

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

May 10, 2011

ORDER
(Dismissing NEI Safety Contention 05)

In LBP-10-22, 72 NRC __ (Dec. 14, 2010), CAB-04 addressed Legal Issue 1, which had been jointly proposed by the parties and accepted by the Board. That issue posited:

(1) whether the Commission's regulations require ALARA ("as low as is reasonably achievable") considerations at individual nuclear plant sites remote from the Geologic Repository Operations Area (GROA) be addressed in the Department of Energy's (DOE) License Application; and
(2) whether DOE must demonstrate that the repository not only meets applicable safety and environmental regulatory standards, but must show that it does so without any alleged unnecessary expenditures of resources.¹ The Licensing Board held that the Commission's regulations do not require that DOE take into account ALARA considerations at remote individual nuclear plant sites outside the GROA and that there are no regulatory requirements that DOE demonstrate that the repository meets applicable safety and environmental standards without unnecessary expenditures of resources.²

¹ LBP-10-22, 72 NRC at __ (slip op. at 5).

² Id. at __ (slip op. at 9).

Now before us is DOE's motion to dismiss Nuclear Energy Institute (NEI) Safety Contention 05 (NEI-SAFETY-05),³ the contention underlying Legal Issue 1 addressed in LBP-10-22. The NRC Staff agrees with DOE's motion that NEI-SAFETY-05 should be dismissed.⁴ Although misidentifying DOE's motion to dismiss as a motion for summary disposition, NEI "does not oppose the DOE motion."⁵ Accordingly, because LBP-10-22 definitively resolves the legal issue presented in NEI-SAFETY-05, DOE's motion to dismiss is granted and NEI-SAFETY-05 is dismissed.

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
May 10, 2011

³ See U.S. Department of Energy's Motion to Dismiss NEI Safety Contention 05 (Apr. 8, 2011).

⁴ NRC Staff Response to U.S. Department of Energy Motion to Dismiss NEI Safety Contention 05 (Apr. 18, 2011) at 2.

⁵ Nuclear Energy Institute's Answer to the Department of Energy's Motion to Dismiss NEI Safety-05 (Apr. 18, 2011) at 2.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board "**ORDER (Dismissing NEI Safety Contention 05)**", dated May 10, 2011, 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
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