

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

August 26, 2009

ORDER

(Granting Joint Motion for Extension of Time in Part)

On August 14, 2009, six parties filed a joint motion for an extension of time to file new or amended contentions in response to the Department of Energy's (DOE) "Analysis of Postclosure Groundwater Impacts for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada" (DOE Analysis).<sup>1</sup> DOE made the DOE Analysis available to the parties on August 5, 2009, rather than a full Supplemental Environmental Impact Statement (SEIS), which it had previously committed to undertake.<sup>2</sup>

Pursuant to CAB Case Management Order #1, the parties have 30 days from the date "new information" first becomes available to file a motion for leave to file new or amended

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<sup>1</sup> Joint Motion by the County of Inyo, the State of Nevada, the State of California, Nye County, the Joint Timbisha Shoshone Tribal Group and the Native Community Action Council for an Extension of Time to File New or Amended Contentions (Aug. 14, 2009) [hereinafter Joint Motion].

<sup>2</sup> See Letter from Donald J. Silverman to Thomas S. Moore, Paul S. Ryerson, and Richard E. Wardwell (Aug. 5, 2009).

contentions.<sup>3</sup> In their joint motion, the parties ask the Board to extend this time period “until 60 days after NRC Staff formally announces or otherwise advises the parties how it will proceed with respect to DOE’s Analysis . . . .”<sup>4</sup> Otherwise, the parties contend, they may be compelled to waste resources by filing two sets of contentions – one in response to the DOE Analysis, and another in response to an SEIS that the NRC Staff may prepare at a later date.<sup>5</sup>

Except for the NRC Staff, no other party, including DOE, objects to the joint motion.<sup>6</sup> The NRC Staff opposes the motion, contending that no “unavoidable and extreme circumstances” justify granting the requested extension.<sup>7</sup> In the alternative, the Staff suggests an extension of 30 days, rather than the 60-day extension requested by the parties.<sup>8</sup>

For good cause shown, the Board grants the joint motion in part. The Nuclear Waste Policy Act requires the NRC to adopt DOE’s Yucca Mountain EIS, but only “to the extent practicable.”<sup>9</sup> Until the NRC Staff determines how it will treat the DOE Analysis, its significance remains unclear. In the unique circumstances of this proceeding, it appears wasteful and inefficient to require the parties to file new and amended contentions concerning the DOE Analysis before the Staff determines whether or not it will prepare an environmental evaluation of its own, and how it will utilize the analysis DOE has prepared. The joint motion does not demonstrate, however, why an extension of 60 days from such determination is more appropriate than the 30 days specified in CAB Case Management Order #1.

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<sup>3</sup> CAB Case Management Order #1 (Jan. 29, 2009) at 3 (unpublished).

<sup>4</sup> Joint Motion at 4.

<sup>5</sup> Id.

<sup>6</sup> Id. at 4-5.

<sup>7</sup> NRC Staff Answer to Joint Motion for an Extension of Time to File New or Amended Contentions (Aug. 24, 2009) at 3-4.

<sup>8</sup> Id. at 5.

<sup>9</sup> 42 U.S.C. § 10134(f)(4).

Accordingly, new or amended contentions relating to the DOE Analysis shall be deemed timely if filed, in accordance with CAB Case Management Order #1, within 30 days after the NRC Staff publicly announces or otherwise advises the parties how it will proceed with respect to the DOE Analysis. This ruling is without prejudice to the right of any party subsequently to seek a further extension, for good cause shown.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Paul S. Ryerson  
ADMINISTRATIVE JUDGE<sup>10</sup>

Rockville, Maryland  
August 26, 2009

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<sup>10</sup> By delegated authority, in the absence of Thomas S. Moore, Chairman.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Granting Joint Motion for Extension of Time in Part), dated August 26, 2009, have been served upon the following persons by Electronic Information Exchange.

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[ Original Signed by Linda D. Lewis ]  
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Dated at Rockville, Maryland  
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