

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges:

ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell
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In the Matter of)	
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U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	September 10, 2009
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**RESPONSE OF THE STATE OF NEVADA
TO MEMORANDUM AND ORDER DATED AUGUST 25, 2009
(CONCERNING FURTHER PREHEARING CONFERENCE)**

On August 25, 2009, Construction Authorization Board-04 ("Board") issued a Memorandum and Order concerning the prehearing conference scheduled for September 14-15, 2009 ("Memorandum and Order"). The Memorandum and Order directed the parties in this proceeding to consult and seek agreement on responses to 23 questions and to file a very brief summary where their answers are in agreement on or before September 10, 2009. This Response was prepared by the State of Nevada and incorporates input from most of the other Parties to this proceeding (hereinafter referred to as the Joining Parties); however, each Party reserves the right

to file separate responses on issues on which they differ or to address the Board on these matters at the scheduled hearing.

- 1. In light of the NRC Staff's plans to issue the SER serially and associated scheduling uncertainties, will it be appropriate to proceed with adjudication of contentions on multiple tracks: that is, for the parties to conduct discovery on certain related groups of contentions while simultaneously participating in hearings on other related groups of contentions that are ready for adjudication?**

The Joining Parties acknowledge that many of the environmental contentions are now ripe for discovery and in some instances may be ready for adjudication without discovery. In addition, the Joining Parties acknowledge that, for the reasons set forth below, discovery for safety contentions associated with SER Volumes 1 and 3 could begin now. Furthermore, the Joining Parties believe that at least the legal contentions associated with SER Volumes 1 and 3 could be briefed for resolution by the Board early next year. Any residual factual and opinion issues associated with those legal contentions would then be ripe for discovery. If such an approach is followed, the adjudication of these contentions would proceed on multiple tracks and would result in discovery for some safety contentions while simultaneously hearings on many environmental contentions were ongoing.

In a separate pleading that may be filed by DOE on Friday, September 11, 2009, with some of the Parties supporting and other Parties not supporting, a schedule regarding the briefing of legal contentions will be offered to the Board for consideration. Regardless of whether such a filing is made or which Parties concur in the filing, counsel for all Parties will be available during the hearing scheduled for September 14-15, 2009 to discuss a schedule for identifying the legal contentions and their underlying legal questions, and any other associated logistical and procedural issues. Accordingly, the remainder of the responses to the Board's questions

addresses the nature and timing of discovery and hearings for safety, miscellaneous and environmental contentions.

All Joining Parties agree that discovery for any contention (safety, miscellaneous, or environmental) that is associated in any manner with SER Volumes 1 and 3 could begin now, with discovery occurring over the next year. 10 C.F.R. Part 2 clearly anticipates that discovery on all contentions will commence shortly after the issuance of the First Prehearing Conference Order (which occurred on May 11, 2009) even though the NRC Staff's SER was not scheduled to be issued for over 11 months (using the times identified in Appendix D to Part 2, the SER was to be issued in April 2010). In light of the NRC Staff's new plan to serially issue the SER, with Volume 1 to be issued in March 2010 and Volume 3 to be issued in September 2010, it appears reasonable to begin discovery on contentions associated with SER Volumes 1 and 3 in October 2009, expand it to include discovery against the NRC Staff when the respective SER Volume is issued, and then close discovery two months after SER Volume 3 is issued, or circa November 2010. (The schedule in Appendix D would close discovery 2 months after the NRC Staff was scheduled to issue its SER.) The 13-month discovery window is needed to allow ample time to conduct discovery on the more than half of the contentions in this proceeding that address the most complex issues involving DOE's License Application (namely, post-closure issues) whose resolution will likely be dispositive of the project. Hearings would begin approximately 4 months after the close of discovery (*see* 10 C.F.R. Part 2, App. D), circa March 2011, and last approximately 3 months (ending circa June 2011) or as long as the Board deems appropriate given the number of issues involved and their complexity. Findings of fact and conclusions of law would be filed 30-45 days after the hearing ends.

