

ORAL ARGUMENT SCHEDULED 05/02/2012
NO. 11-1271

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

IN RE: AIKEN COUNTY, *et al.*, Petitioners.

v.

UNITED STATES NUCLEAR REGULATORY COMMISSION
and GREGORY B. JACZKO, Chairman of the United States
Nuclear Regulatory Commission, Respondents.

On Petition for Writ of Mandamus (Agency Action Unreasonably Withheld)

**JOINT APPENDIX OF INTERVENOR, THE STATE OF NEVADA
VOLUME IV (PAGES JA001632 – JA001685)**

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February 10, 2012

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U.S. Department of Energy (High-Level Waste Repository: Pre-Application Matters) Memorandum and Order (on State of Nevada's Motion to the Commission to Establish a Reasonable Schedule for the Filing of Contentions on Yucca Mountain), CLI-08-18, 68 NRC 246 (2008)	JA001637
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prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 15, 2008.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E8-25147 Filed 10-21-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 5, 2008, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 5, 2008—1:30 p.m. until 5 p.m.

The Subcommittee will discuss the Vogtle Electric Generating Plant (VEGP), Unit 1 and 2 license renewal application and the associated Safety Evaluation Report (SER). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, VEGP, Southern Nuclear Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Christopher Brown (telephone 301-415-7111) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268-58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 16, 2008.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E8-25149 Filed 10-21-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 63-001; CLI-08-25]

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

COMMISSIONERS: Dale E. Klein, Chairman; Gregory B. Jaczko, Peter B. Lyons, Kristine L. Svinicki.

I. Notice of Hearing

By letter dated June 3, 2008, the Department of Energy (DOE) submitted an application seeking authorization to construct a geologic repository at a geologic repository operations area at Yucca Mountain in Nye County, Nevada. The NRC published a notice of receipt and availability of this application in the **Federal Register** (73 FR 34348, corrected in 73 FR 40883 (June 17, 2008)). Notice is hereby given that a hearing on the application will be held at a time and place to be set in the future by the Nuclear Regulatory Commission (the Commission) or an Atomic Safety and Licensing Board (Board).

The hearing will consider the application for construction authorization filed by DOE pursuant to Section 114 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10134, and pursuant to 10 CFR Parts 2 and 63. The NRC Staff accepted the DOE application for docketing on September 8, 2008 (73 FR 53284 (September 15, 2008)), and the docket number established for this application is 63-001.

The NRC Staff determined that it is practicable to adopt, with further supplementation, the Environmental Impact Statement (EIS) and supplements prepared by DOE. The Staff concluded that neither the 2002 Final Environmental Impact Statement (FEIS) nor the 2008 Final Supplemental Environmental Impact Statement (Repository Supplemental EIS) adequately address all the impacts on groundwater, or from surface discharges of groundwater, from the proposed action. The Staff therefore found that additional supplementation is needed to

ensure that the 2002 FEIS and 2008 Repository Supplemental EIS are adequate. The basis for the Staff's position is presented in the "U.S. Nuclear Regulatory Commission Staff's Adoption Determination Report for the U.S. Department of Energy's Environmental Impact Statements for the Proposed Geologic Repository at Yucca Mountain," which is available in the Agencywide Documents Access and Management System (ADAMS) online document system at <http://www.nrc.gov/reading-rm/adams/web-based.html>, at accession number ML082420342.

The NRC Staff will complete a detailed technical review of the DOE application, and will document its findings in a safety evaluation report. If the Commission finds that the DOE application meets the applicable standards of the Atomic Energy Act of 1954, as amended (AEA), the NWPA, and the Commission's regulations, then the Commission will issue a construction authorization, in the form and containing such conditions and limitations, if any, as the Commission finds appropriate and necessary.

II. Opportunity To Petition for Leave To Intervene

A hearing on DOE's construction authorization application will be held in the public interest pursuant to 10 CFR 2.101(e)(8). The hearing will be governed by the rules of procedure in 10 CFR Part 2, Subpart C, "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings"; Subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository"; and Subpart G, "Rules for Formal Adjudications." The matters of fact and law to be considered are whether the application satisfies the applicable safety, security, and technical standards of the AEA and NWPA and the NRC's standards in 10 CFR Part 63 for a construction authorization for a high-level waste geologic repository, and also whether the applicable requirements of the National Environmental Policy Act (NEPA) and NRC's NEPA regulations, 10 CFR Part 51, have been met.

Any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written petition for leave to intervene in accordance with the requirements in 10 CFR 2.309, including contentions that satisfy the admissibility standards

in § 2.309. Petitioners seeking to intervene as parties must also comply with the procedural case management requirements set forth in the Advisory Pre-License Application Presiding Officer (PAPO) Board's Memorandum and Order, LBP-08-10 (Case Management Order Concerning Petitions to Intervene, Contentions, Responses, Replies, Standing Arguments, and Referencing or Attaching Supporting Materials), dated June 20, 2008, available at ADAMS accession number ML081720154, and the Advisory PAPO Board's Order (Regarding Contention Formatting and Tables of Contents), dated September 29, 2008, available at ADAMS accession number ML082730764. In addition, as outlined further below, the regulations in 10 CFR Part 2, Subpart J require electronic production, filing and service of all documents in this proceeding.

In ruling on a petition to intervene in this proceeding, the presiding officer shall consider any failure of the petitioner to participate as a potential party in the pre-license application phase under 10 CFR Part 2, Subpart J, in addition to the factors on standing to intervene outlined in 10 CFR 2.309(d).

A petition for leave to intervene must be filed no later than 60 days after the date of publication of this notice in the **Federal Register**. A non-timely petition or contention will not be entertained unless the Commission, an Atomic Safety and Licensing Board, or a presiding officer designated to rule on the petition determines that the late petition or contention meets the late-filed requirements of 10 CFR 2.309(c)(1)(i)-(viii).

Certain hearing schedule milestones in Appendix D to 10 CFR Part 2, as well as the 30-day hearing petition and contention-filing deadlines set forth in 10 CFR 2.309(b)(2) and 51.109(a)(2) are superseded by this notice. A revised hearing schedule with new milestones for actions through the First Prehearing Conference Order appears in Section VI of this notice.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and will have the opportunity to participate fully in the conduct of the hearing.

The regulations in 10 CFR Part 2, Subpart J require electronic document production (via the Licensing Support Network) and electronic filing and service of adjudicatory documents via the Electronic Information Exchange (EIE). This requirement applies to all documents filed in the proceeding, including a petition for leave to intervene, and any motion or other

document filed in the proceeding prior to the submission of a petition to intervene. Pursuant to 10 CFR 2.1012(b)(1), a petitioner, including a potential party given access to the Licensing Support Network, may not be granted party status under 10 CFR 2.309, or status as an interested governmental participant under 10 CFR 2.315, if the petitioner cannot demonstrate substantial and timely compliance with the requirements in 10 CFR 2.1003 at the time of the request for participation in the high-level waste proceeding.¹ In addition, a petitioner will not be found to be in substantial and timely compliance unless the petitioner complies with all orders of the Pre-License Application Presiding Officer (PAPO) regarding electronic availability of documents. PAPO orders are available on the NRC's high-level waste electronic hearing docket at: http://hlwehd.nrc.gov/Public_HLW-EHD/home.asp, under HLW-EHD, folder titled PAPO_HLW, subfolder titled Orders_PAPO.

A petition for leave to intervene, and all filings in the adjudicatory proceeding, must be filed electronically in accordance with 10 CFR 2.1013(c)(1). At least 30 days prior to the filing deadline for a petition to intervene, the petitioner must contact the Office of the Secretary (SECY) by e-mail at: HEARINGDOCKET@NRC.GOV or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner, or its counsel or representative, already holds an NRC-issued digital certificate). Each petitioner will need to download the Workplace Forms Viewer™ to access the EIE, a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

¹ A person denied party or interested governmental participant status under 10 CFR 2.1012(b)(1) may request such status upon a showing of subsequent compliance with the requirements of 10 CFR 2.1003. The subsequent admission of such a party or interested governmental participant shall be conditioned on accepting the status of the proceeding at the time of admission.

Once a petitioner has obtained a digital ID certificate, has had a docket created, and has downloaded the EIE viewer, the petitioner can then submit a petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. *Guidance for Electronic Submissions to the NRC* is a consolidated guidance document that sets forth the technical standards for electronic transmission and formatting electronic documents, and provides instructions on how to obtain and use the agency-provided digital ID certificate. A person who holds a current digital ID certificate for use in the proceedings before the PAPO or the Advisory PAPO need not obtain a new certificate. That certificate will remain valid for this proceeding.

