

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

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

December 9, 2009

MEMORANDUM AND ORDER
(Addressing Contentions Filed After Initial Petitions)

On May 11, 2009, the Construction Authorization Boards (CABs or Boards) issued a ruling on the twelve timely-filed intervention petitions in the above-captioned proceeding.¹ On June 30, 2009, the Commission largely affirmed the Boards' ruling,² and on August 27, 2009, CAB-04 admitted two additional parties that had demonstrated subsequent compliance with the licensing support network (LSN) requirements.³ To date, ten petitioners have been admitted as parties to this proceeding, with 296 admitted contentions among them. The instant order sets forth CAB-04's rulings on the admissibility of six additional contentions that were filed subsequent to the original petitions.

¹ U.S. Dep't of Energy (High-Level Waste Repository), LBP-09-06, 69 NRC 367 (2009).

² U.S. Dep't of Energy (High-Level Waste Repository), CLI-09-14, 69 NRC __ (June 30, 2009).

³ CAB Order (Granting Party Status to the Native Community Action Council) (Aug. 27, 2009) (unpublished); CAB Order (Granting Party Status to the Joint Timbisha Shoshone Tribal Group) (Aug. 27, 2009) (unpublished).

Two of these contentions (NEV-SAFETY-202 and -203) were filed in response to the NRC's final rule implementing the Environmental Protection Agency's (EPA) revised dose standard after 10,000 years.⁴ Both contentions allege that DOE improperly excluded certain features, events, and processes (FEPs) from its post-10,000 analysis – namely, climate change and land-surface erosion. NEV-SAFETY-203, although styled as a contention, is actually a petition for waiver of an NRC rule, and is addressed in Part II of this order.

Three contentions (NEV-SAFETY-204 and -205 and CLK-SAFETY-013) were filed in response to DOE's February 19, 2009 updates and supplements to the initial application.⁵ All of these contentions allege problems related to DOE's Probabilistic Volcanic Hazard Analysis – Update (PVHA-U). Because CLK-SAFETY-013 is functionally equivalent to NEV-SAFETY-205, the two contentions are treated together.

Finally, Nevada filed one contention (NEV-SAFETY-206) in response to two documents made available on July 31, 2009 as part of DOE's LSN document collection supplementation.⁶ This contention alleges that DOE's application inadequately addresses generalized corrosion of Alloy-22 because it relies on flawed experimental data. In accordance with CAB Case

⁴ Implementation of a Dose Standard After 10,000 Years, 74 Fed. Reg. 10,811 (Mar. 13, 2009). See Department of Energy (High Level Waste Repository); Notice of Hearing and Opportunity To Petition for Leave To Intervene, 73 Fed. Reg. 63,029, 63,032 (Oct. 22, 2008) (stating that such contentions “will be deemed timely for admissibility purposes if filed within sixty days after the Federal Register publication of the NRC rules implementing the new EPA standards”).

⁵ Letter from William J. Boyle, Director, Regulatory Affairs Division, DOE Office of Technical Management, to NRC Document Control Desk (Feb. 19, 2009) (ADAMS Accession No. ML090700812). See CAB Order (Clarifying CAB Case Management Order #1) (March 13, 2009) at 2 (unpublished) (stating that “new or amended contentions arising from DOE's February 19, 2009 updates and supplements to DOE's initial application for construction authorization shall be deemed timely if filed within 30 days from the date of the CABs' initial order identifying the parties and admitted contentions”).

⁶ Condition Report Record Report for Unexpected Test Results – Residue on Subset of Alloy 22 Coupons (June 1, 2009) (LSN# DEN001614752); Condition Report Record Report for Unexpected Test Results – Heterogeneous Alloy 22 Oxide Thickness (June 26, 2009) (LSN# DEN001614731).

Management Order #1, NEV-SAFETY-206 was submitted as an attachment to a motion for leave to file a new contention based on newly available information.

We turn now to the admissibility of the proffered contentions. Because the contention admissibility criteria are fully addressed in the CAB's earlier decision,⁷ there is no need to repeat that discussion here.

