

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

March 24, 2011

ORDER
(Dismissing Contentions)

In LBP-10-22, CAB-04 resolved ten Phase I legal issues raised by admitted contentions sponsored by the State of Nevada (Nevada) and the Nuclear Energy Institute (NEI) and denied two Nevada rule waiver petitions.¹ The Board also instructed the affected parties to seek agreement on a stipulation regarding the effects of its rulings on admitted contentions.² On behalf of the affected parties, the Department of Energy (DOE) filed the joint stipulation of DOE, the NRC Staff, Nevada, and NEI.³ The stipulation identifies the contentions that the parties agree are subject to dismissal and the contentions on which the parties do not agree as to the effect on them of the Board's legal rulings.⁴

¹ See LBP-10-22, 72 NRC __, __ (slip op. at 5-36) (Dec. 14, 2010).

² LBP-10-22, 72 NRC at __ (slip op. at 36).

³ U.S. Department of Energy's Joint Report in Response to CAB Orders of December 8, 2010 and LBP-10-22 (Jan. 21, 2011) [hereinafter Joint Report].

⁴ See Joint Report, Attachment, Joint Stipulation Among DOE, Nevada, NEI and NRC Staff Regarding Admitted Contentions Affected by LBP-10-22 (Jan. 21, 2011).

The affected parties agree that four of Nevada contentions, NEV-SAFETY-041, NEV-SAFETY-146, NEV-SAFETY-169, and NEV-SAFETY-201 are subject to dismissal.⁵ The Board agrees, accepts the joint stipulation as to those contentions, and dismisses NEV-SAFETY-041, NEV-SAFETY-146, NEV-SAFETY-169, and NEV-SAFETY-201.⁶

Finally, with regard to the remaining Phase I contentions identified by the parties in the joint stipulation⁷ as directly or indirectly affected by the Board's rulings in LBP-10-22, DOE or the NRC Staff should timely file dispositive motions seeking appropriate relief, such as a motion to dismiss a contention in whole or in part.⁸ Because the parties already have fully briefed the legal issues resolved by the Board in LBP-10-22 and filed memoranda regarding the effect of those rulings on the admitted contentions of NEI and Nevada, any such motions should be very brief.⁹

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD
/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 24, 2011

⁵ Id. at 2-3, 5.

⁶ The joint stipulation also recites that the parties agree that Nevada will not pursue NEV-SAFETY-203 before the CAB. Id. at 6. In denying Nevada's rule waiver petition in LBP-10-22, the Board stated that "[a]lthough, styled as a contention, NEV-SAFETY-203 is actually a petition for a rule waiver pursuant to 10 C.F.R. § 2.335." LBP-10-22, 72 NRC at ___ (slip op. at 4). So that there will be no misunderstanding in tracking the hundreds of contentions in this proceeding, NEV-SAFETY-203 is dismissed.

⁷ I.e., NEV-SAFETY-009, -010, -011, -012, -013, -019, -130, -149, -161, -162, -171, -202; NEI-SAFETY-05, -06.

⁸ For purposes of such motions, the time period prescribed in 10 C.F.R. § 2.323(a) shall not be applicable.

⁹ It is the Board's expectation that any such motion normally would not exceed two or three pages per challenged contention.

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ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board **ORDER (Dismissing Contentions)**, dated March 24, 2011, have been served upon the following persons by Electronic Information Exchange.

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ORDER (Dismissing Contentions)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (Dismissing Contentions)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (Dismissing Contentions)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (Dismissing Contentions)

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