Section 2.1013(c) defines service as completed when the filer/sender receives electronic acknowledgement ("delivery receipt") that the electronic submission has been placed in the recipient's electronic mailbox. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date.

Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, the applicant and any other participant (or their counsel or representative) must apply for and receive a digital ID certificate before a petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located under the heading "Additional Information" on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally (301) 415-4737.

Documents submitted in adjudicatory proceedings will appear in the NRC's high-level waste electronic hearing docket at http://hlwehd.nrc.gov/Public_HLW-EHD/home.asp, unless

excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in the filing. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filing and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. The ADAMS accession number for the ADAMS package containing the DOE application is ML081560400. The ADAMS accession number for the ADAMS package containing DOE's Final Environmental Impact Statement is ML032690321, and the accession number for the ADAMS package containing DOE's Final Supplemental Environmental Impact Statement is ML081750191. The ADAMS accession number for the ADAMS package containing DOE's Final Rail Corridor Supplemental EIS and Rail Alignment EIS is ML082460227. The application is also available at <http://www.nrc.gov/waste/hlw-disposal/yucca-lic-app.html>. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr@nrc.gov.

III. Additional Matters Pertaining to the Hearing and Intervention Requests

A. Standing as of Right

Pursuant to 10 CFR 2.309(d)(2)(iii), the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which the geologic repository operations area is located, and by any affected Federally-recognized Indian Tribe, as defined in 10 CFR Part 63, if the contention requirements in 10 CFR 2.309(f) are satisfied with respect to at least one contention. Section 2.309(d)(2) specifies that such State, affected Federally-recognized Indian Tribe, and local governmental body need not

address the standing requirements in 10 CFR 2.309(d).

In LBP-08-10, the Advisory PAPO Board requested that the Commission clarify whether an "affected unit of local government" (AULG), as defined in section 2 of the NWPA, as amended (42 U.S.C. 10101), also need not address the standing requirements of section 2.309(d). Any AULG seeking party status shall be considered a party to this proceeding, provided that it files at least one admissible contention in accordance with 10 CFR 2.309. An AULG need not address the standing requirements under that section.

B. Environmental Contentions

In addition to meeting NRC's regular contention admissibility requirements in 10 CFR 2.309(f), environmental contentions addressing any DOE environmental impact statement or supplement must also conform to the requirements and address the applicable factors outlined in 10 CFR 51.109 governing NRC's adoption of DOE's environmental impact statements. The requirements of section 51.109 should be applied consistent with *Nuclear Energy Institute, Inc. v. EPA*, 373 F.3d 1251, 1313-14 (D.C. Cir. 2004), a court decision discussing section 51.109, and consistent with the Commission's denial of the State of Nevada's petition to amend section 51.109 (73 FR 5762; January 31, 2008), and the Office of the General Counsel's subsequent letter clarifying the Commission's denial (Letter from Bradley W. Jones, Assistant General Counsel to Martin G. Malsch, dated March 20, 2008, ADAMS accession number ML080810175). Under 10 CFR 51.109(c), the presiding officer should treat as a cognizable "new consideration" an attack on the Yucca Mountain environmental impact statements based on significant and substantial information that, if true, would render the statements inadequate. Under 10 CFR 51.109(a)(2), a presiding officer considering environmental contentions should apply NRC "reopening" procedures and standards in 10 CFR 2.326 "to the extent possible."

C. Hearing Procedures

The construction authorization hearing will be conducted by one or more presiding officers (licensing boards) that will be designated by the Chief Judge of the Atomic Safety and Licensing Board Panel. The Commission anticipates and authorizes the establishment of multiple licensing boards throughout the proceeding. Notice as to the membership of the

board(s) will be published at a later date.

In 1991, the Commission suggested that it would use the notice of hearing for a high-level waste (HLW) proceeding to announce detailed case management procedures (56 FR 7787, 7793-94 (February 26, 1991)). In the intervening years, however, the Atomic Safety and Licensing Board Panel has engaged in extensive case management planning for this proceeding. The Commission therefore believes that the presiding officer(s) in this proceeding will be in the best position to establish and efficiently resolve case management issues, some of which the Commission-authorized Advisory PAPO Board resolved in LBP-08-10.

D. Scope of the Hearing

In accordance with 10 CFR 2.1027, in any initial decision on the application for construction authorization, the presiding officer shall make findings of fact and conclusions of law on, and otherwise give consideration to, only material issues put into controversy by the parties and determined to be litigable in the proceeding. The Commission has determined that the scope of the adjudicatory proceeding on safety, security, or technical issues is limited to litigable contested issues. See *State of Nevada; Denial of Petition for Rulemaking*, Docket No. PRM-2-14, available at ADAMS accession number ML082900618. The presiding officer has no authority or duty to resolve uncontested issues in those areas. See 10 CFR 2.1023(c)(2) and 10 CFR 2.1027.

Notwithstanding the provisions in 2.1023(c)(2) and 10 CFR 2.1027, the presiding officer shall make the environmental findings required by 10 CFR 51.109(e), even on uncontested issues, "to the extent it is not practicable to adopt the environmental impact statement prepared by the Secretary of Energy."

E. Participation by a Non-Party

A person who is not a party may be permitted to make a limited appearance statement by making an oral or written statement of his or her position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

IV. Access to Non-public information

Those petitioners who seek access to non-public information must follow the access requirements contained in the PAPO Board's Third Case Management Order (August 30, 2007), available at ADAMS accession number

ML072420327. This and other case management orders issued by the PAPO Board govern protection of various categories of protected and privileged information. The Board's case management orders are available on the high-level waste electronic hearing docket, Docket No. PAPO-00, at http://hlwehd.nrc.gov/Public_HLW-EHD/home.asp, under HLW-EHD, folder titled PAPO_HLW, subfolder titled Orders_PAPO.

V. Motions

To avoid unnecessary disputes and filings, a party who files a motion must certify, pursuant to 10 CFR 2.323, that he or she has made a reasonable effort to consult with counsel for the applicant and counsel for the NRC staff, as well as other interested counsel or litigants, in an effort to resolve the matter in advance of filing the motion. Motions must also meet all other section 2.323 requirements.

VI. Revised Hearing Schedule Milestones

In CLI-08-18 (August 13, 2008), available at ADAMS accession number ML082261241, the Commission granted the State of Nevada, as well as any other petitioner, an additional thirty (30) days in which to file a petition to intervene, or a petition for status as an interested government participant, in this proceeding. In addition, the Commission proposed further modifications to the schedule codified in 10 CFR Part 2, Appendix D.

The Commission invited any party or potential party participating in the matters before the PAPO Board to provide comments on certain additional proposed extensions of time. The Commission also sought the views of the Atomic Safety and Licensing Board Panel on the reasonableness of current and proposed time frames. The Commission has considered the comments received, and has determined that the revised schedule below will replace certain hearing milestones set forth in Appendix D to 10 CFR Part 2.

The Commission hereby doubles the time permitted to file answers and replies, pursuant to 10 CFR 2.309(h)(1) and (2), respectively, to fifty (50) and fourteen (14) days, respectively. The Commission also extends the period for the First Prehearing Conference from eight (8) to sixteen (16) days after the deadline for filing replies, and extends the period for issuance of the First Prehearing Conference Order from thirty (30) to sixty (60) days after the First Prehearing Conference. The revised Appendix D schedule, reflected in the table below, replaces only the

milestones up to, and including, the First Prehearing Conference Order. The presiding officer retains authority to grant extensions of time of no more than fifteen days, and the Commission retains authority to grant extensions of longer than fifteen days, but in either case the litigant seeking the extension must follow the requirements of 10 CFR 2.1026.

PARTIALLY REVISED APPENDIX D SCHEDULE

Day	Action
0	Federal Register Notice of Hearing.
60	Petition to intervene/request for hearing, w/contentions.
110	Answers to intervention and interested government participant Petitions.
124	Petitioner's response to answers.
140	First Prehearing Conference.
200	First Prehearing Conference Order identifying participants in proceeding, admitted contentions, and setting discovery and other schedules.

The regulatory requirements governing the balance of the Appendix D schedule remain unchanged.

