

August 24, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High-Level Waste Repository))	ASLBP Nos. 09-876-HLW-CAB01
)	09-877-HLW-CAB02
)	09-878-HLW-CAB03
)	09-892-HLW-CAB04

COMMENT ON JOINT RESPONSE TO CAB'S JULY 21, 2009 ORDER

On July 21, 2009, Construction Authorization Board 04 ("the Board") issued an order¹ concerning serial case management in the above-captioned proceeding which requested that the parties caucus regarding six questions related to serial case management and, file a joint response to those six questions by August 17, 2009. The Order also afforded each party the opportunity to file any differing views within five days of the joint response. Following consultation amongst the parties, DOE filed a joint response.² Although the Staff joins in the majority opinion presented in the Joint Response, consistent with the Order permitting the filing of additional views, the Staff hereby submits a comment on one item in the response and identifies one typographical error.

First, in Spreadsheet #3 (Answer to Board Questions 4, 5, and 6), appended to the Joint Response, NCA-NEPA-001 is identified as relating to neither a safety issue nor any groundwater impact issue identified in the NRC Staff's September 5, 2008 Adoption

¹ "Order (Concerning Serial Case Management)," dated July 21, 2009 (Order).

² "Joint Response to July 21, 2009 Order (Concerning Serial Case Management)," dated August 17, 2009 (Joint Response).

Determination Report.³ It is the Staff's understanding that this accurately reflects the belief of the original proponents of the contention, the Native Community Action Council. However, the Staff believes that SER Volume 3 may contain information that is relevant to the contention, and, therefore, that it would be prudent to consider the expected completion date of Volume 3 when setting the schedule for NCA-NEPA-001.

In addition, the Staff notes NEV-SAFETY-196 is identified in Spreadsheet #1 (Answer to Board Question 1) as related to SER Volume 1, but in Spreadsheet #2 (Answer to Board Question 2) as related to SER Volume 4. Based on the parties' negotiations, the Staff believes that the listing of NEV-SAFETY-196 is accurate in Spreadsheet #1, and the reference to SER Volume 4 in Spreadsheet #2 is a typographical error.

Respectfully submitted,

/Signed (electronically) by/
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Dated at Rockville, Maryland
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³ "U.S. Nuclear Regulatory Commission Staff's Adoption Determination Report for the U.S. Department of Energy's Environmental Impact Statements for the Proposed Geological Repository at Yucca Mountain," dated September 5, 2008 (ADAMS Accession No. ML082420342).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "COMMENT ON JOINT RESPONSE TO CAB'S JULY 21, 2009 ORDER" in the above-captioned proceeding have been served on the following persons this 24th of August, 2009, by Electronic Information Exchange.

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