

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

Before Administrative Judges:

William J. Froehlich, Chairman
Thomas S. Moore
Dr. 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 20, 2009

MEMORANDUM AND ORDER
(Regarding Telephonic First Prehearing Conference)

On March 12, 2009 at 1:00 p.m. EDT, CAB-01 held the first prehearing conference pursuant to 10 C.F.R. § 2.1021 and 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). During this telephone conference, the Board discussed with counsel for the petitioners and parties the agenda set forth in the Board's order of March 4, 2009.¹ In addition, Nevada raised an issue with the apparent conflict between the due dates for new or amended contentions based upon any revisions or supplements to the DOE license application.² The Board issued a clarifying order on March 13, 2009.³ The Board also inquired of the NRC Staff whether they will be following the schedule set forth in Appendix D to 10 C.F.R. Part 2 and when it expects to issue the Safety Evaluation Report (SER).⁴ The NRC Staff indicated that it is "holding to the current schedule under Appendix D and awaiting guidance from the Commission regarding the budget environment for any changes to that schedule."⁵

In accordance with the suggestion of several counsel, the Board directs that, in the

¹ See [HLW] Memorandum and Order (Agenda for Telephonic First Prehearing Conference) (Mar. 4, 2009) at 2-3 (unpublished).

² See Tr. at 49-50.

³ See [HLW] Order (Clarifying CAB Case Management Order #1) (Mar. 13, 2009) (unpublished).

⁴ See Tr. at 26-27.

⁵ Tr. at 27.

period between the conclusion of oral argument on April 2nd and the issuance of the Board's order identifying parties' admitted contentions, the petitioners and parties consult and seek agreement upon a mutually agreeable process and schedule for the joining (i.e., grouping) and the consolidation of contentions. Similarly, during that same period, the petitioners and parties should consult and seek agreement on a draft joint proposed discovery schedule with a starting date commencing shortly after the expiration of the time for filing briefs in any appeals from the Licensing Boards' orders identifying the parties and admitted contentions. Within ten (10) days after the expiration of the time for filing appellate briefs, the petitioners and parties shall file with the Board a brief description of their proposed process and schedule for joining and consolidating contentions. In the unlikely event one or more petitioners and parties cannot agree upon such a proposed process and schedule, any differing views shall be filed within five (5) days of the majority filing. Similarly, within ten (10) days after the expiration of the time for filing appellate briefs, the parties and petitioners shall file with the Board their draft joint proposed discovery schedule. Again, in the unlikely event one or more petitioners or parties cannot agree upon such a discovery schedule, any differing views shall be filed within five (5) days of the majority filing. The filings of the parties and petitioners will form part of the foundation for future case management orders and, if necessary, case management conferences.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 20, 2009

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REGARDING TELEPHONIC FIRST PREHEARING CONFERENCE), dated March 20, 2009, have been served upon the following persons by Electronic Information Exchange.

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