VII. September 9, 2008, Petition

On September 9, 2008, the State of Nevada submitted to the Commission a "petition" directed to the content of this hearing notice.² In this petition, Nevada argues that the Commission cannot issue a notice of hearing unless it first resolves "at least three important legal and procedural issues."³

Nevada's first issue, now partially mooted, is the lack of final Environmental Protection Agency (EPA) standards and implementing NRC rules for the post-10,000 year period. The EPA has now established post-10,000 year standards, and the Staff is developing implementing regulations.⁴

² *Petition to Publish a Fair and Reasonable Notice of Hearing on DOE's Yucca Mountain Application* (Sept. 9, 2008), available at ADAMS accession number ML082550289 (September 9 Petition). The procedural identity of Nevada's "petition" is not obvious. The Commission addresses the issues Nevada raises as part of this notice of hearing solely as a matter of expedience since they touch on topics the Commission already addresses independently.

Both DOE and the NRC Staff responded to the September 9 Petition. See *U.S. Department of Energy Response to State of Nevada "Petition to Publish a Fair and Reasonable Notice of Hearing on DOE's Yucca Mountain Application"* (Sept. 19, 2008); *NRC Staff's Response to the State of Nevada's Petition to Publish a Fair and Reasonable Notice of Hearing on DOE's Yucca Mountain Application* (Sept. 19, 2008).

³ September 9 Petition at 3.

⁴ Final Rule, Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada 73 FR 61,256 (October 15, 2008).

Nevada argued that potential parties cannot draft contentions based upon standards that have not been finalized. As a possible remedy, Nevada proposed that today's notice of hearing include a delay—essentially a bifurcation of contention-filing deadlines—with respect to all issues related to the EPA standards and the NRC's implementing rules until some date to be determined after the standards and rules are issued. Nevada argued alternatively that this delay could be avoided if the Commission declined to be bound by its Staff's decision to docket the application.

The Commission recognizes Nevada's concern but does not believe Nevada's extraordinary remedies are necessary, especially since the EPA has now issued the relevant standards, and the NRC's regulations are in preparation. Under the NRC's ordinary practice, Nevada and other hearing petitioners are free to file contentions arguing that the Commission may not authorize construction in the absence of implementing NRC rules. And they are also free to file contentions maintaining that DOE's application does not meet EPA's standards. Such contentions would require no change in the contention-filing schedule set out in CLI-08-18. Nevada or other hearing petitioners may amend their "EPA standards"-related contentions later, after the NRC's implementing rules are issued, if the new NRC rules establish fresh grounds for contentions. Under the unusual circumstances of this case, where controlling agency rules have been delayed, and to ensure that no one is prejudiced, any contentions so amended—on EPA standards-related issues only—will be deemed timely for admissibility purposes if filed within sixty days after the **Federal Register** publication of the NRC rules implementing the new EPA standards.⁵

The second issue Nevada raises in its September 9 Petition concerns a petition for rulemaking it filed regarding the specification of issues for the mandatory hearing portion of this proceeding.⁶

⁵ NRC rules ordinarily call on licensing boards to balance several factors in deciding whether to allow late-filed (or amended) contentions. See 10 CFR 2.309(c)(i)-(viii). In the case of the yet-to-issue NRC rules, however, the Commission is dispensing in advance with all "late-filed" factors except the "good cause" factor. It is obvious even now that promptly-filed and well-pled contentions based on new, previously unavailable NRC rules—rules that will govern important aspects of NRC's safety review—must be admitted for hearing. There plainly would be "good cause" for filing such contentions late, and no conceivable justification for rejecting them at the threshold.

⁶ Petition by the State of Nevada for Rulemaking to Specify Issues for the Yucca Mountain Mandatory Hearing (June 19, 2007).

That petition has now been ruled on, and the Commission's rulemaking decision is reflected in the discussion of the scope of the hearing addressed in Section III.D, above.⁷

Finally, the third issue Nevada raises in its September 9 Petition concerns the status of security clearances and access to classified information in the Yucca Mountain construction authorization application. Nevada argues that its representatives have not been informed of decisions on their security clearances and on access to classified information, "notwithstanding timely applications," so no contentions based on classified information can be prepared.⁸ To remedy this, Nevada again asks for a bifurcation of contention-filing deadlines.

It is the Commission's understanding that, as of the end of July, one of Nevada's security clearance applications was complete and was being processed, another application was incomplete, and two applications had been withdrawn.⁹ From this, the Commission concludes that the timeliness of Nevada's security clearance applications is factually ambiguous. Moreover, it is not immediately clear that the perceived problem could not be remedied by the provision of redacted versions of classified documents that could provide a basis for the formulation of contentions before the security clearance application reviews are completed. The Commission directs the PAPO Board to resolve both of these questions.

It is so ordered.

Dated at Rockville, Maryland, this 17th day of October, 2008.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8-25293 Filed 10-21-08; 8:45 am]

BILLING CODE 7590-01-P

⁷ See State of Nevada; Denial of Petition for Rulemaking, Docket No. PRM-2-14, available at ADAMS accession number ML082900618.

⁸ September 9 Petition at 6.

⁹ See Letter from Aby Mohseni, Deputy Director, Licensing and Inspection Directorate, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards to Robert R. Loux, Executive Director, Agency for Nuclear Projects, Office of the Governor, State of Nevada (July 31, 2008), available at ADAMS accession number ML081910097.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Economic Simplified Boiling Water Reactor (ESBWR); Corrected Notice of Meeting (Corrected To Note New Meeting Times)

The ACRS Subcommittee on the ESBWR will hold a meeting on October 21-22, 2008, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric-Hitachi (GEH) Nuclear Energy and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, October 21, 2008—1 p.m.–5 p.m

Wednesday, October 22, 2008—8:30 a.m.–12 noon.

The Subcommittee will review Chapter 14 of the Safety Evaluation Report with Open Items associated with the ESBWR Design Certification Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GEH, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Harold J. Vandermolen, (Telephone: 301-415-6236) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 14, 2008.

Cayetano Santos,

Branch Chief.

[FR Doc. E8-25141 Filed 10-21-08; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7001, 70-7002]

Notice of Renewal of Certificates of Compliance GDP-1 and GDP-2 for the U.S. Enrichment Corporation, Paducah and Portsmouth Gaseous Diffusion Plants, Paducah, KY and Portsmouth, OH

ACTION: Notice and issuance of a Director's Decision renewing the Certificates of Compliance for the United States Enrichment Corporation (USEC) allowing continued operation of the gaseous diffusion plants (GDPs), at Paducah, KY, and Portsmouth, OH.

FOR FURTHER INFORMATION CONTACT: Michael Raddatz, Enrichment and Conversion Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 492-3108; Fax: (301) 492-3363; or by e-mail: Michael.Raddatz@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is hereby issuing a director's decision authorizing the renewal of the certificates of compliance for the two GDPs located near Paducah, KY, and Portsmouth, OH, for the USEC, allowing continued operation of these plants. The renewal of these certificates for the GDPs covers a 5-year period. USEC submitted individual renewal requests for both the Paducah and Portsmouth GDPs on April 10, 2008, pursuant to Title 10 of the Code of Federal Regulations (10 CFR), Section 76.31.

Pursuant to 10 CFR 76.53, the NRC consulted with and requested written comments on the renewal application from the U.S. Environmental Protection Agency (EPA) and the Department of Energy (DOE). EPA responded in a letter dated September 15, 2008, (ML082840196) stating that it had thoroughly reviewed the USEC application to ensure that USEC had provided an accurate environmental compliance overview. The EPA found that both the local and regional EPA regulators had adequately inspected the

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

DOCKETED 8/13/08
SERVED 8/13/08

Dale E. Klein, Chairman
Gregory B. Jaczko
Peter B. Lyons
Kristine L. Svinicki

_____)	
In the Matter of)	
U.S. DEPARTMENT OF ENERGY)	Docket No. PAPO-00
(High Level Waste Repository:)	
Pre-Application Matters))	ASLBP No. 04-829-01-PAPO
_____)	

CLI-08-18

MEMORANDUM AND ORDER

On April 28, 2008, the State of Nevada requested that the Commission modify the schedule for the filing of petitions to intervene in any proceeding on the Department of Energy's (DOE) application for authorization to construct a geologic repository at Yucca Mountain, Nevada.¹ We decline to modify the schedule as specifically requested by Nevada. As discussed below, however, we grant Nevada, as well as any other petitioner, an additional thirty (30) days in which to file a petition to intervene, or a petition for status as an interested government participant, in any proceeding initiated on the Yucca Mountain application. In addition, we propose further modifications to the schedule currently codified in 10 C.F.R. Part 2, Appendix D.

¹ *State of Nevada's Motion to the Commission to Establish a Reasonable Schedule for the Filing of Contentions on Yucca Mountain* (Apr. 28, 2008)(Nevada Motion).

