

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
April 27, 2010

ORDER
(Setting Briefing Schedule)

On April 23, 2010, the Commission vacated the Board's April 6, 2010 order suspending briefing of DOE's motion to withdraw. The Commission directed the Board to establish a briefing schedule on DOE's motion and to issue a decision on that motion no later than June 1, 2010.¹

The Board is, of course, obliged to comply with the Commission's direction insofar as possible. Respectfully, however, the complexity of the issues, the desirability of holding oral argument, and a previously-established filing date² concerning a related issue render a decision by June 1, 2010 infeasible. Instead, in accordance with the Commission's direction to resolve all pending matters expeditiously and responsibly, the Board will decide DOE's motion to withdraw as soon as possible after June 1 and, in no event, later than June 30.

¹ U.S. Dep't of Energy (High Level Waste Repository), CLI-10-13, 71 NRC ___, ___ (slip op. at 5) (Apr. 23, 2010).

² CAB Order (Questions for Several Parties and LSNA) (Apr. 21, 2010) at 3 (unpublished).

All outstanding matters shall be briefed as follows:

1. Answer's to the petitions to intervene of the Prairie Island Indian Community (PIIC) and the National Association of Regulatory Utility Commissioners (NARUC) shall be filed by May 4, 2010. In particular, the Board wishes to learn whether the NRC Staff continues to assert that the issue of DOE's authority to withdraw its Application is beyond the scope of this proceeding in light of the Commission's April 23, 2010 order stating that the NRC's position should be available to the Court of Appeals if judicial review is pursued. PIIC's and NARUC's replies shall be filed by May 11, 2010.

2. Responses to DOE's motion to withdraw shall be filed by May 17, 2010. Consistent with the Commission's direction to proceed as expeditiously as possible, the five new petitioners shall be allowed to participate in briefing and argument of DOE's motion to withdraw as though they were admitted as parties, pending the Board's determination of their status. DOE may submit a reply, which shall be filed no later than May 27, 2010. Among other things, the parties and potential parties may wish to give particular attention to the statutory scheme, history, and legislative intent of the Nuclear Waste Policy Act.

3. Responses to the questions set forth in the Board's April 21, 2010 order remain due May 24, 2010. As promised in our March 5, 2010 order, thereafter the parties will be afforded an opportunity to comment on DOE's plans for preserving its LSN collection. Any such comments shall be filed no later than June 1, 2010.

4. The Board will shortly schedule a date for argument of these matters, to be held at the earliest practicable date after June 1.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD³

/RA/

Paul S. Ryerson
ADMINISTRATIVE JUDGE

/RA/

Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
April 27, 2010

³ To facilitate its prompt issuance, this order has not been reviewed by Judge Thomas S. Moore.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **BOARD ORDER (Setting Briefing Schedule)**, dated April 27, 2010, have been served upon the following persons by Electronic Information Exchange.

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