

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 8, 2010

ORDER

(Addressing Nevada's Motion and Discovery Status)

Before us is the State of Nevada's November 18, 2010 "motion" requesting that the Board announce its schedule for deciding the outstanding Phase I legal issues.<sup>1</sup> The NRC Staff has no objection to the motion<sup>2</sup> and no other party has responded.

The State of Nevada may be assured that the Board has the issue under active consideration and intends to issue a decision in the immediate future.

The Board also has before it the Staff's November 29, 2010 notification stating that "the Staff will not be issuing SER [Safety Evaluation Report] Volume 3 in November and that a revised schedule is indeterminate at this time."<sup>3</sup> Previously, the Staff had informed the Board at the January 27, 2010 case management conference that the Staff's schedule for issuing SER

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<sup>1</sup> See Letter from Martin Malsch, counsel for the State of Nevada, to CAB-04 (Nov. 18, 2010); CAB Order (Schedule for Answers) (Nov. 23, 2010) (unpublished).

<sup>2</sup> See NRC Staff Answer to Nevada Status Inquiry (Dec. 2, 2010).

<sup>3</sup> NRC Staff Notification Regarding SER Schedule (Nov. 29, 2010) at 1.

Volume 3 had slipped from September 2010 to November 2010,<sup>4</sup> a date the Staff confirmed at the June 4, 2010 case management conference.<sup>5</sup> The Staff had initially established the September 2010 issuance date for SER Volume 3 in its July 10, 2009 filing answering Board questions.<sup>6</sup> In light of this long-established schedule for the issuance of SER Volume 3, the Board is surprised that on the next to the last day of the month in which the Staff was to issue the SER volume, the Staff now informs us, not only that the schedule had once again slipped, but that any new schedule was “indeterminate.” No later than December 22, 2010, the Staff shall file a full explanation for its last minute schedule change and a full explanation of why, after so many months of preparation, the Staff cannot, at a minimum, establish a date by which it will issue Volume 3 of the SER.

Further, as the State of Nevada pointed out in its November 18, 2010 motion, there has been no stay of discovery since the stay expired by its own terms on June 29, 2010. The parties, therefore, could have been diligently pursuing deposition discovery in accordance with CAB Case Management Order #2.<sup>7</sup> The parties shall confer and seek to reach agreement on a discovery status report and any proposals for modifications to CAB Case Management Order #2. The consensus status report and proposals shall be filed by January 21, 2011. If any party

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<sup>4</sup> Tr. at 398 (Jan. 27, 2010).

<sup>5</sup> Tr. at 329 (June 4, 2010).

<sup>6</sup> NRC Staff Answer to the CAB's July 2, 2009 Order Concerning Scheduling (July 10, 2009) at 2.

<sup>7</sup> See CAB Case Management Order #2 (Sept. 30, 2009) (unpublished).

disagrees, separate views shall be filed on that same date.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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ADMINISTRATIVE JUDGE

*/RA/*

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Paul S. Ryerson  
ADMINISTRATIVE JUDGE

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Richard E. Wardwell  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
December 8, 2010

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
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U.S. DEPARTMENT OF ENERGY )  
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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 Board “**ORDER (Addressing Nevada’s Motion and Discovery Status)**”, dated December 8, 2010, have been served upon the following persons by Electronic Information Exchange.

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**ORDER (Addressing Nevada's Motion and Discovery Status)**

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Dated at Rockville, Maryland  
this 8<sup>th</sup> day of December 2010