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DISCUSSIONA. The Nevada Motion

The Nevada Motion requests an extension of time, from 30 days after publication of a notice of hearing,² until 180 days after publication of that notice, to file a request for hearing in any proceeding on a construction authorization application for a geologic repository at Yucca Mountain.³ Nevada cites three principal bases for its request: first, more time is needed to prepare contentions that will satisfy the Commission's pleading standards;⁴ second, the NRC Staff previously indicated to Nevada that potential parties would have ten months to review relevant materials (six months to review documents on the Licensing Support Network, three months during the docketing period, and 30 days following the notice of hearing);⁵ and third, allowing more time to frame contentions actually will expedite the proceeding by permitting Nevada to focus and narrow the issues (including time to meet with DOE and the NRC Staff).⁶

² See 10 C.F.R. § 2.309(b)(2).

³ Shortly thereafter, the Nevada Congressional delegation wrote to the Secretary of the Commission, similarly requesting that the Commission provide potential parties to the licensing proceeding 180 days after the date the Staff docket the application and publishes a notice of hearing to submit petitions and contentions. Letter from the Honorable Harry Reid *et al.* to Annette L. Vietti-Cook (Apr. 30, 2008)(ML081220486).

⁴ Nevada Motion at 4. Nevada notes that it must review more than 110,000 pages of material comprising the license application and supporting material not already available on the Licensing Support Network (LSN). *Id.*

⁵ *Id.* at 5-6, citing the transcript of a May 23, 2001 public meeting to discuss the hearing process for a potential repository at Yucca Mountain (ML012060483). Subsequent to the filing of the Nevada Motion, we affirmed the Pre-License Application Presiding Officer's (PAPO) denial of Nevada's motion to strike DOE's LSN certification of October 19, 2007. *U.S. Department of Energy* (High Level Waste Repository; Pre-Application Matters), CLI-08-12, 67 NRC __ (slip op. June 17, 2008).

⁶ Nevada Motion at 7.

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DOE, the NRC Staff, and Nye County filed answers to the Nevada Motion. Both DOE and the NRC Staff oppose any extension.⁷ Nye County suggests that the 180-day period Nevada requests should begin at the date of license application tender, as opposed to the date the application is docketed.⁸

The current schedule for the adjudicatory proceeding on a construction authorization application for a high-level waste repository is codified in 10 C.F.R. Part 2, Appendix D. The schedule was initially promulgated as a model timeline nearly twenty years ago, as part of a negotiated rulemaking.⁹ In 1991, the Commission modified the rules, via notice-and-comment rulemaking, with respect to the schedule.¹⁰ At that time, the Commission amended 10 C.F.R. Part 2, Subpart J, to add 10 C.F.R. § 2.1026 and Appendix D, which codified the model schedule (with minor changes), and added some flexibility for the Presiding Officer to handle special circumstances.¹¹ Since that time, the Appendix D schedule has not been modified.¹²

⁷ *U.S. Department of Energy Answer Opposing the State of Nevada's Motion to Establish a Schedule for Filing Contentions* (May 8, 2008); *NRC Staff Response to the State of Nevada's Motion to Establish a Reasonable Schedule for the Filing of Contentions on Yucca Mountain* (May 8, 2008).

⁸ *Nye County Response to State of Nevada's Motion for Schedule for Filing Contentions* (May 3, 2008).

⁹ Final Rule, Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste, 54 Fed. Reg. 14,925 (Apr. 14, 1989).

¹⁰ Final Rule, Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository, 56 Fed. Reg. 7787 (Feb. 26, 1991).

¹¹ 10 C.F.R. § 2.1026(b) and (c) provide that the Presiding Officer may grant extensions of time for individual milestones for the participants' filings, and may delay its own issuances for up to 30 days beyond the date of the milestone set in the hearing schedule.

¹² The Commission had the opportunity to revisit the Appendix D schedule when it revised its rules of practice in 2004, but expressly declined to do so. Final Rule, Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2199 (Jan. 14, 2004)(declining to extend the 30-day period for filing requests for hearing and petitions to intervene in a proceeding on a high-level waste repository, "in view of the ample pre-application document disclosures provided by the LSN").

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Considering these longstanding procedural requirements for a high-level waste repository proceeding, we note the following recent developments. In preparation for submission of its application, DOE made information available on the LSN in October 2007, and, as noted above, its LSN certification has been upheld.¹³ On June 3, 2008, DOE tendered a license application seeking authorization to construct a geologic repository at Yucca Mountain.¹⁴ The NRC Staff has not yet accepted the application for review and has not yet docketed it in accordance with 10 C.F.R. § 2.101(e)(3). The Staff has stated that it expects to complete the acceptance review in approximately 90 days; that is, in September 2008.¹⁵ This 90-day review period is consistent with the Staff's statements in 2001, cited in the Nevada Motion. As a practical matter, in addition to its many years of participation in pre-application matters, Nevada already has approximately 120 days (i.e., the 90-day acceptance review period plus the 30-day period for filing petitions in response to the Notice of Hearing), to refine its proposed contentions from the date of NRC's official notice of the availability of the application in the *Federal Register*.¹⁶ In these circumstances, we see no basis for granting Nevada the full 180-day extension of time it seeks.

It is true, however, as we recently acknowledged, that if a proceeding is initiated on the DOE application, it has the potential to be one of the most expansive and complex adjudicatory

¹³ A proceeding on a high-level waste application is the only NRC adjudicatory proceeding that specifically provides for pre-application discovery.

¹⁴ Yucca Mountain; Notice of Receipt and Availability of Application, 73 Fed. Reg. 34,348 (June 17, 2008).

¹⁵ Information on the Staff's acceptance review is available on the NRC's Web site: <http://www.nrc.gov/waste/hlw-disposal/licensing/acceptance-safety/acceptance-review.html> (last revised June 12, 2008).

¹⁶ In addition, the Presiding Officer retains the flexibilities accorded it by 10 C.F.R. § 2.1026.

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proceedings in agency history.¹⁷ In addition, the 30-day time limit provided for intervention petitions for a high-level waste repository construction authorization proceeding is half the time accorded participants in nearly all other NRC adjudicatory proceedings, most of which are narrower in scope and less complex than we would anticipate a high-level waste repository proceeding to be.¹⁸ We therefore find a modest extension of time reasonable and, indeed, advisable.¹⁹ Should an adjudicatory proceeding commence on the application, Nevada, as well as any other petitioner in that proceeding, is hereby *granted* a thirty (30) day extension of time in which to file a petition to intervene and request for hearing, or a petition for status as an interested government participant. This 30-day extension will be reflected in any notice of hearing we publish in connection with DOE's construction authorization application.

B. Proposed Revisions to Other Procedural Milestones

In order to provide equitable, proportional extensions of time to other participants in any proceeding that may be commenced, the Commission proposes to revise additional milestones in 10 C.F.R. Part 2, Appendix D. In particular, the Commission plans to double the existing time permitted to file answers and replies, pursuant to 10 C.F.R. §§ 2.309(h)(1) and (h)(2), to fifty (50) and fourteen (14) days, respectively. Any party or potential party who is participating in the

¹⁷ *U.S. Department of Energy* (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board), CLI-08-14, 67 NRC ___ (slip op. June 17, 2008)(noting the "voluminous body of information upon which a postulated adjudicatory proceeding would be based"). The Advisory PAPO Board has noted the number of contentions could exceed 650, with the bulk of those submitted by the State of Nevada. Memorandum (Advisory Pre-License Application Presiding Officer Board Request to the Commission for Additional Authority)(Mar. 31, 2008)(unpublished), slip op. at 2 & n.2.

¹⁸ *Compare* 10 C.F.R. § 2.309(b)(3)(providing for 60 days to file intervention petitions and hearing requests in NRC proceedings other than those for license transfer requests and a construction authorization application for a high-level waste repository).

¹⁹ The Commission has authority to issue case-specific orders modifying procedural regulations, including milestone schedules. *Nat'l Whistleblower Center v. NRC*, 208 F.3d 256 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 1070 (2001).

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ongoing matter before the PAPO Board may provide comments on these proposed extensions of time no later than ten (10) days from the date of this Order.

Finally, the Commission proposes to revise certain Appendix D milestones applicable to the Presiding Officer if a proceeding on DOE's application for a geologic repository commences. In particular, the Commission proposes to extend the period for the First Prehearing Conference from eight (8) to sixteen (16) days after the deadline for filing replies, and to extend the period for issuance of the First Prehearing Conference Order from thirty (30) to sixty (60) days after the First Prehearing Conference.²⁰ The Commission requests that the Atomic Safety and Licensing Board Panel provide comments on the reasonableness of the current and proposed time frames no later than ten (10) days from the date of this Order.

