a DDMS terminal. Hearing participants should be aware of the following limitations relative to each conference room:

- a. Conference rooms ***should not*** be considered “secure” repositories for important/sensitive “tactical” documents or other materials a participant considers litigation-critical, or for personal items of value (e.g., purses/briefcases containing items such as wallets or small electronic devices). Conference room doors ***cannot be locked***. During evidentiary hearings, each conference room will be provided with a small safe with a user-programmable combination in which to store unclassified material under protective order (e.g., proprietary material) that is needed for use during a hearing session. Sensitive information or personal belongings should not be left in a conference room safe beyond the end of the prehearing/hearing session because the LVHF Facility Manager will inspect and empty all conference room safes after each session has concluded.
- b. Conference room walls ***are not sound-proof***, so hearing participants should be careful regarding the volume and content of their discussions while in a conference room.
- c. Conference room access will be afforded only on the days when a hearing session is actually being held and then only shortly before, during, and shortly after the time when the hearing is in session on that day.

Accordingly, the conference rooms should not be considered or treated as litigation “war rooms” for storing litigation materials or conducting confidential strategy discussions or witness interviews during early morning/evening/weekend periods when hearings are not in session.

- d. Participants are not permitted to install their own copiers, stand-alone fax machines, or phone lines in a conference room assigned for their use. Participants who wish to use a laptop computer in a conference room to access the internet via a high-speed service must provide their own wireless internet service.
- e. Although participants may bring food and beverages into conference rooms, those items should not be carried into or consumed in the hearing room. See Section III.B above. Participants are responsible for disposing of all food and beverage containers and their contents in an appropriate trash receptacle prior to leaving the LVHF for the day.

B. Conference Room Area Access

1. Participant Access Authorization

As is the case with conference room assignments, participant access to assigned conference rooms is authorized on a hearing session basis. Conference room area access will be authorized as follows:

- a. In conjunction with its request to participants to indicate whether they need a conference room for a particular hearing session, the Licensing Board (or its

designee) will also direct each participant requesting a conference room to provide a list of all individuals who will need access to the room during that session.

- b. A hearing participant must respond timely to this request to ensure that all those it believes need access to any assigned conference room are considered. The access list should include only those individuals who are integral members of the participant's litigation team, including counsel and representatives who have entered an appearance for the participant, paralegals and other litigation support personnel, and witnesses who will testify in the proceeding. Access lists containing more than 10 names must be accompanied by a written justification explaining why each of the individuals on the list needs conference room access.
 - c. The Licensing Board (or its designee) will review the participant access requests and provide a list of approved individuals to the participant and security personnel at the LVHF for use during the hearing session.
 - d. Requests for additions to a participant access list during the hearing session should be directed in writing to the Licensing Board (or its designee) and will be allowed at the discretion of the Board (or its designee). Such a request should be made well in advance of the time the individual will need to have access to the conference room space to ensure the request can be timely considered and processed.
2. Accessing a Conference Room during a Hearing Session

After entering the facility and completing security screening, those who have received conference space access authorization for the session in accord with Section IV.A.1 above should identify themselves to security personnel. Security personnel, after determining his/her name is on the approved access list, will issue the individual an access identification badge and four-number PIN. As described in Section II.B.2 above, both the ID badge and the PIN are needed to access the conference room space during that session.

If an individual with conference room space access wishes to leave the LVHF temporarily (e.g., for lunch), he/she should return the access badge to security personnel in the lobby when exiting the building. If the individual returns to the facility that same day, after completing the security screening process, the access badge will be returned to the individual upon request. Access badges also should be returned to security personnel when the individual leaves and does not intend to return to the facility that day (e.g., after the hearing is adjourned for the day).

For a multi-day hearing session, each individual with access authorization will need to obtain an access badge each day after completing the security screening process. The PIN issued at the beginning of the session will remain in effect during the entire period of the session.

3. Post-Hearing Session Conference Room Access

When the period of the hearing session is completed, the PIN number provided to each individual with conference room area access for that hearing session will be canceled. If that individual later wishes to attend another hearing session and is identified by a participant as requiring conference room access, if approved by the Licensing Board (or its designee), upon clearing the security screening process he/she will be able to obtain an access card and a new PIN, which will be valid during that session.

