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April 27, 2010

Mr. Mark J. Langer  
Clerk of Court  
U.S. Court of Appeals for the D.C. Circuit  
333 Constitution Ave., N.W.  
Washington, DC 20001

Re: *In re: Aiken County, Ferguson v. DOE, South Carolina v. DOE*  
Consolidated Case Nos. 10-1050, 10-1052, 10-1069  
*Washington v. DOE*, Case No. 10-1082 (pending consolidation)

Dear Mr. Langer:

On April 23, 2010, the federal respondents filed a letter with this Court pursuant to Fed. R. App. P. 28(j) and D.C. Cir. R. 28(f), alerting this Court to the NRC's order dated April 23, 2010. That order directed "the [Atomic Safety & Licensing] Board to establish a briefing schedule on DOE's motion to withdraw and issue a decision on that motion no later than June 1, 2010." On April 27, 2010, the Board issued a scheduling order stating that it "will decide DOE's motion to withdraw as soon as possible after June 1 and, in no event, later than June 30." The Board further stated, among other things, that it will allow the five new petitioners – most of whom also are parties to this Court's proceedings – "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." The April 27 scheduling order is attached.

Sincerely,

/s/ John F. Cordes  
*Counsel for the Nuclear Regulatory*  
*Commission*

/s/ Allen M. Brabender  
*Counsel for Department of Energy*

**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. App. P. 25(c), D.C. Circuit Rule 25(c), and this Court's Administrative Order of May 15, 2009, I hereby certify that on this date, April 27, 2010, I caused the foregoing 28(j) letter to be filed upon the Court through the use of the D.C. Circuit CM/ECF electronic filing system, and thus also served on counsel of record. The resulting service is consistent with the preferences articulated by counsel of record in the Service Preference Report.

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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.<sup>1</sup>

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 date<sup>2</sup> 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.

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

<sup>2</sup> 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.

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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 BOARD<sup>3</sup>

/RA/

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Paul S. Ryerson  
ADMINISTRATIVE JUDGE

/RA/

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Richard E. Wardwell  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
April 27, 2010

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

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

U.S. DEPARTMENT OF ENERGY )

(High-Level Waste Repository) )

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

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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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
BOARD ORDER (Setting Briefing Schedule)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
BOARD ORDER (Setting Briefing Schedule)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
BOARD ORDER (Setting Briefing Schedule)

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[Original Signed by Linda D. Lewis]

Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 27<sup>th</sup> day of April 2010