²⁰ See 10 C.F.R. §§ 2.1021(a), (d).

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For the reasons set forth above, we *deny* Nevada's request for a 180-day extension of time but *grant* a 30-day extension of time to Nevada and all other hearing petitioners.

IT IS SO ORDERED.²¹

For the Commission



/RA/

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland
This 13th day of August, 2008.

²¹ Pursuant to 10 C.F.R. § 2.101(e)(3), a docket number will be assigned to DOE's application if and when the Staff determines that the application is acceptable for docketing. As an administrative convenience, this Memorandum and Order will be served on the service lists for the PAPO-00 and PAPO-001 dockets.

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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)
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Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04
September 30, 2009

CAB CASE MANAGEMENT ORDER #2

On June 19, 2009, the Chief Administrative Judge established Construction Authorization Board-04 (CAB-04) to preside over matters concerning discovery, Licensing Support Network (LSN) compliance, new or amended contentions, grouping or consolidation of contentions, scheduling, and case management matters relating to any of the foregoing in the proceeding involving the United States Department of Energy's (DOE's) application for construction authorization for a high-level waste repository at Yucca Mountain in Nye County, Nevada. On September 14 and 15, 2009, CAB-04 conducted a prehearing conference at the Las Vegas Hearing Facility primarily to discuss four sets of documents that bear upon discovery, contention grouping and consolidation, scheduling, and case management in this proceeding: (1) the parties' initial filings in response to CAB-01's March 20, 2009 order regarding the first prehearing conference; (2) the U.S. Nuclear Regulatory Commission (NRC) Staff's answer to this Board's July 2, 2009 order concerning scheduling; (3) the parties' filings in response to this Board's July 21, 2009 order concerning serial case management; and (4) the parties' filings in response to this Board's August 25, 2009 order concerning discovery and case management. During the prehearing conference, the Board directed the parties to meet and

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confer in order to develop a proposed case management order for the first phase of this proceeding.

On September 23, 2009, the parties filed a proposed case management order in which all parties and interested governmental participants concurred.¹ On September 28, 2009, an unopposed joint motion was filed by the County of Inyo and the Joint Timbisha Shoshone Tribal Group to modify the proposed order by removing three groundwater-based contentions from first phase discovery (Joint Motion).² The Board appreciates the parties' efforts to reach agreement, and hereby grants the Joint Motion and adopts the proposed order with limited modifications. In Section A, for example, we provide that reply briefs shall be filed no later than 30 days after initial briefs are due (rather than filed) in order to simplify the calendaring of response dates. We have also made one significant language change in Section A, but only to express more clearly our understanding of the parties' intent: i.e., that the focus of discovery during the first phase shall be on contentions that relate to either SER Volume 1 or 3, but that the parties may also conduct discovery on other contentions if necessary or appropriate to lead to the production of admissible evidence associated with the prosecution or defense of a contention that is within the scope of SER Volume 1 or 3. The Board does not believe that any modifications should affect the overall balance of the discovery plan on which the parties have agreed.

Accordingly, pursuant to the Commission's October 17, 2008 notice of hearing and 10 C.F.R. § 2.319(g), (q), and (r), this Board issues this Case Management Order setting forth requirements and procedures applicable to the proceeding.

¹ Joint Submission of Proposed Case Management Order #2 (Sept. 23, 2009).

² Joint Motion by the County of Inyo and the Joint Timbisha Shoshone Tribal Group to Remove Three Groundwater-Based Contentions from Discovery During Phase I (Sept. 28, 2009).

A. Phase I Discovery

In light of the NRC Staff's plan to issue its Safety Evaluation Report (SER) serially and to schedule the issuance of SER Volume 1 in March 2010 and SER Volume 3 in September 2010, discovery in this proceeding will occur in phases. Phase I discovery is authorized to begin on October 1, 2009 (although depositions cannot commence until February 16, 2010, but can be noticed earlier), and end on November 30, 2010 (or two months after the NRC Staff issues SER Volume 3, whichever is later), with regard to the following admitted contentions:

- all safety and miscellaneous contentions concerning issues that relate to either SER Volume 1 or 3;
- all NEPA contentions (other than those involving DOE's additional groundwater analysis) concerning issues that relate in some manner to SER Volume 1 or 3; and
- all legal issue contentions that relate in some manner to SER Volume 1 or 3.

The Appendix to this Case Management Order identifies the specific contentions (safety, miscellaneous, NEPA, and legal issue) that will be addressed in Phase I. Except as otherwise expressly provided, there shall be no discovery on or litigation of any other contentions that are not specifically identified as included in Phase I until a schedule is established for those contentions by this Board. In admitting any new contentions to this proceeding, the Board will identify whether they shall be included in Phase I. However, parties may move this Board, upon good cause shown, to initiate discovery on contentions other than those identified in the Appendix to this Case Management Order or newly admitted Phase I contentions where necessary to preserve evidence that may be lost if such discovery is otherwise delayed.

Consistent with the requirements of 10 C.F.R. § 2.1018(b)(1), the parties may conduct discovery on contentions outside the scope of SER Volumes 1 and 3 during Phase I of this proceeding if necessary or appropriate to lead to the production of admissible evidence associated with the prosecution or defense of a contention that is within the scope of SER Volume 1 or 3. If contentions now subject to discovery in Phase I need to be adjudicated in

later phases of this proceeding, the parties may move this Board to continue discovery on those contentions as necessary or appropriate beyond the close of discovery for Phase I.

The contentions identified in the Appendix include legal issue contentions that will be addressed in Phase I. With regard to those legal issue contentions, the affected parties (i.e., the Applicant, the NRC Staff, and each party that filed, adopted, or joined in the contention) shall jointly file with this Board a proposed legal question for each such contention on or before October 6, 2009. If the affected parties cannot reach agreement on the wording of the legal question, they shall submit to this Board, on or before October 13, 2009, their respective proposed wording. The Board will then rule on the issues. Initial briefs shall be filed on all such legal issues by the affected parties 45 days after the Board's order. Any affected party's reply brief shall be filed no later than 30 days after initial briefs are due. Unless otherwise directed by the Board, no other filings shall be permitted.

Unless otherwise specified herein, all filings, notices, disclosures, and requests required by or permitted by this Case Management Order shall be via the EIE. Informal communications between counsel for the parties shall not be via the EIE or otherwise communicated to the Board. All parties' regulatory obligations regarding the LSN and the case management orders of the Advisory Pre-License Application Presiding Officer Board and Construction Authorization Boards 01, 02, and 03 remain in effect and are not affected by this Case Management Order.

B. Contention Consolidation and Grouping

Within ten days after the start of discovery of Phase I, the party intervenors shall propose, either individually or in groups or collectively, those contentions that should be consolidated for Phase I and those contentions that should be grouped for Phase I. For those contentions that are to be consolidated for Phase I, a lead party should be proposed. See La. Energy Servs., L.P. (National Enrichment Facility), LBP-04-14, 60 NRC 40, 71 (2004), aff'd, 60 NRC 619, 629 (2004); see also 10 C.F.R. § 2.309(f)(3).

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The party intervenors shall consider contentions in Phase I that focus on a common subject matter or rely upon the same witness as candidates for grouping. Unlike consolidated contentions for which a lead party is identified, each contention that is grouped with other similar contentions for Phase I remains distinct and unique, and thus, each party intervenor is permitted to advocate or defend each of those contentions and participate in the discovery process for each of those contentions notwithstanding the identified groupings. Discovery related to grouped contentions shall be coordinated as discussed in Sections C.2 and C.3, infra.

Within 30 days after the start of discovery of Phase I, any party may file any objection to any proposed consolidation or grouping or may propose alternate consolidation or grouping. Reply filings shall be permitted within ten days of objections. The Board will issue an order setting forth the groupings or consolidations effective for Phase I. Any changes to any groupings or consolidations of contentions shall require leave of this Board for good cause shown.