V. Assignment and Use of Reserved Parking

A. Reserving Parking

As was noted in Section I.B above, reserved parking is available for a limited number of participant automobiles in a lot directly in front of the LVHF. Reserved parking spaces in this lot will be assigned as follows:

1. In conjunction with its request to participants to indicate whether they need conference room space for a particular hearing session, the Licensing Board (or its designee) will also direct that each participant indicate whether it is requesting reserved parking for the session and, if so, how many spaces.
2. A hearing participant that wishes to be provided reserved parking space for a particular hearing session must respond timely to this request to be considered for parking space assignments for the session. Requests for more than two spaces per participant are generally disfavored absent a detailed justification as to why additional spaces are needed.
3. Since it is presumed that one or more of those individuals listed as needing conference room access will be driving or a passenger in a vehicle for which a reserved parking space is requested, if a participant requests a reserved parking space but does not request conference room space, the parking space request must be accompanied by a list identifying those individuals who would be driving or a passenger in the vehicle (or vehicles) that would be parked at the LVHF.
4. The Licensing Board (or its designee) will review participant requests for reserved parking and provide the participant and security personnel at the LVHF for use during the hearing session with a determination regarding (1) the number of reserved spaces assigned to the participant; and (2) if conference room space is not requested, those individuals who are approved as drivers/passengers for participant vehicles using the assigned reserved space.

B. Accessing Reserved Parking

In each instance in which a participant vehicle seeks to enter the LVHF reserved parking lot to use a space assigned to that participant, an individual driving or riding in the vehicle must

be on the list of (1) those who have been approved for conference room access; or (2) if no conference room was requested, those approved as drivers/passengers for a participant vehicle assigned a reserved space. The following process must be used for accessing a reserved parking space:

1. The vehicle to be parked should stop in front of the gate across the entrance to the LVHF reserved parking area so that the driver can access the gate intercom system.
2. Using the intercom system, the driver should (1) identify himself/herself to security personnel as an individual who is either (i) approved for conference room access during the hearing session on behalf of a particular participant with approved reserved parking, or (ii) approved as a driver/passenger for a participant vehicle that would be parked in an approved reserved space; and (2) provide security personnel with the license plate number of the car.
3. Security personnel will check the lists of those who have been approved for conference space access or to drive a reserved parking space vehicle for a particular participant and, if the driver is listed, provide the driver with a reserved space number that the vehicle is to occupy during that day of the hearing session.
4. Once the reserved parking area entrance gate is raised, the driver should proceed to the assigned space and park in that space. If the assigned space is taken, the driver should park the vehicle in another non-handicapped open space and notify security personnel immediately that the assigned space is occupied.

Participants should be aware that only the number of vehicles that have been approved by the Licensing Board (or its designee) for that participant will be permitted to park in the reserved lot. If additional vehicles occupied by those representing a participant attempt to access the lot, they will be denied entry regardless of who is driving the vehicle.

Participant vehicles with authorization to use the reserved parking lot should not permit other vehicles to "tailgate" through the gated lot entrance when they are entering or leaving the parking lot and should notify security personnel immediately if tailgating by another vehicle occurs.

Parking a participant vehicle in the LVHF reserved park lot without an assigned spot or parking in a space other than the space assigned by security personnel may result in the participant having its reserved parking access revoked.

Overnight parking in the facility reserved parking lot by hearing participants is prohibited and may result in the participant having its reserved parking access revoked.

The reserved parking area is monitored by security cameras on a continuous basis.

C. Post-Hearing Session Status of Reserved Parking

A reserved parking space assignment lasts only for the duration of a hearing session. If a participant requires a parking space for another hearing session and timely identifies that need, if approved by the Licensing Board (or its designee) a new parking space assignment will be made that will be valid during that session.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Terms, Logistics, and Questions for Oral Argument), dated March 18, 2009, have been served upon the following persons by Electronic Information Exchange.

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ORDER (Terms, Logistics, and Questions for Oral Argument)

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