All Joining Parties also agree that discovery for any contention (safety, miscellaneous or environmental) that is associated with SER Volumes 2, 4 and 5 would begin immediately after the findings of fact are submitted following the close of the hearing on contentions associated with SER Volumes 1 and 3. Included within this second group of safety contentions to be adjudicated would be:

- all the contentions associated with SER Volume 2 (*i.e.*, 23 contentions using the response of the State of Nevada to the Board's Order of July, 2009, or 41 contentions using the DOE response);
- all the contentions associated with SER Volume 4 (*i.e.*, 22 contentions using the response of the State of Nevada to the Board's Order of July 19, 2009, or 28 contentions using the DOE response); and
- the single contention associated with SER Volume 5 (*i.e.*, NEV-MISC-003).

If the schedule set forth above with regard to contentions associated with SER Volumes 1 and 3 were to be maintained, this means that discovery for contentions associated with SER Volumes 2, 4 and 5 would begin in August 2011 (*i.e.*, following the submittal of findings of fact after the hearing on post-closure issues). Since the complexity of the pre-closure safety issues is not as demanding as the post-closure issues, the Joining Parties recommend a 6-month discovery window that would close in January 2012. The Joining Parties further propose that 2 months be allowed to prepare for hearing and that a 2-month hearing begin in April and end in June 2012. Findings of fact would be submitted 30-45 days later in July 2012.

The Parties were unable to reach agreement on when to conduct discovery and schedule a hearing for those environmental contentions that are not associated with any SER volume (*i.e.*,

"pure" environmental contentions). For reasons that will be articulated in greater detail at the upcoming hearing, three options have been suggested:

- OPTION 1: Commence discovery for pure environmental contentions now (*i.e.*, at the same time discovery begins for the post-closure issues involving SER Volumes 1 and 3), and complete discovery and conduct a hearing sometime in the middle of 2010. For those environmental contentions affected by DOE's recent decision not to prepare a Supplemental Environmental Impact Statement, completion of discovery against NRC and commencement of the hearing may need to be postponed. This option is supported by Four Counties, Nye County, Lincoln County, and White Pine County.
- OPTION 2: Commence discovery and conduct a hearing for pure environmental contentions as part of the discovery process and hearing schedule identified above for pre-closure issues involving SER Volumes 2, 4 and 5. In the anticipation that there may be circumstances in which discovery in advance of this proposed schedule may be essential to preserve evidence, the Board should authorize depositions to preserve testimony on a proper showing. Within 40 days of the NRC Staff's decision on how it will respond to DOE's recent decision not to prepare a Supplemental Environmental Impact Statement to address groundwater issues, a schedule for the litigation of any related (or new) environmental contentions would be proffered; however, it is anticipated that the adjudication will be consistent with the discovery process and hearing schedule for contentions associated with SER Volumes 1 and 3. This option is supported by DOE, the State of Nevada, the State of California, Clark County, JTS, NCAC, and County of Inyo.
- OPTION 2A: The NRC Staff intends to propose an additional option in a separate filing.

The Nuclear Energy Institute may be filing separately to express its views on these options.

2. It appears that most or all parties wish to conduct some form of further discovery before adjudication of any factual NEPA contentions. Specifically, what discovery will be required and how long should it take?

The Joining Parties agree that discovery is required before the adjudication of some of the NEPA contentions. The Joining Parties anticipate that discovery will take the form of deposition testimony of both factual and expert witnesses, preceded by the production of documents pursuant to 10 C.F.R. §§ 2.1018 and 2.1019, as well as responses to requests for admission. As discussed in the response to Question 1 above, for those NEPA contentions associated with SER Volumes 1 and 3, discovery would begin in October 2009 and complete in November 2010, and for those NEPA contentions associated with SER Volumes 2, 4 and 5, discovery would begin in August 2011 and complete in January 2012. Note, however, that the timing of discovery for NEPA contentions that are not associated with any SER volume would depend on how the Board resolves the Parties' differences regarding pure environmental contentions presented in the three options articulated in the response to Question 1 above.

3. Given the parties' apparent belief that further discovery is necessary before any factual contention can be adjudicated, what is the earliest date on which the parties agree that at least some factual contentions can be ready for adjudication?

The original schedule for this proceeding set forth in 10 C.F.R. Part 2, App. D anticipated that a period of approximately 4 months would be needed between the times that discovery completes and the hearing begins. Based upon the responses provided to Questions 1 and 2 above, the Joining Parties believe that a hearing on contentions associated with SER Volumes 1 and 3 could begin in March 2011. The hearing on contentions associated with SER Volumes 2, 4 and 5 could begin in April 2012. The timing of the hearing on pure environmental contentions

would depend on how the Board resolves the Parties' differences presented in the three options articulated in the response to Question 1 above.