C. Discovery Rules

1. Identification of Witnesses

Within ten days after the start of discovery of Phase I, each party (including NRC Staff, but only as to NEPA contentions and subject to the restrictions noted below) shall identify the witness(es) it intends to call at a hearing to provide testimony in support or defense of each contention subject to Phase I (hereinafter "Party Witnesses"). Every 60 days thereafter, each party (including NRC Staff, but only as to NEPA contentions and subject to the restrictions noted below) shall provide either an updated list of Party Witnesses or a certification that no additional Party Witnesses have been identified. No later than 120 days before discovery closes for Phase I, each party (including the NRC Staff, but only as to NEPA contentions and subject to the restrictions noted below) shall provide a final updated list of Party Witnesses, except as discussed below for "Other Witnesses." For each Party Witness that is identified, the following information shall be provided:

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- name, affiliation, address, curriculum vitae, a general statement of the subject matter(s) that will be addressed, and a listing of the specific contention(s) that will be addressed;
- all relevant publications authored by witness in the previous ten years; and
- all cases in which the witness has provided testimony at trial or by deposition in the previous four years.

The foregoing information for Party Witnesses shall be provided even if similar information was previously provided, e.g., as part of any petition to intervene, any answer to any petition to intervene, or any response to any answer to any petition to intervene. No party may object to the deposition of any Party Witness so long as the deposition is limited to matters relating to admitted contentions or the subject matter identified as that to be addressed by the Party Witness. If a party fails to produce a Party Witness for deposition, if noticed, by the time discovery closes for Phase I, that party shall be precluded from calling that Party Witness at the hearing.

Within 30 days after the start of discovery of Phase I, each party (including the NRC Staff, but only as to NEPA contentions and subject to the restrictions noted below) shall identify any witness that it intends to depose if that witness was not previously identified as a Party Witness (hereinafter "Other Witnesses"). Every 60 days thereafter, each party (including the NRC Staff, but only as to NEPA contentions and subject to the restrictions noted below) shall provide either an updated list of Other Witnesses or a certification that no additional Other Witnesses have been identified. No later than 120 days before discovery closes for Phase I, each party (including the NRC Staff, but only as to NEPA contentions and subject to the restrictions noted below) shall provide a final updated list of Other Witnesses. Any party may object to the deposition of any Other Witness identified by moving for a protective order within ten days from the date of the notice of deposition. Once an Other Witness has been deposed,

any party may add that witness to their Party Witness list without the obligation to provide the information identified above and without regard to the 120-day final listing of Party Witnesses.

The NRC Staff is not required to respond to any discovery request or identify or produce any witness or potential witness pursuant to 10 C.F.R. § 2.709(a)(1) with respect to any matter related to any safety or miscellaneous contention subject to discovery during Phase I until ten days after the NRC Staff has issued the volume of the SER that relates to that particular contention. Within ten days after the issuance of a particular volume of the SER, the NRC Staff shall identify its Party Witnesses, and any Other Witnesses as necessary or appropriate, for that particular volume of the SER, and if less than 60 days remain for discovery, then any party (other than the NRC Staff) may reasonably notice their deposition without regard to the 60-day advance notice provision discussed in Section C.2, infra. With respect to those NEPA contentions that are subject to discovery during Phase I, NRC Staff is required to respond to those discovery requests and to identify and produce witnesses or potential witnesses pursuant to 10 C.F.R. § 2.709(a)(1), but only with respect to the NRC Staff's September 5, 2008 Adoption Determination Report.

To the degree that any party needs to identify new, additional, or replacement Party Witnesses or Other Witnesses, that party shall identify such witnesses as soon as practicable after the circumstance arises that prompts the need to secure such a witness. In no event may any party identify a witness so late in the discovery process that it delays the close of discovery or unduly prejudices another party.

2. Depositions

No deposition of any witness shall occur in Phase I before February 16, 2010. If counsel for any party seeks to depose any witness, prior to noticing the deposition, such counsel must confer in good faith with counsel who will defend the witness on matters involving, at a minimum, the date, location, and anticipated duration of the proposed deposition. Unless otherwise agreed among all involved counsel and the witness, all depositions shall be

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scheduled with at least 60 days' prior notice. The preferred location for the deposition of a witness shall be that location that all counsel involved in the deposition and the witness mutually agree to be the most convenient, but if there is no agreement, then the location shall be, at the discretion of the counsel defending the witness, one of the following locations:

- in the metropolitan area of the city where the witness resides (at a location convenient to the witness) provided that city is located within the continental United States;
- in the office of the counsel defending the witness; or
- at a location in Las Vegas, Nevada for witnesses residing west of the Mississippi River or in Washington, D.C. for witnesses (or Rockville, Maryland for NRC Staff witnesses) residing east of the Mississippi River.

The length of the deposition of any one witness should be limited to no more than one seven-hour day (with an additional hour off for lunch), unless counsel involved in taking and defending the deposition collectively agree that additional time is needed to fairly examine the witness (e.g., where multiple parties will participate and examine the witness during the deposition or where the deponent will be testifying on matters involving several contentions or groups of contentions). If it is agreed that more than one day is required to fairly examine the witness, the deposition notice shall so state and estimate the amount of time required for the deposition. Absent agreement, the matter can be submitted to this Board for resolution. The party noticing the deposition shall be entitled to approximately five of the seven hours to examine the witness. The parties shall accord a high priority to avoiding multiple depositions of the same witness, while recognizing that some witnesses may have to be deposed more than once; however, in those situations where a second deposition of the same witness could occur, the counsel taking the deposition shall make a good-faith effort to avoid revisiting subject matter on which the witness already was deposed absent a showing of new information.

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Pursuant to 10 C.F.R. § 2.1018(d), the depositions in this proceeding may proceed in any order that the counsel for the parties collectively agree in good faith is appropriate for that particular contention, group of contentions, or witness. Counsel for the parties should endeavor in good faith to sequence depositions on groups of contentions in a single window of time during the period of discovery.

Generally only one counsel for each party should examine or defend a witness in a deposition; however, more than one counsel may examine or defend a witness (although not simultaneously) in a deposition under the following circumstances:

- if a witness will be opining on more than one contention or group of contentions that necessitates the use of more than one attorney, although such issues shall be examined and defended sequentially; or
- if the deposition extends over more than one day and counsel availability is or becomes problematic (e.g., a witness from outside the United States is only available on specific dates, some of which conflict with the schedule of a single counsel examining or defending the witness).

In those circumstances in which more than one party expects to examine a witness in a deposition and their interests appear to be aligned, examining counsel should confer prior to the deposition to attempt to avoid or minimize repetitive questioning and unduly extend the time required to complete the deposition. The first counsel examining the witness will, to the extent feasible, conduct the majority of the deposition, and additional counsel examining the witness will limit their examination to questions not already addressed.

With the exceptions of responses that would require the public disclosure of privileged information, classified information, or information otherwise protected from public disclosure by a rule, a case management order, or a protective order by the NRC or its presiding officers, or where limited by order of the CAB or the Commission, the witness shall not be permitted, or instructed by counsel defending the witness, not to answer questions posed. It shall not be

permissible for counsel defending a witness to instruct the witness not to answer, or for the witness to refuse to answer a question on grounds including, but not limited to, that the question is outside the scope of this proceeding, is not material to this proceeding, or does not relate to a genuine dispute or issue involved in this proceeding. Upon ten days' advance notice (not through the EIE) to all counsel involved in a deposition, counsel for a party may participate in a deposition, including questioning a witness, by telephone or video conference, and any costs associated with such participation shall be borne by the counsel so participating.

For Party Witnesses and for those Other Witnesses currently employed by or currently acting as a contractor for the defending party, the cost associated with producing such witnesses, as well as the cost for time spent and expenses incurred by such witnesses in preparing for their examination, in attending the deposition, or in reviewing and if needed correcting the transcript of their examination shall be borne by the party defending the witness. For all remaining Other Witnesses, the party noticing the deposition shall be responsible for the costs specified in 10 C.F.R. § 2.1019(g). The party noticing a deposition shall also be responsible for the following costs:

- charges associated with the venue where the deposition is conducted unless the witness is produced in the office of the counsel defending the deposition, or as otherwise agreed by counsel noticing the deposition and counsel representing the witness;
- the use of a court reporter to record the deposition by stenographic means;
- the use of the videographer to videotape the deposition but only if the videographer is requested by counsel noticing the deposition (otherwise the party requesting the videographer shall be responsible for such costs);
- the production of the transcript of the deposition and associated exhibits, and any necessary corrections; and

- the filing of the transcript and associated exhibits as required by 10 C.F.R. § 2.1019(d).

Once the deposition transcript becomes available, it shall be submitted immediately to the counsel defending the witness, who shall forward the same to the witness for review and any correction. Review and any correction of the transcript shall be made within 20 days of the transcript becoming available. The procedural requirements of 10 C.F.R. § 2.1019(d) shall be followed.