I. Rulings on Contentions

A. NEV-SAFETY-202

NEV-SAFETY-202 asserts that "climate-change processes included as FEPs in the TSPA [total system performance assessment] for the first 10,000 years are neither carried forward for the next 990,000 years, as the rule requires, nor represented by NRC's specified deep percolation rate for that subsequent period."⁸ According to Nevada, 10 C.F.R. § 63.342(c) should be construed so that climate change processes included as FEPs for the first 10,000 year period are carried forward for the post-10,000 year performance assessment, and not represented by the deep percolation flux that applies only to climate change FEPs excluded for the pre-10,000 year period.⁹ In addition, Nevada faults DOE for neglecting to include the deep percolation rates established in the NRC's final rule, which are different from the rates set forth in the proposed rule.¹⁰ Finally, Nevada, in effect, requests that the Board consider its contention as a rule waiver petition and certify it to the Commission pursuant to 10 C.F.R. § 2.335(d),

⁷ Dep't of Energy, LBP-09-06, 69 NRC at 389-91.

⁸ State of Nevada's New Contentions Based on Final NRC Rule (May 12, 2009) at 2 [hereinafter Final Rule Contentions].

⁹ Id. at 2-3; Reply of the State of Nevada to NRC Staff's Answer to NEV-SAFETY 202 and 203 (July 3, 2009) at 3-4 [hereinafter Nevada Reply to NRC Staff Answer to Final Rule Contentions].

¹⁰ Final Rule Contentions at 5.

should we construe section 63.342(c) to exclude climate change FEPs from the post-10,000 year assessment.¹¹

DOE objects to the admission of NEV-SAFETY-202 on several grounds. First, DOE argues that the contention should be dismissed as untimely, because Nevada chose to proffer NEV-SAFETY-202 as a “new” contention, rather than an “amended” contention, as the notice of hearing requires under its “narrow exception to the late-filing rules.”¹² Second, DOE disputes Nevada’s interpretation of 10 C.F.R. § 63.342(c), insisting that the rule allows all climate change FEPs for the post-10,000 year TSPA to be limited to the analysis of a constant-in-time deep percolation rate regardless of the climate change FEPs evaluated for the first 10,000 year closure period.¹³ Finally, DOE challenges Nevada’s request for a rule waiver, arguing that Nevada fails to satisfy the “special circumstances” requirement of section 2.335(b).¹⁴

The NRC Staff also objects to the admission of NEV-SAFETY-202, with one narrow exception. The Staff “does not oppose admission of NEV-SAFETY-202 insofar as it alleges that ‘DOE’s TSPA fails to include the deep percolation in NRC’s final rule, which is different from the one NRC proposed.’”¹⁵

DOE’s timeliness objection is easily dispatched because it is footed upon a crabbed interpretation of the Commission’s hearing notice. Contrary to DOE’s argument, a reasonable reading of the hearing notice provides for the proffering of new, as well as amended, contentions based upon the NRC’s final implementing regulations of the EPA’s standards for

¹¹ Id. at 2.

¹² U.S. Department of Energy’s Answer to State of Nevada’s New Contentions Based on Final NRC Rule (July 2, 2009) at 3-5 [hereinafter DOE Answer to Final Rule Contentions].

¹³ Id. at 8-9.

¹⁴ Id. at 14-20.

¹⁵ NRC Staff Answer to State of Nevada’s New Contentions Based on Final NRC Rule (June 11, 2009) at 6 [hereinafter NRC Staff Answer to Final Rule Contentions].

post-10,000 year repository performance. Although, as DOE argues, the text of the notice only explicitly mentions amended contentions,¹⁶ DOE's argument ignores the language of the Commission's accompanying footnote that leaves no reasonable doubt that new contentions may also be filed.¹⁷ Accordingly, NEV-SAFETY-202 satisfies the criteria for non-timely filings because it was filed within 60 days after publication of the final rule in the Federal Register, as the Commission specified.¹⁸

Regarding the contention itself, as presaged in our October 23, 2009 order, we admit NEV-SAFETY-202 solely as a legal issue contention.¹⁹ As the Commission has confirmed,²⁰ a legal issue contention need not satisfy all the contention admissibility criteria of 10 C.F.R. § 2.309(f)(1). For example, such a contention is not required to provide "facts or expert opinions," as called for in section 2.309(f)(1)(v). Here, NEV-SAFETY-202 clearly satisfies all appropriate criteria for a legal issue contention. Neither DOE nor the NRC Staff disputes that

¹⁶ 73 Fed. Reg. at 63,032.