4. In light of the NRC Staff's plans to issue the SER serially and associated scheduling uncertainties, should limits on the total number of depositions be imposed by a Case Management Order at this time?

The Parties originally proposed limiting the number of depositions in this proceeding in two manners. First, any witness (expert or other) produced by any party would be produced only once. *See* Joint Proposed Discovery Schedule at 11. A modification to this proposal is addressed in greater detail in the responses to Questions 8 and 9 below. Second, for "Other Witnesses" (*i.e.*, those witnesses (expert or other) that were not identified initially by a party as "Party Witnesses" offering testimony in support of or in response to the claims set forth in each contention) the Parties conditionally proposed to limit the number of witnesses, which would have the effect of limiting the number of depositions. Specifically, it was proposed that all parties in this proceeding would be limited to 5 such witnesses with the exceptions that the State of Nevada and DOE would be limited to 20 such witnesses (*id.*, at 6) and the NRC Staff would be limited only by 10 C.F.R. § 2.790 (*id.* at 6-7).

The witness limitations presented in the Joint Proposed Discovery Schedule were proposed conditionally because the Parties also proposed that FRCP 30(b)(6) depositions be permitted in this proceeding. *Id.* at 17. The Board has decided not to allow such "subject matter depositions ... [u]nless the parties consent." Memorandum and Order at 3.

Therefore, the Joining Parties hereby withdraw the proposed limits on the number of "Other Witnesses" and the associated limit on the number of depositions. DOE and the State of California do not agree with this change in position for reasons that will be articulated in a separate pleading or at the hearing. Thus, in short, the response to the question asked is no –

limits on the total number of depositions should not be imposed by the Board in a Case Management Order at this time. Such an approach appears consistent with this Board's general philosophy governing discovery, which "expects that counsel will continue to conduct themselves professionally throughout this proceeding, and refrain from inappropriate behavior" Memorandum and Order at 3. Such an approach is also consistent with 10 C.F.R. § 2.1019, which does not limit depositions, particularly in a proceeding of this magnitude.

5. If so, what should such limits be?

As discussed in the response to Question 4 above, the Joining Parties are not suggesting any limits on the total number of depositions in this proceeding at this time.

6. Given that discovery will now likely take place over several years, rather than in less than one year, are the limitations in the Joint Proposed Discovery Schedule on the timing of depositions (e.g., no more than three depositions per week, at least one "off-week" per month) now acceptable to all parties?

The Parties first proposed limits on the timing of depositions in the Proposed Joint Discovery Schedule (at 10-12) specifically because the entire discovery process for all contentions had to be completed in one year and absent any limitations counsel for the Parties would have to devote substantially all of their time to nothing but depositions in this proceeding. Although the time for the adjudication of some of the contentions has been extended based upon the recent NRC Staff decision to issue the SER serially (and beyond the time specified in 10 C.F.R. Part 2, App. D), the fact remains that discovery for the vast majority of the safety contentions (*i.e.*, those dealing with post-closure issues and associated with SER Volume 3) will occur within the next year as discussed in the response to Question 1 above. Therefore, the Joining Parties continue to believe that the limitations on the timing of depositions presented in the Proposed Joint Discovery Schedule are still warranted with one exception – presenting a

witness only once for a deposition (see the discussion in the responses to Questions 8 and 9 below).

7. If not, what limits do the parties now propose?

As discussed in the response to Question 6 above, the Joining Parties continue to believe that the limits on the timing of depositions articulated in the Proposed Joint Discovery Schedule are still warranted with one exception – presenting a witness only once for a deposition as discussed in the responses to Questions 8 and 9 below. The Joining Parties also agreed that in no case should two or more witnesses for the same party be deposed at the same time.

8. In light of the NRC Staff's plans to issue the SER serially and associated scheduling uncertainties, would it still be reasonable for the Case Management Order to specify that each witness shall be presented for deposition only once?