3. Requests for Admission

Pursuant to 10 C.F.R. §§ 2.1018 and 2.708, each party may, without leave of this Board, file a request for admission as to either (i) the genuineness and authenticity of any relevant document, or (ii) the truth of any specified relevant matter of fact. Responses are required within 14 days. However, absent an agreement between the parties or leave of this Board in response to a motion for relief, no party may file requests for admission more than once for each group of contentions (with a limit of no more than five requests for any one contention), and no more than four sets of requests for admission may be filed by any party in any one calendar month.

4. Entry Upon Land for Inspection

The parties may make an entry upon land for inspection as authorized by 10 C.F.R. §§ 2.1018(a)(1)(ii) and 2.1020. The parties will provide courtesy copies of any request for entry upon land for inspection to all counsel. Any party may respond to a request for an entry upon land for inspection within ten days after the service of the request.

5. Document Production

Pursuant to 10 C.F.R. §§ 2.1018(a)(1)(i) and 2.1003, the production of documents from any party is limited to that which exists on the LSN with the following three exceptions:

- under 10 C.F.R. § 2.1018(a)(1)(iii), document access or production is required (if specifically requested) where only bibliographic header information has been

provided for nonprivileged, nonimageable documentary material (see 10 C.F.R. § 2.1003(a));

- under 10 C.F.R. § 2.1019(i), if requested, paper copies of additional documents in the possession of any deponent relevant to the subject matter of the deposition shall be brought to the deposition if not already electronically available; and
- additional document production is permitted in accordance with an applicable NRC regulation or an applicable case management order. See, e.g., PAPO Board Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007) at 14-15 (unpublished); PAPO Board Third Case Management Order (Aug. 30, 2007) at 7 (unpublished).

None of the foregoing documents need be placed on the EIE. Subpoenas for the production of documents from non-parties may be issued pursuant to 10 C.F.R. § 2.1018(f)(3).

6. Interrogatories

Pursuant to 10 C.F.R. § 2.1018(a)(2), interrogatories are not permitted without leave of this Board upon a showing that the parties have engaged in informal, but unsuccessful, good-faith efforts to resolve a dispute in a timely fashion concerning the production of information. The Board encourages the parties to take advantage of informal requests for information of the type typically made in NRC adjudications and encourages the parties to be forthcoming in responding to those informal requests and producing information voluntarily. Neither the informal requests nor the information produced need be placed on the EIE; however, both informal requests and responses should be provided to counsel for all parties via email messages. If good-faith efforts to resolve disputes are not successful, this Board is willing to entertain formal requests for leave to serve interrogatories.

D. Dispute Resolution

The Board expects counsel to cooperate with each other in all aspects of the management of this unusually complex proceeding, to extend professional courtesy to all

parties, counsel, witnesses, and staff, and in general to be guided by principles of good faith.

The Board interprets counsels' remarks during the prehearing conference of September 14 and 15, 2009, as a commitment to abide by these principles.

Counsel for the parties shall engage in good-faith negotiations to resolve any disputes between them that may arise. The Board does not intend to appoint a discovery master at this time. In the event that counsel for the parties are unable to resolve their disputes following good-faith negotiations, counsel for the parties to the dispute shall contact the Board telephonically to resolve the dispute. In that regard, all counsel for the parties to the dispute should contact one of the Board's law clerks, Ms. Tucker at 301-415-5833 or Mr. Rotman at 301-415-7703, to identify the dispute for resolution. The Board will, if available, immediately resolve the dispute or promptly schedule another conference call to do so.

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
September 30, 2009

JA001656

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JA001660

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

BEFORE THE COMMISSION

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001
)	
(High Level Waste Repository))	December 19, 2008

**STATE OF NEVADA'S
PETITION TO INTERVENE AS A FULL PARTY**

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Yucca Mountain Review Plan

Final Report

**U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Washington, DC 20555-0001**



ABSTRACT

The Yucca Mountain Review Plan provides guidance for the U.S. Nuclear Regulatory Commission staff to evaluate a U.S. Department of Energy license application for a geologic repository. It is not a regulation and does not impose regulatory requirements. The licensing criteria are contained in the U.S. Code of Federal Regulations (CFR) Title 10, Part 63 (10 CFR Part 63), "Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada." The Secretary of Energy has recommended the Yucca Mountain site to the President for the development of a Yucca Mountain repository. The President has notified Congress that he considers the Yucca Mountain site qualified for application for a construction authorization for a repository. Nevada filed a notice of disapproval of the President's recommendation; however, Congress later approved the site recommendation. The U.S. Department of Energy may now submit a license application to the U.S. Nuclear Regulatory Commission. The principal purpose of the Yucca Mountain Review Plan is to ensure the quality, uniformity, and consistency of U.S. Nuclear Regulatory Commission staff reviews of the license application and any requested amendments. The Yucca Mountain Review Plan has separate sections for reviews of general information, repository safety before permanent closure, repository safety after permanent closure, the research and development program to resolve safety questions, the performance confirmation program, and administrative and programmatic requirements. Each section addresses determining compliance with specific regulatory requirements from 10 CFR Part 63. The regulations and the Yucca Mountain Review Plan are risk-informed, performance-based to the extent practical.

Draft Revision 2 of the Yucca Mountain Review Plan was made available for public comment in March 2002. This Final Revision 2 reflects revisions to address those comments, as appropriate.

EXECUTIVE SUMMARY

Disposal of high-level radioactive waste requires a U.S. Nuclear Regulatory Commission license. Part 63 under Title 10 of the U.S. Code of Federal Regulations (“Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada”) contains the governing regulations. U.S. Nuclear Regulatory Commission authority to regulate a high-level waste repository comes from the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and the Nuclear Waste Policy Act of 1982, as amended. The Yucca Mountain Review Plan is guidance to the U.S. Nuclear Regulatory Commission staff for review of any license application from the U.S. Department of Energy for a geologic repository for disposal of high-level radioactive waste at Yucca Mountain, Nevada. The U.S. Nuclear Regulatory Commission has directed the staff to carry out risk-informed, performance-based regulatory programs. 10 CFR Part 63 is risk-informed and performance-based, because risk of health effects to the reasonably maximally exposed individual is the basis for its performance objectives. 10 CFR Part 63 also requires protection of ground water by limiting the radioactivity in a representative volume of ground water and an assessment of repository performance under conditions of human intrusion. The U.S. Nuclear Regulatory Commission will base its licensing decision on whether the U.S. Department of Energy has demonstrated compliance with the performance objectives. Therefore, the Yucca Mountain Review Plan is risk-informed and performance-based.

The principal purpose of the Yucca Mountain Review Plan is to ensure the quality and uniformity of U.S. Nuclear Regulatory Commission staff licensing reviews. Yucca Mountain Review Plan sections present the areas of review, review methods, acceptance criteria, evaluation findings, and references the staff will use for its review. There are sections for reviews of general information, repository safety before permanent closure, repository safety after permanent closure, the research and development program to resolve safety questions, the performance confirmation program, and administrative and programmatic requirements. A summary of the risk-informed, performance-based foundation for each section follows.

An acceptance review is the first screening of the U.S. Department of Energy license application. The application must be complete and provide enough information to demonstrate compliance with the regulations. The reviewer will evaluate whether the information is sufficient to support a detailed review, and will assess the schedule for any later U.S. Nuclear Regulatory Commission milestones. The acceptance review does not determine the technical adequacy of the submitted information; that will be accomplished during a subsequent detailed technical review. U.S. Nuclear Regulatory Commission staff will send the results of the acceptance review, with a projected schedule for the rest of the review, to the U.S. Department of Energy within 90 days of receiving the license application. If the license application fails the acceptance review, the staff will inform the U.S. Department of Energy in writing, that the application is not acceptable for processing or docketing and will inform the U.S. Department of Energy as to how the document is deficient.

During the detailed technical review, the general information section of the license application will be evaluated to determine if it provides a broad overview of the U.S. Department of Energy engineering design concept for the repository and allows the U.S. Department of Energy to demonstrate its understanding of which aspects of the Yucca Mountain site and its environs influence repository design and performance. More detailed technical information about the repository is in the Safety Analysis Report sections of the license application. The assessment

EXECUTIVE SUMMARY (continued)

of safety before permanent closure evaluates compliance with performance objectives to limit doses to workers and the public to acceptable risk levels. 10 CFR Part 63 requires the U.S. Department of Energy to demonstrate compliance using a preclosure safety analysis. A preclosure safety analysis systematically examines the site, the design, the potential hazards, initiating events and their consequences, and the potential dose consequences to workers and the public. The preclosure safety analysis considers the probabilities and uncertainties associated with potential hazards. The preclosure review will focus on information supplied by the U.S. Department of Energy to demonstrate that repository design, construction, and operation will meet the performance objectives (exposure limits). The U.S. Nuclear Regulatory Commission staff review will include risk-significant systems, structures, and components important to safety.