¹⁷ Id. at 63,032 n.5. In that footnote, the Commission explained that it was dispensing with all but the good cause factor of the section 2.309(c)(2) criteria for late-filed contentions using, inter alia, the words "late-filed (or amended) contentions." Id. If, as argued by DOE, the Commission meant to limit the reach of the hearing notice provision solely to amended contentions, its use of the above-quoted language would, at a minimum, be redundant, if not totally nonsensical. Without any limiting qualification regarding only amended contentions, the Commission further stated that:

It is obvious even now that promptly-filed and well-pled contentions based on new, previously unavailable NRC rules – rules that will govern important aspects of NRC's safety review – must be admitted for hearing. There plainly would be "good cause" for filing such contentions late, and no conceivable justification for rejecting them at the threshold.

Id.

¹⁸ Id. at 63,032.

¹⁹ See CAB Order (Identifying Phase I Legal Issues for Briefing) (Oct. 23, 2009) at 1 (unpublished).

²⁰ Dep't of Energy, CLI-09-14, 69 NRC at __ (slip op. at 13).

Nevada has adequately stated the legal issue to be controverted and briefly explained the basis for the contention.²¹ The legal issue clearly falls within the scope of this proceeding and is material to the findings the NRC must make, because it raises a question about DOE's compliance with Part 63 – the NRC regulations applicable to the high-level waste proceeding.²² Finally, the legal issue raises a genuine dispute with the application, because it challenges DOE's performance assessment for the post-10,000 year period.²³

Because we admit NEV-SAFETY-202 solely as a legal issue contention, at this time we need not reach the admissibility of the other factually-based components of the contention or the alternative request for a waiver. The parties have been instructed to brief the legal issue raised in accordance with the schedule set for all other Phase I legal issues.²⁴

B. NEV-SAFETY-204

NEV-SAFETY-204 asserts that DOE's description of its expert elicitation relating to a PVHA-U fails to comply with 10 C.F.R. § 63.21(c)(19) or the guidance of NUREG-1563, which DOE formally committed to follow.²⁵ Neither DOE nor the NRC Staff generally opposes the admission of this contention, although each objects to an argument included in the contention. DOE expresses concern that NEV-SAFETY-204 implicitly challenges the site selection process, noting that one expert on the elicitation panel suggested that the repository "would be more

²¹ 10 C.F.R. § 2.309(f)(1)(i), (ii); see DOE Answer to Final Rule Contentions at 7; NRC Staff Answer to Final Rule Contentions at 6.

²² 10 C.F.R. § 2.309(f)(1)(iii), (iv).

²³ Id. § 2.309(f)(1)(vi).

²⁴ CAB Order (Identifying Phase I Legal Issues for Briefing) (Oct. 23, 2009) at 1 (unpublished).

²⁵ State of Nevada's New Contentions Based on DOE's February 19, 2009 License Application Update (June 8, 2009) at 2 [hereinafter Update Contentions].

appropriately placed 20 kms to the east.”²⁶ The NRC Staff objects to Nevada’s suggestion that DOE must comply with NUREG-1563, since “NUREG-1563 is guidance and not a binding regulation” and DOE’s commitment to follow NUREG-1563 “was applicable only to the period before DOE submitted the [license application].”²⁷

NEV-SAFETY-204 satisfies all the admissibility criteria of 10 C.F.R. § 2.309(f)(1). Nevada adequately sets forth the issue involved and briefly explains the basis for the contention.²⁸ Nevada demonstrates that the contention raises a genuine, material dispute and falls within the scope of this proceeding because the results of the PVHA-U bear directly on the NRC’s decision whether to authorize construction at Yucca Mountain.²⁹ Additionally, Nevada provides a concise description of the facts supporting the contention – namely, the details of DOE’s agreement to implement NUREG-1563.³⁰ As to DOE’s objection, we fail to see how Nevada’s contention presents any challenge to the siting decision. Regarding the objection of the NRC Staff, the Staff is correct that NUREGs, in contrast to regulations, are not binding. In the instant case, however, where DOE has agreed to comply with NUREG-1563 through a Key Technical Issue agreement, DOE remains bound by this agreement, and that agreement is necessarily relevant to the license application’s subsequent regulatory compliance. Thus, we reject the arguments of both DOE and the NRC Staff and admit NEV-SAFETY-204.

²⁶ U.S. Department of Energy’s Answer to the State of Nevada’s and Clark County’s Late-Filed Contentions Related to the February 19, 2009 License Application Update (July 2, 2009) at 3 [hereinafter DOE Answer to Update Contentions].