The Parties initially proposed that witnesses be presented for deposition only once in light of the fact that discovery for all contentions had to be completed within a period of approximately one year. *See* Joint Proposed Discovery Schedule at 10-12. The NRC Staff recently announced that it will issue the SER serially. If a witness is required to present, for example, testimony on post-closure contentions associated with SER Volume 3 as well as testimony on pre-closure contentions associated with SER Volume 2, then a single-deposition limitation may result in the witness' testimony "going stale" if all the matters addressed in the deposition are not fully adjudicated until some significant time later. Accordingly, the Joining Parties hereby withdraw their request to limit a witness to a single deposition if that witness is required to provide testimony on contentions associated with SER Volumes 1 and 3 and on contentions associated with SER Volumes 2, 4 and 5. The same scenario could exist if a witness testifies on environmental contentions related to a particular SER volume and "pure" environmental contentions. In those situations, a second deposition of the same witness could

occur; however, questioning in the second deposition could not revisit subject matter on which the witness was already deposed absent a showing of new information.

- 9. Rather, in negotiating a deposition schedule, should the parties accord a high priority to avoiding multiple depositions of the same witness, while recognizing that some witnesses may have to be deposed more than once if their testimony pertains to more than one group of contentions set for hearing?**

The Joining Parties agree with the Board's characterization of the process associated with scheduling depositions of witnesses whose testimony pertains to more than one group of contentions as noted in the response to Question 8 above.

- 10. If not, what guidance regarding multiple depositions of the same witness should be included in a Case Management Order?**

The Joining Parties agree with the guidance from the Board regarding multiple depositions of the same witness as articulated in Question 9 above and in the response to Question 8 above; and therefore, the Joining Parties are not suggesting any other guidance be included in a Case Management Order.

- 11. Consistent with 10 C.F.R. § 2.1018(a)(1)(vi), the Joint Proposed Discovery Schedule provides that the parties' identification of an expert witness should include, at a minimum, the "subject matter" and contentions that the expert will address. In contrast, Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure requires a more detailed explanation of an expert's proposed testimony, including "a complete statement of all opinions the witness will express and the basis and reasons for them," as well as specification of the "data or other information considered by the witness in forming them." Would depositions be more useful and efficient if the parties were to agree upon a disclosure similar to Rule 26(a)(2)(B) requirements for expert witnesses in this proceeding?**

As the Board is aware, for each contention submitted in this proceeding the Intervenors' expert witnesses have set forth in detail their opinions and the basis and reasons for them, and have identified with specificity the specific documents and other data or information upon which the expert relied in forming their opinions. Providing an "expert report" of the type contemplated in FRCP 26(a)(2)(B) is therefore not necessary, would be duplicative of that

information which has already been provided, and thus would result in an unnecessary expenditure of the Intervenor's resources and the witnesses' time. Expert reports are generally required in federal litigation specifically because the complaint does not contain the type of detail present in the intervention petitions filed by the Parties in this proceeding.

The NRC Staff believes that the opinions contained in its SER and DOE's Safety Analysis Report ("SAR") are sufficient, and therefore NRC Staff does not believe that expert reports are needed. DOE believes that requiring expert reports is an enormous effort that could not be done until the end of discovery in any event. NRC Staff and DOE may be filing a separate statement to further articulate their positions with regard to expert reports.

The Joining Intervenor's do not believe that mere reliance on what was presented in the License Application and the SAR or the SER is an effective substitute for the opinions of an expert directed at specific contentions because the supporting opinions of the Joining Intervenor's experts are often more focused and precise than what is contained in DOE's License Application and SAR, and there is no way of knowing, in advance, whether the NRC Staff's SER will provide sufficient focus and detail. In addition, the Joining Intervenor's believe that, if required by the Board, some sort of expert report can be provided at the outset of discovery with a minimum degree of effort.

Accordingly, the Joining Intervenor's are willing to provide more detail than merely an identification of the subject matter and contentions on which their experts will offer testimony as discussed in the responses to Questions 12 and 13 below. Any such information, however, should be provided by all Parties to this proceeding, including DOE and the NRC Staff.

12. Can the parties agree upon voluntary disclosure of the proposed content of expert witness testimony, similar to that required by Rule 26(a)(2)(B)?

