NRC STAFF COMMENTS REGARDING CONTENTION CONSOLIDATION

INTRODUCTION

Consistent with "CAB Case Management Order #2," dated September 30, 2009, issued by Construction Authorization Board-04 (Board) the NRC staff (Staff) hereby comments on the Joint Proposal to Consolidate Contentions of Clark County, Nevada, State of Nevada and Inyo County, California, dated October 13, 2009 (Consolidation Proposal).¹ The Consolidation Proposal seeks to consolidate nineteen (19) separate volcanism contentions into nine (9) consolidated contentions.

DISCUSSION

The Staff does not object to any of the proposed consolidations. However, the Staff believes that the scope of certain proposed contention consolidations are unclear and should be clarified.²

¹ In a separate pleading, the State of Nevada proposed consolidating its contentions NEV-SAFETY-146 and NEV-SAFETY-201. State Of Nevada's Identification of Contentions for Consolidation, October 13, 2009. These two contentions are identical and the Staff has no objection to their consolidation.

² Nothing in this pleading should be construed as a waiver, modification or other change to any position previously expressed by the Staff with respect to the admissibility or non-admissibility of any proferred contention in this proceeding.
The Consolidation Proposal suggests that NEV-SAFETY-150 through NEV-SAFETY-158 be consolidated with CLK-SAFETY-003 through -011, respectively, and that INY-SAFETY-3 also be consolidated with NEV-SAFETY-153 and CLK-SAFETY-006. The Staff noted in its answer to intervention petitions, that NEV-SAFETY-150 through -158 are virtually identical to CLK-SAFETY-003 through -011 and suggested that the Board should consider consolidating, and designating a lead intervenor regarding, these contentions if they were admitted. NRC Staff Answer to Intervention Petitions, dated February 9, 2009, at 11.

However, the Consolidation Proposal proposes to consolidate CLK-SAFETY-006 with NEV-SAFETY-153 and INY-SAFETY-3. Although these three contentions are similar, they are not identical. INY-SAFETY-3 alleges that DOE failed to comply with the requirements of the NUREG-1804, Rev. 2, “Yucca Mountain Review Plan” (July 2003). Neither CLK-SAFETY-006 nor NEV-SAFETY-153 assert this position. See "Petition for Leave to Intervene by the County of Inyo, California on an Application by the U.S. Department of Energy for Authority to Construct a Geologic High-Level Waste Repository at a Geologic Repository Operations Area at Yucca Mountain, Nevada," dated December 22, 2008, (Inyo County Petition) at 64-70. Compare "Clark County, Nevada’s Request for Hearing, Petition to Intervene and Filing of Contentions," dated December 22, 2008 (Clark County Petition) at 49-53, with "State of Nevada’s Petition to Intervene as a Full Party," December 19, 2008, at 808-812. Thus, the proposed inclusion of INY-SAFETY-3, if adopted, would interject an issue separate and distinct from that raised in CLK-SAFETY-006 and NEV-SAFETY-153. In ruling on the Consolidation Proposal, the Board should clarify whether or not it will consider DOE’s compliance with NUREG-1804 as part of the consolidated contention.

Further, NEV-SAFETY-153 claims that the TSPA is a complex non-linear model, and alleges that as a result, possibly thousands of changes would need to be made to the TSPA’s approach to “include the effects of accepting this one contention.” Nevada Petition at 792. This basis is not included in either CLK-SAFETY-006 see, Clark County Petition, at 49-53, or INY-
SAFETY-3, see Inyo County Petition at 64-70. Nevada similarly claims the need for possibly thousands of TSPA changes in NEV-SAFETY-150, Nevada Petition at 792-793; NEV-SAFETY-151, Nevada Petition at 798; NEV-SAFETY-152, Nevada Petition at 806-807; NEV-SAFETY-154, Nevada Petition at 817; and NEV-SAFETY-156, Nevada Petition at 830. This allegation, however, is not included in any of the Clark County contentions which are proposed for consolidation with these Nevada contentions. See Clark County Petition at 28-48, 54-58, 64-71.

In ruling on consolidation, the Board should clarify whether or not this allegation will be considered as part of the consolidated contentions or considered separately.

The Consolidation Proposal suggests, at 2, that consolidated contentions be rewritten and submitted within 20 days of an order approving consolidation, with replies 10 days afterward. The Staff does not object to these suggestions.

CONCLUSION

For the foregoing reasons, the Board should clarify the scope of consolidated contentions and direct that they be rewritten in accordance with the Board’s clarification.

Respectfully submitted,

Signed (electronically) by

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/Executed in accord with 10 C.F.R. § 2.304(d)/
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Dated at Rockville, Maryland
this 30th day of October, 2009
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the “NRC STAFF COMMENTS REGARDING CONTENTION CONSOLIDATION” in the above-captioned proceeding have been served on the following persons this 30th day of October, 2009, by Electronic Information Exchange.

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