

HLWYM PEmails

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Sent: Friday, May 22, 2009 1:42 PM
To: NMSS Distribution
Subject: ASLB Adjudicatory Proceeding for Yucca Mt. Repository
Attachments: ASLB Decision Quick Summary.doc

**Attached for your information and review is the Summary of:
May 11, 2009 Memorandum and Order from the
Atomic Safety and Licensing Boards for the:**

Adjudicatory Proceeding for the Yucca Mountain High-Level Waste Repository

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**Summary of May 11, 2009 Memorandum and Order from the
Atomic Safety and Licensing Boards for the
Adjudicatory Proceeding for the Yucca Mountain High-Level Waste Repository**

Background

On October 22, 2008, the Commission published a Notice of Hearing in the Federal Register, which began the adjudicatory hearing process for Yucca Mountain.

To participate as a party in the Yucca Mountain hearing process, potential participants must demonstrate “standing,” have at least one admissible contention, and demonstrate compliance with document access requirements.

To demonstrate standing, a petitioner has to show that they have an interest that will be affected by the proposed licensing action, and that it could be harmed by the outcome of the proceeding. An admissible contention is a specific concern or issue material to the licensing of Yucca Mountain that the potential party seeks to bring to the Atomic Safety and Licensing Board (ASLB) for litigation in the proceeding. A contention usually alleges that the applicant has failed to satisfy some legal or technical regulatory requirement. The NRC staff and the applicant (DOE) are automatically granted party status in this proceeding.

The Notice of Hearing gave potential participants 60 days to file petitions before the ASLB to participate as a party (or as an interested governmental participant), and to submit contentions related to the Yucca Mountain license application, or the NRC staff’s adoption of DOE’s Environmental Impact Statement (EIS) for Yucca Mountain. The deadline for the submission of petitions was December 22, 2008.

Petitions for Leave to Intervene and Contentions

The ASLB received 319 contentions from 12 different petitioners (subsequent filings reduced the number of contentions to 317). Among the 317 contentions filed, 239 were related to DOE’s license application for the proposed repository, and 78 concerned DOE’s EIS, including impacts of transportation of waste to the repository site.

To consider the admissibility of contentions, the ASLB established three separate boards, each consisting of three judges. On May 11, 2009, the three boards issued a Memorandum and Order, addressing the standing of parties and admissibility of contentions.

Standing

Of the parties filing to intervene, eight were granted standing: States of Nevada and California; Counties of Clark (NV), Nye (NV), White Pine (NV), and Inyo (CA); a joint group of four Nevada Counties (Churchill, Esmeralda, Lander and Mineral); and the Nuclear Energy Institute. Standing for two petitioners, the Native Community Action Council, and a joint group representing the Timbisha Shoshone Tribe, were also found to have standing, but were denied party status because they failed to demonstrate compliance with LSN requirements. Once they demonstrate compliance with LSN requirements they will be granted party status. Standing for one petitioner, Caliente Hot Springs Resort, was denied outright. Two Nevada Counties, Eureka and Lincoln, were granted participation as interested governmental participants.

Admitted Contentions

The Board admitted 299 contentions. Among the admitted contentions, 229 contentions concerned DOE's license application for the proposed repository, and 70 contentions are directed to DOE's EIS, including transportation issues.

Next Steps

In accord with 10 CFR 2.1015(b), any of the parties, including NRC and DOE, may appeal the Boards' decision to the Commission. Any appeal must be filed no later than May 21, 10 days after service of the Order. Briefs in opposition to any appeal filed are due 10 days after that, June 1.

The Commission is expected to issue a ruling on appeals approximately 50 days after the date of the Boards' order.