²⁷ NRC Staff Answer to New Contentions Filed by State of Nevada and Clark County (July 6, 2009) at 3-6 [hereinafter NRC Staff Answer to Update Contentions].

²⁸ 10 C.F.R. § 2.309(f)(1)(i), (ii).

²⁹ Id. § 2.309(f)(1)(iii), (iv), (vi).

³⁰ Id. § 2.309(f)(1)(v).

C. NEV-SAFETY-205 and CLK-SAFETY-013

Both NEV-SAFETY-205 and CLK-SAFETY-013 allege various deficiencies in the PVHA-U, which DOE relies on as the basis for calculating the probability of igneous events.³¹

Specifically, the contentions identically assert that the PVHA-U “does not sufficiently integrate a comprehensive, self-consistent geologic model into probability calculations”; does “not adequately address alterative models, modern geophysical surveys, [and] the entire 11 million year history of volcanism in the Yucca Mountain area”; and does “not adequately consider the Greenwater Range near Death Valley as part of the volcanic field about Yucca Mountain.”³²

DOE does not oppose the admissibility of these contentions, except to the extent they suggest that DOE must do more than merely “consider” alternative volcanic models. According to DOE, Nevada and Clark County acknowledge in their contentions that DOE’s experts specifically considered the model proposed by Dr. Eugene Smith.³³ Given that acknowledgment, DOE reads into the contentions a suggestion that “each expert on the elicitation panel must not only consider, but fully adopt, Dr. Smith’s theories in order for the results of the PVHA-U to be appropriate.”³⁴ To the extent that Nevada and Clark County make such an argument, DOE opposes it.

The NRC Staff does not oppose the admissibility of NEV-SAFETY-205 or CLK-SAFETY-013, except to the extent these contentions assert that “the PVHA-U does not adequately consider the entire 11 million year volcanic record of the Yucca Mountain region.”³⁵ According

³¹ Update Contentions at 13; Clark County, Nevada’s New Contention Arising From the Department of Energy’s February 19, 2009 License Application Update (June 10, 2009) at 2 [hereinafter Clark Contention].

³² Id.

³³ DOE Answer to Update Contentions at 4.

³⁴ Id.

³⁵ NRC Staff Answer to Update Contentions at 8.

to the Staff, DOE did consider volcanic events for an 11 million year period, but simply chose not to utilize the entire “look back” period.³⁶

The Board admits both NEV-SAFETY-205 and CLK-SAFETY-013. As to DOE’s objection, we do not see anywhere in the contentions an “acknowledgment” that DOE considered Dr. Smith’s theories. Rather, the contentions of Nevada and Clark County merely state that Dr. Smith’s models “were presented” to DOE’s experts.³⁷ We fail to see how these contentions suggest or even allude to the need for the elicitation panel to fully adopt Dr. Smith’s theories in order for the PVHA-U results to be appropriate. In any event, the extent to which an expert panel must consider alternative models is not a consideration to be resolved at the contention admissibility stage.

As to the NRC Staff’s argument, Nevada states in its reply that the Staff’s argument refers to the wrong type of volcanism.³⁸ Indeed, while the Staff insists that DOE considered an 11-million-year history of silicic volcanism, the contentions actually fault DOE for its failure to consider the history of basaltic volcanism in the Yucca Mountain region. Thus, the NRC Staff’s objection raises no actual dispute with the contentions. Of course, even supposing the Staff had addressed the correct type of volcanism, the extent to which DOE’s experts must consider or analyze any particular kind of volcanic history also is not a matter for consideration at the contention admissibility stage.

Both NEV-SAFETY-205 and CLK-SAFETY-013 meet the admissibility criteria of 10 C.F.R. § 2.309(f)(1). Accordingly, we admit both contentions. Because the contentions are functionally equivalent, the contentions will be consolidated. The State of Nevada and Clark

³⁶ Id. at 9.

³⁷ Update Contentions at 17; Clark Contention at 6.

³⁸ Reply of the State of Nevada to NRC Staff’s Answer to NEV-SAFETY 204 and 205 (July 13, 2009) at 7.

County should consult and agree as to which one of them will be the lead representative for the consolidated contentions and inform the Board of their agreement by Friday, January 8, 2010.

