

September 11, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARDS

In the Matter of	)	
	)	Docket No. 63-001-HLW
U.S. DEPARTMENT OF ENERGY	)	
	)	ASLBP Nos. 09-876-HLW-CAB01
(High-Level Waste Repository)	)	09-877-HLW-CAB02
	)	09-878-HLW-CAB03
	)	09-892-HLW-CAB04

NRC STAFF ANSWER TO THE  
STATE OF NEVADA'S MOTION FOR LEAVE TO FILE  
NEW CONTENTION AND PROPOSED CONTENTION NEVADA SAFETY 206

INTRODUCTION

Pursuant to 10 C.F.R. § 2.309(h)(1) and the “[Construction Authorization Board] Case Management Order #1,” dated January 29, 2009 (CMO # 1) (unpublished) at 4, the staff of the U.S. Nuclear Regulatory Commission (Staff) hereby files its answer to the “State of Nevada’s Motion for Leave to File New Contention Based on Newly Available Information” (Motion), and proposed contention NEV-SAFETY-206 (attached to the Motion as Exhibit A), filed August 24, 2009. For the reasons set forth below, the Staff does not oppose Nevada’s motion for leave to file proposed contention NEV-SAFETY-206, and does not object to the admission of the proposed contention.

BACKGROUND

On June 3, 2008, the Department of Energy (DOE) submitted the Yucca Mountain Repository License Application to the NRC, seeking authorization to construct a geologic repository at Yucca Mountain, Nevada, in accordance with the provisions of 10 C.F.R. Part 63. See Yucca Mountain; Notice of Receipt and Availability of Application, 73 Fed. Reg. 34,348 (June 17, 2008); Yucca Mountain; Notice of Receipt and Availability of Application; Correction,

73 Fed. Reg. 40,883 (July 16, 2008). After the Staff docketed the License Application,<sup>1</sup> the Commission issued a “Notice of Hearing and Opportunity to Petition for Leave to Intervene,” *U.S. Dept’ of Energy* (High-Level Waste Repository), CLI-08-25, 68 NRC 497 (2008). The Notice of Hearing was subsequently published in the *Federal Register* on October 22, 2008.<sup>2</sup> In response to the Notice of Hearing, Nevada filed a timely intervention petition, and is one of the parties admitted to this proceeding.<sup>3</sup>

Three Construction Authorization Boards (CABs or Boards) were established to preside over the petitions to intervene and requests to participate in this licensing proceeding. U.S. Department of Energy; Establishment of Atomic Safety Licensing Boards, 74 Fed. Reg. 4477 (Jan. 26, 2009). On June 19, 2009, the Chief Administrative Judge established Construction Authorization Board 04 to, among other things, preside over matters concerning new or amended contentions. See Establishment of Atomic Safety and Licensing Board; Department of Energy, 74 Fed. Reg. 30,644 (June 26, 2009).

On August 24, 2009, Nevada filed the instant motion and proposed contention. NEV-SAFETY-206 alleges that DOE’s Alloy-22 corrosion modeling is inadequate because it relies upon flawed experimental data. See NEV-SAFETY-206 at 1.

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<sup>1</sup> Department of Energy; Notice of Acceptance for Docketing of a License Application for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, 73 Fed. Reg. 53,284 (Sept. 15, 2008).

<sup>2</sup> In the Matter of U.S. Department of Energy (High-Level Waste Repository); Notice of Hearing and Opportunity To Petition for Leave to Intervene on an Application for Authority To Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, 73 Fed. Reg. 63,029 (Oct. 22, 2008).

<sup>3</sup> See *U.S. Dep’t of Energy*, LBP-09-06, 69 NRC \_\_\_, slip op. (May 11, 2009); see also *U.S. Dep’t of Energy*, CLI-09-14, 69 NRC \_\_\_, slip op. (June 30, 2009).

DISCUSSION

A. Legal Standards Governing New or Amended Contentions

Pursuant to 10 C.F.R. § 2.309(f)(2) and CMO #1, new or amended contentions are considered timely if they are based upon new and materially different information than was previously available, and filed within 30 days of when that information became available. See 10 C.F.R. § 2.309(f)(2)(i)-(iii); see also CMO #1 at 3-4. The Staff has previously addressed contention admissibility requirements generally, and will not repeat them here. See “NRC Staff Answer to Intervention Petitions,” dated February 9, 2009, at 34-39.

B. Proposed Contention NEV-SAFETY-206

**NEV-SAFETY-206 – INADEQUATE DOE WEIGHT-LOSS MEASUREMENT FOR GENERAL-CORROSION TESTING OF ALLOY-22**

SAR Subsection 2.3.6.2.2, 2.3.6.3 and similar subsections, which deal with waste package degradation and general corrosion testing of Alloy-22, inadequately address generalized corrosion because they rely on flawed experimental data.

NEV-SAFETY-206 at 1. Nevada’s new contention references two recent DOE condition reports. The reports describe deposits found on Alloy-22 coupons that were corrosion-tested for 5 years (Licensing Support Network (LSN) Accession No. DEN001614731), and a waxy substance found on coupons that were corrosion-tested for 9.5 years (LSN Accession No. DEN001614752). Nevada asserts that these findings invalidate the experimental data DOE relies upon its License Application, NEV-SAFETY-206 at 5, and that therefore, the License Application does not comply with various requirements of 10 C.F.R. Part 63. *Id.* at 7. Attached to the proposed contention, as exhibits 1 and 2, are affidavits and curricula vitae of Maurice E. Morgenstein and Michael C. Thorne, both adopting paragraphs 5 and 6 of the proposed contention as their opinion.

C. Staff Response

The Staff does not oppose Nevada's motion for leave to file the proposed contention, as the contention appears to be based upon previously unavailable and materially different information, the referenced DOE condition reports. Nevada states that these documents were made available on the LSN on July 31, 2009, as confirmed by the LSN Administrator. Motion at 1. Thus, the Motion appears timely because it was filed within 30 days of the date the cited reports became available. The proposed contention appears to satisfy the contention admissibility requirements in 10 C.F.R. § 2.309(f)(1). Thus, the Staff does not object to the admission of proposed contention NEV-SAFETY-206.

CONCLUSION

For the reasons set forth above, the Staff does not oppose Nevada's motion for leave to file proposed contention NEV-SAFETY-206, and does not object to admission of the proposed contention.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF ANSWER TO THE STATE OF NEVADA'S MOTION FOR LEAVE TO FILE NEW CONTENTION AND PROPOSED CONTENTION NEVADA SAFETY 206" in the above-captioned proceeding have been served on the following persons this 11<sup>th</sup> day of September, 2009, by Electronic Information Exchange.

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