10 CFR Part 63 requires the U.S. Department of Energy to conduct a performance assessment to demonstrate compliance with postclosure performance objectives. A performance assessment systematically analyzes what can happen, the likelihood, and the consequences. The U.S. Nuclear Regulatory Commission staff will use risk information to focus its review on those items most important to waste isolation. The staff will examine the U.S. Department of Energy identification of natural and engineered barriers important to waste isolation. The staff will use risk insights from previous performance assessments for the Yucca Mountain site, detailed process-level modeling efforts, laboratory and field experiments, and natural analog studies. The staff will then evaluate the U.S. Department of Energy scenario analysis. The scenario analysis must consider the risk information from identified barriers and include the identification and screening of features, events, and processes, and the construction of scenarios from the retained features, events, and processes of the Yucca Mountain site. Finally, the performance assessment review will examine information on 14 model abstractions. The abstractions arose from engineered, geosphere, and biosphere subsystems shown to be most important to waste isolation, based on previous performance assessments, knowledge of site characteristics, and repository design. The staff review will focus on those models and abstracts that are most risk significant to repository safety. For the postclosure period, "important to safety" means important to meeting the radiation exposure performance objective. The risk of radiation health effects is the basis for the radiation exposure limit. The postclosure performance objectives also protect ground water by limiting the radioactivity in a representative volume of ground water and require an assessment of performance under conditions of human intrusion.

The review of the research and development program for resolving safety questions applies to systems, structures, and components important to safety, and engineered and natural barriers important to waste isolation. The program identifies, describes, and discusses safety features or components that require further information to confirm the adequacy of design. This will be a risk-informed review, because it focuses on those items most important to safety or waste isolation.

The review of the performance confirmation program examines the program of tests, experiments, and analyses the U.S. Department of Energy will conduct to evaluate the adequacy of the information used to demonstrate compliance with the performance objectives in 10 CFR Part 63. A performance confirmation program addresses uncertainties in estimating repository performance over thousands of years. This section is risk-informed and

EXECUTIVE SUMMARY (continued)

performance-based because it focuses on parameters and engineered and natural barriers important to health and safety.

10 CFR Part 63 provides no performance objectives for the administrative and programmatic sections of the Yucca Mountain Review Plan. Existing regulatory programs are the basis for acceptance criteria and review methods in this section and are identified. The acceptance criteria and review methods were prepared based on expected operations and associated risks. The quality assurance section of the Yucca Mountain Review Plan contains review methods and acceptance criteria to support a review of either a graded or nongraded quality assurance program. The U.S. Nuclear Regulatory Commission staff will conduct a review of the quality assurance program proposed by the U.S. Department of Energy.

Review Plan for General Information

1.1.3 Acceptance Criteria

The following acceptance criteria are based on meeting the requirements of 10 CFR 63.21(b)(1), relating to the description of the general information.

Acceptance Criterion 1 The Location and Arrangement of the Geologic Repository Operations Area are Adequately Defined.

- (1) A general but accurate description of the geologic repository operations area is provided. This description includes:
 - (a) A discussion of the physical characteristics of the site and the natural setting;
 - (b) Scaled drawings or maps showing the location of the geologic repository operations area and its associated structures, systems, and components;
 - (c) A summary of the design features of the above- and below-ground structures, systems, and components, with a designation of whether they are permanent or temporary;
 - (d) A definition of the purpose of each geologic repository operations area structure, system, and component, and any interrelationships among them;
 - (e) Plans to restrict access to, and to regulate land uses around, the geologic repository operations area; and
 - (f) A description of radiological monitoring instrumentation and activities, including the U.S. Department of Energy plans for the mitigation of radiological impacts associated with the construction and operation of the proposed repository.

Acceptance Criterion 2 The General Nature of the Activities to be Conducted at the Geologic Repository is Adequately Described.

- (1) A summary description of the types, kinds, and amounts of spent nuclear fuel and other high-level radioactive waste to be disposed of is provided;
- (2) A summary description of the proposed operations is provided that includes receipt, handling, emplacement, retrieval, of waste and waste packages. This description includes basic plans for the movement of personnel, material, and equipment during construction and normal operations;
- (3) A description of plans for the inspection and testing of waste forms and waste package is provided;
- (4) A description of plans for the retrieval and the alternative storage of radioactive wastes, should retrieval be necessary is provided;

Review Plan for General Information

- (5) A description of plans for decommissioning and permanent closure of the geologic repository operations area is provided;
- (6) A general discussion of proposed uses of the geologic repository operations area for purposes other than the disposal of spent nuclear fuel and other types of high-level radioactive waste is incorporated; and
- (7) A description of plans for responses to emergencies is provided.

Acceptance Criterion 3 An Adequate Basis for the Exercise of the U.S. Nuclear Regulatory Commission Licensing Authority is Provided.

- (1) The license application describes the basis for the Commission's licensing authority that applies to the proposed activities at the geologic repository.

1.1.4 Evaluation Findings

If the license application provides sufficient information and the regulatory acceptance criteria in Section 1.1.3 are appropriately satisfied, the staff concludes that this portion of the staff evaluation is acceptable. The reviewer writes material suitable for inclusion in the safety evaluation report prepared for the entire application. The report includes a summary statement of what was reviewed and why the reviewer finds the submittal acceptable. The staff can document the review as follows.

U.S. Nuclear Regulatory Commission staff has reviewed the "General Information" and other information submitted in support of the license application and has found, with reasonable assurance, that the requirements of 10 CFR 63.21(b)(1) are satisfied. An adequate general description of the geologic repository has been provided that identifies the location of the geologic repository operations area, discusses the general character of the proposed activities at the geologic repository operations area, and provides the basis for the exercise of the Commission's licensing authority.

1.1.5 References

None.

1.2 Proposed Schedules For Construction, Receipt, and Emplacement of Waste

Review Responsibilities—High-Level Waste Branch and Environmental and Performance Assessment Branch

1.2.1 Areas of Review

This section reviews proposed schedules for construction, receipt, and emplacement of waste. Reviewers will evaluate the information required by 10 CFR 63.21(b)(2).



Technical Evaluation Report on the Content of the U.S. Department of Energy's Yucca Mountain Repository License Application

Postclosure Volume: Repository
Safety After Permanent Closure

JA001684

CHAPTER 21

Conclusions

The U.S. Nuclear Regulatory Commission staff has reviewed the Safety Analysis Report and the other information the U.S. Department of Energy (DOE) submitted. NRC staff notes that (i) the repository design is composed of multiple barriers and (ii) the results of the performance assessments for individual protection, human intrusion, and separate groundwater protection calculations are consistent with applicable YMRP guidance. In particular, the staff notes the following.

Multiple Barriers

- The repository includes multiple barriers, consisting of both natural barriers and engineered barrier systems.
- The proposed engineered barrier systems can be expected to work in combination with the natural barriers, consistent with the criteria for a system of multiple barriers.
- DOE identified the design features of the engineered barrier system and natural barrier features of the geologic setting that are considered barriers important to waste isolation, described the capability of the barriers identified as important to waste isolation (to isolate waste), and provided the technical basis for the description of the capability of the barriers that is consistent with the technical basis for the performance assessment evaluations.

Performance Assessments

- The performance assessment evaluations used to estimate repository performance include the appropriate features, events, and processes. DOE has provided an appropriate basis for the features, events, and processes that have been excluded from the performance assessment analysis.
- DOE appropriately considered events that have at least 1 chance in 100 million per year of occurring (i.e., igneous events, seismic events, and early failure of waste packages and drip shield events) in its performance assessment analyses.
- The model abstractions used in the performance assessment evaluations included applicable data related to the natural systems and the engineered barrier systems, appropriate consideration of uncertainty and variability in parameters and models, consideration of alternative models, and technical bases in support of the model abstractions. DOE should confirm its approach for decay chain radionuclide behavior by providing, through its performance confirmation program, information to reduce uncertainty related to the likelihood of excess Po-210 occurring in the saturated zone, as identified in TER Section 2.2.1.3.9.3.
- DOE has provided a reasonable basis for the statistical stability of the quantitative results of the Total System Performance Assessment (TSPA).