D. NEV-SAFETY-206

As previously noted, Nevada proffers NEV-SAFETY-206 as an attachment to a motion for leave to file a new contention based on newly available information.³⁹ Under 10 C.F.R. § 2.309(f)(2), before the Board can consider this new contention, Nevada must show that it (1) is based on information that “was not previously available”; (2) is based on information that “is materially different than information previously available”; and (3) “has been submitted in a timely fashion.” To satisfy these criteria, Nevada states that NEV-SAFETY-206 arises from information contained in two DOE condition reports (CRs) that were first made publicly available via the LSN on July 31, 2009.⁴⁰ According to Nevada, the information contained in these CRs suggests “deficiencies in DOE’s Alloy-22 corrosion testing” and is materially different from information that was previously available.⁴¹ Finally, Nevada states that NEV-SAFETY-206 was filed within 30 days of the date on which the CRs first became available, and was therefore “submitted in a timely fashion.”⁴² In addition, Nevada asserts that it “has made a sincere effort

³⁹ State of Nevada’s Motion for Leave to File New Contention Based on Newly Available Information (Aug. 24, 2009) [hereinafter Motion for Leave]. As the CABs provided in their first case management order, “[a] petitioner or party that seeks to file a new or amended contention shall file an appropriate motion and the proposed contention simultaneously.” CAB Case Management Order #1 (Jan. 29, 2009) at 3 (unpublished).

⁴⁰ Motion for Leave at 1.

⁴¹ Id. at 2.

⁴² Id. at 2-3. The CABs provided in their first case management order that a motion for leave, accompanied by a proposed new contention, “shall be deemed timely under 10 C.F.R. § 2.309(f)(2) if filed within 30 days of the date when the new and material information on which it is based first became available.” CAB Case Management Order #1 (Jan. 29, 2009) at 3 (unpublished).

to contact the other parties in this proceeding regarding their objection or non-objection to the Motion” in accordance with 10 C.F.R. § 2.323(b).⁴³

In objection to Nevada’s motion, DOE argues that NEV-SAFETY-206 is non-timely, because it arises from information that was available “long ago.”⁴⁴ Specifically, DOE contends that the “new” information contained in the CRs could have been deduced from eight separate documents made available on the LSN prior to July 31, 2009, including a 2007 report, a 2008 review, and various documents prepared in early 2009.⁴⁵ According to DOE, “these documents demonstrate that DOE observed and documented, in various publicly available documents, the contamination of Alloy-22 test coupons and test solutions and made that information publicly available on the LSN.”⁴⁶ Because Nevada’s contention is non-timely, DOE asserts, the Board should decline to grant Nevada’s motion for leave for not satisfying the criteria for non-timely contentions found at 10 C.F.R. § 2.309(c). The NRC Staff, on the other hand, does not object to Nevada’s motion, conceding that Nevada has satisfied all the criteria of 10 C.F.R. § 2.309(f)(2).⁴⁷ Similarly, the Staff does not object to the admission of the contention, conceding that it meets the admissibility requirements of 10 C.F.R. § 2.309(f)(1).⁴⁸

The Board grants Nevada’s motion for leave to file the new contention. DOE’s objection – that the information underlying NEV-SAFETY-206 was available long before July 31, 2009 – reflects a misapprehension of Nevada’s contention. As Nevada states in its reply, “[t]he issue in

⁴³ Motion for Leave at 4.

⁴⁴ U.S. Department of Energy’s Answer Opposing State of Nevada’s Motion for Leave to File a New Corrosion Contention (Sept. 18, 2009) at 1.

⁴⁵ Id. at 3-10.

⁴⁶ Id. at 9.

⁴⁷ NRC Staff’s Answer to the State of Nevada’s Motion for Leave to File New Contention and Proposed Contention Nevada Safety 206 (Sept. 11, 2009) at 4 [NRC Staff Answer to Motion].

⁴⁸ Id.

NEV-SAFETY-206 is not the failure to adequately monitor or control some experimental studies, but the subsequent reliance on such studies to estimate general corrosion rates for use in support of the License Application.”⁴⁹ Although DOE points to various documents that purportedly “long ago” raised the issue of Alloy-22 contamination, none of these documents addresses general corrosion rates related to contamination, which is the subject of NEV-SAFETY-206. Thus, Nevada could not have proffered NEV-SAFETY-206 at any time before the two CRs became available on July 31, 2009.

The Board is not impressed with arguments suggesting that, in order to raise a timely contention, a party must piece together disparate shreds of information that, standing alone, have little apparent significance. As Nevada points out, “the significance of technical information or raw data in an LSN document is often not clear until a later time when DOE uses it for a particular purpose.”⁵⁰ We do not expect parties to demonstrate clairvoyance or an “encyclopedic knowledge”⁵¹ of the LSN, and our rulings will reflect this view.