For each expert witness that each Joining Intervenor will use in this proceeding to provide testimony at a hearing on one or more of the admitted contentions then subject to discovery (*e.g.*, the post-closure contentions in the first year), the Joining Intervenors are willing to voluntarily provide a statement by their expert witnesses that discloses the following information:

- (a) the experts' opinions to be rendered in this proceeding and the basis or reasons for those opinions, which in part or whole can incorporate by reference statements made in specific contentions;
- (b) the documents, data or information to be relied upon by the experts in forming their opinions, which in part or whole can incorporate by reference specific documents, data or other information cited in specific contentions; and
- (c) an update to the foregoing (if appropriate or necessary) to address any new or different information that has come to light since the Intervenors' experts filed their affidavits in support of the Parties' contentions, which could include but not necessarily be limited to requests for additional information ("RAIs") issued by the NRC Staff to DOE and DOE's responses to those RAIs, again any such new or different information can be incorporated by reference in part or whole.

Such statements may appear on a single sheet of paper in the form of cross-references. The Joining Intervenors are willing to voluntarily provide those statements within 30 days of the identification of their expert witnesses then subject to discovery, conditioned of course on a Board decision agreeing to serial discovery. The Joining Intervenors again note, however, that production of the foregoing information, and the schedule for production, is specifically conditioned upon a requirement from the Board that DOE and the NRC Staff produce (on the same schedule) similar documents with similar disclosures, which can in part or whole reference statements, documents, data or other information identified in the SAR or the SER, respectively. DOE and the NRC Staff will be filing a separate pleading to address their position in this regard.

- 13. If not, is there any such disclosure – more specific than expected "subject matter" and "contentions" – upon which the parties can agree?**

See the response to Question 12 above.

- 14. It appears that Intervenors would like to depose all the Applicant's witnesses before depositions of any of their own witnesses, and that the Applicant would like to depose all the Intervenors' witnesses before depositions of any of the Applicant's witnesses. In light of the NRC Staff's plans to issue the SER serially and associated scheduling uncertainties, can the parties now agree upon a plan for sequencing depositions?**

The Intervenors requested the opportunity to examine DOE's witnesses before DOE examines the Intervenors' witnesses for the principal reason that, to date, DOE has not identified expert witnesses and DOE has not presented expert opinions (or cited documents, data and information upon which those opinions would be based) with regard to any of the admitted contentions. *See* Joint Proposed Discovery Schedule at 3 and 12-13. To the degree that DOE is willing to provide the Joining Intervenors with the information identified in the response to Question 12 above, the Joining Intervenors are willing to discuss the sequencing of depositions in a manner other than originally proposed. In that regard, the Joining Parties are aware that 10 C.F.R. § 2.1018(d) specifies that "discovery may be used in any sequence," however, unless and until DOE provides at least some indication of what its experts' opinions will be, Joining Intervenors' experts will likely caveat their opinions to permit their supplementation after DOE makes its disclosures.

- 15. Would voluntary disclosure of more detailed information concerning proposed expert witness testimony, of the sort described above, assist the parties in agreeing upon the sequence of depositions?**

See the response to Question 14 above.

- 16. In light of the NRC Staff's plans to issue the SER serially and associated scheduling uncertainties, should limits on the total number of requests for admissions be imposed by a Case Management Order at this time?**

The Joining Parties continue to believe that limits should be placed on the total number of requests for admission by Case Management Order consistent with those proposed previously.

See Joint Proposed Discovery Schedule at 17.

- 17. If so, what should such limits be?**

See the response to Question 16 above.

- 18. Applicable regulations expressly contemplate "[i]nformal requests for information" and specify that the Board should authorize formal interrogatories or depositions upon written questions only "in the event that the parties are unable, after informal good faith efforts, to resolve a dispute in a timely fashion concerning the production of information." The Board does not wish to decide numerous motions for permission to obtain information that should have been made available voluntarily. Is any mechanism required to discourage the need to resort to such motions.**

To date the Joining Parties are generally satisfied that information that should be produced informally has been produced when requested and in a timely fashion. For example, where the LSN identifies documents by bibliographic header only or when a reference to undisclosed data appears within a disclosed document, a request has been made for the full document or data, and the information has been produced. The Joining Parties believe that similar good faith requests for the production of information will be made in the future and timely production will occur. Accordingly, unless circumstances prove different the Joining Parties do not anticipate filing motions with the Board for formal interrogatories or depositions upon written questions even though such form of discovery is permitted under 10 C.F.R. § 2.1018(a)(2). Given this regulatory prohibition on written interrogatories without leave of the Board and the Joining Parties commitment to good faith negotiations regarding informal requests for information, the number of motions for interrogatories, if any, should be small. The Joint

Proposed Discovery Schedule (at 20) merely reiterated the requirements contained in Section 2.1018(a)(2) and asked that requests for interrogatories be heard by a Discovery Master.