As to NEV-SAFETY-206 itself, the NRC Staff, as noted, does not object to its admissibility,⁵² and DOE has neglected even to address its admissibility in its answer to Nevada’s motion for leave. As such, we have little difficulty concluding that the contention satisfies all six criteria of 10 C.F.R. § 2.309(f)(1). Nevada provides an adequate statement of the issue and a brief explanation of the contention⁵³ – namely, that the application inadequately addresses generalized corrosion because it relies on flawed experimental data. Nevada raises

⁴⁹ Reply of the State of Nevada to DOE’s Answer Opposing Nevada’s Motion for Leave to File a New Corrosion Contention (Sept. 25, 2009) at 9.

⁵⁰ Id. at 13.

⁵¹ Id.

⁵² NRC Staff Answer to Motion at 4.

⁵³ 10 C.F.R. § 2.309(f)(1)(i), (ii).

a genuine, material dispute with the application by pointing to specific sections that allegedly fail to comply with the NRC's requirements for conducting a post-closure performance assessment.⁵⁴ Nevada demonstrates that its contention falls within the scope of this proceeding, and it provides a concise statement of the facts supporting the contention.⁵⁵ Thus, Nevada has proffered an admissible contention.

II. Petition for Waiver

As previously noted, NEV-SAFETY-203 is a petition for a rule waiver pursuant to 10 C.F.R. § 2.335. The Board has certain questions for the NRC Staff about the waiver petition filings. In lieu of holding oral argument to obtain answers to our questions, we instead address the following questions to the Staff. The Staff shall file written, fully supported answers to the questions by Monday, December 21, 2009. Should any party wish to respond the Staff's answers, it may file a fully supported response by Wednesday, December 30, 2009.

1. The authors of the NRC Staff's affidavit assert that the information underlying the Stuewe model has "been available" for many years.⁵⁶ Yet the affiants do not state that the Commission was aware of that information or actually considered the Stuewe model when it conducted the rulemaking. What information, if any, in the rulemaking record before the Commission demonstrates that the Commission considered the Stuewe model or the data underlying that model? Where is any such information located?

⁵⁴ Id. § 2.309(f)(1)(iv), (vi).

⁵⁵ Id. § 2.309(f)(1)(iii), (v).

⁵⁶ NRC Staff Answer to Final Rule Contentions, Attachment 2, Affidavit of Brittain Hill, Philip Justus, and Timothy McCartin ¶ 18.

2. The NRC Staff affiants point to statements in the published version of the Stuewe study that “undermine the presumed reliability of this model in determining erosion rates on Yucca Mountain itself.”⁵⁷ By raising questions about the model’s applicability, do these statements of limitation defeat Nevada’s *prima facie* showing under section 2.335(d)? Or, rather, do they raise a factual dispute between Nevada and the NRC Staff that cannot be reconciled on the basis of the waiver petition filings?
3. Even accepting the express limitations of the published Stuewe study,⁵⁸ does not Nevada adequately respond to those limitations when it points out that the Stuewe model “addresses erosion degrading the landscape by sub-horizontal eating back into the ridge and not a simple downward lowering?”⁵⁹

III. Conclusion

For the foregoing reasons, NEV-SAFETY-202, NEV-SAFETY-204, NEV-SAFETY-206, NEV-SAFETY-205, and CLK-SAFETY-013 are admitted, and the latter two contentions are consolidated. Pursuant to CAB Case Management Order #2, each of the foregoing contentions shall be included in Phase 1. Further, on or before December 21, 2009, the NRC Staff shall file

⁵⁷ Id. ¶ 15.

⁵⁸ Id.

⁵⁹ Nevada Reply to NRC Staff Answer to Final Rule Contentions at 17.

answers to the Board's questions in Part II. DOE and the State of Nevada may file any response to the Staff filing by December 30, 2009.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

/RA/

Paul S. Ryerson
ADMINISTRATIVE JUDGE

/RA/

Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 9, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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U.S. DEPARTMENT OF ENERGY)
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(High-Level Waste Repository))
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Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Addressing Contentions Filed After Initial Petitions) (LBP-09-29)** dated December 9, 2009, have been served upon the following persons by Electronic Information Exchange.

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
MEMORANDUM AND ORDER (Addressing Contentions Filed After Initial Petitions) (LBP-09-29)

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