Therefore, the Joining Parties believe that no other mechanism need be articulated to discourage the need to resort to such motions.

19. Is so, what should the mechanism be?

See the response to Question 18 above.

20. In light of the NRC Staff's plans to issue the SER serially and associated scheduling uncertainties, are there provisions in the Joint Proposed Discovery Schedule (other than provisions referenced above) that one or more parties previously supported but no longer support?

Contrary to the request in the Joint Proposed Discovery Schedule (at 2), but consistent with the responses to Questions 1 and 2 above, the Joining Parties now request that discovery commence for contentions associated with SER Volumes 1 and 3 as soon as possible and in any event no later than October 1, 2009. The Joining Parties further request that discovery commence for contentions associated with SER Volumes 2, 4, and 5 on August 1, 2011.

Discovery would commence for pure environmental contentions depending on how the Board resolves the Parties' disagreements as presented in the three options articulated at the end of the response to Question 1 above.

The Joint Proposed Discovery Schedule (at 4 and 5) stated that the Parties would identify their expert and other witnesses that will provide hearing testimony within 10 days of the start of discovery as specified in the Case Management Order, and any other witnesses they intend to depose within 30 days of the start of discovery. Since the NRC Staff has decided to issue the SER serial and consistent with the responses to Questions 1 and 2 above, the Joining Parties now request that all Parties to this proceeding (with the exception of the NRC Staff) identify (a) the witnesses that will offer testimony at the hearing in support or defense of the contentions then

being adjudicated within 10 days of the date when discovery commences for those contentions then being adjudicated, and (b) witnesses other than its own witnesses, third party witnesses and known opposing witnesses whose deposition will be taken for those contentions then being adjudicated within 30 days of the date when discovery commences for those contentions then being adjudicated. In other words, the timing for the identification of witnesses is tied to the particular contentions then being adjudicated (*i.e.*, contentions associated with SER Volumes 1 and 3, contentions associated with SER Volumes 2, 4 and 5, and pure environmental contentions).

There are no other provisions in the Joint Proposed Discovery Schedule that need to be revised based upon either the NRC Staff's plans to serially issue the SER or the responses to the questions posed by the Board in its Memorandum and Order of August 25, 2009.

21. If so, what are such provisions?

See the response to Question 20 above.

22. In light of the NRC Staff's plans to issue the SER serially and associated scheduling uncertainties, are there additional provisions (not suggested above) that the parties wish to propose for inclusion in a Case Management Order?

The Joining Parties have prepared the following table to help the Board visualize the responses to Questions 1, 2 and 3 above. The inclusion of information similar to that which is presented in this table may be useful in a Case Management Order.

	SER Issuance	Start of Discovery	End of Discovery	Start of Hearing	End of Hearing	Findings of Fact	CAB Decision
SER Vol. 3	Sept. 2010	10/1/2009	11/30/2010	2/21/2011	6/3/2011	30-45 days @ hearing ends	Oct. 2011
SER Vol. 1	March 2010	Same as Vol. 3	Same as Vol. 3	Same as Vol. 3	Same as Vol. 3	Same as Vol. 3	Same as Vol. 3
SER Vol. 2	Oct. 2011	8/1/2011 or 10 days @ findings of fact for hearing on SER Vol. 3	1/31/2012 or 6 months after discovery starts	4/2/2012 or 2 months after discovery ends	6/1/2012 or 2 months after hearing starts	30-45 days after hearing ends	Sept. 2012
SER Vol. 4	Dec. 2010	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2
SER Vol. 5	Feb. 2012	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2	Same as Vol. 2
Pure NEPA Issues	n/a	TBD	TBD	TBD	TBD	TBD	TBD
Legal Contentions	Various	TBD	TBD	TBD	TBD	TBD	TBD

23. If so, what are such provisions?

See the response to Question 22 above.

Respectfully submitted,

(signed electronically)

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Dated: September 10, 2009

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	September 10, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response of the State of Nevada to Memorandum and Order Dated August 25, 2009 (Concerning Further Prehearing Conference) has been served upon the following persons by the Electronic Information Exchange:

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