

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

January 11, 2010

MEMORANDUM AND ORDER
(Logistics for Oral Argument)

As directed in our January 7, 2010 order,¹ Construction Authorization Board (CAB) 04 will hear oral argument on pending legal issues on January 26, 2010 and, if necessary, January 27, 2010, at the Las Vegas Hearing Facility (LVHF), Pacific Enterprise Plaza, Building 1, 3250 Pepper Lane, Las Vegas, Nevada. On the morning of January 27, 2010, the Board will hold a case management conference regarding matters raised in the Licensing Support Network Administrator's (LSNA's) December 17, 2009 memorandum.² This order sets forth the terms of the oral argument and other necessary logistical information.

A. Terms of Oral Argument and Case Management Conference

On Tuesday, January 26, 2010, oral argument will commence at 9:00 a.m. PST in the LVHF. The Board will strive to conclude argument by 5:00 to 5:30 p.m. and take at least a 90-minute lunch break. Attendance at the oral argument is required by at least one counsel for each

¹ CAB Order (Scheduling Oral Argument) (Jan. 7, 2010) (unpublished).

² Memorandum to CAB-04 from Daniel J. Graser, Licensing Support Network Administrator (Dec. 17, 2009).

affected party associated with the legal issues identified in our October 23, 2009 order.³ These parties are the Department of Energy (DOE), the State of Nevada, the NRC Staff, and the Nuclear Energy Institute (NEI).⁴ Counsel for the other parties are free to attend the January 26 oral argument if they wish, but they will not be allowed to participate. The oral argument shall be limited to counsel who have filed a notice of appearance on behalf of DOE, Nevada, the NRC Staff, or NEI. Only one counsel for each party shall be allowed to argue with respect to any one of the issues identified in the Board's order of October 23, 2009.

The oral argument will proceed as follows. For each of the legal issues identified in our October 23, 2009 order, the Board will allow each side 20 minutes for argument. The proponent of the relevant contention(s) will argue first, followed by the opposing party or parties. Where two parties fall on the same side of a particular legal issue (e.g., DOE and NRC Staff), those parties shall divide their 20 minutes of argument time as agreed between the involved parties. The argument on the legal issues identified in the Board's October 23, 2009 order will be heard in the following order:

³ CAB Order (Identifying Phase I Legal Issues for Briefing) (Oct. 23, 2009) (unpublished).

⁴ Pursuant to CAB Case Management Order #2, only "affected parties (i.e., the Applicant, the NRC Staff, and each party that filed, adopted, or joined in the contention)" were permitted to brief the issues associated with the involved contentions. CAB Case Management Order #2 (Sept. 30, 2009) at 4 (unpublished). "Unless otherwise directed by the Board, no other filings shall be permitted." Id. Because Nye County is not an "affected party," its brief filed January 6, 2010 is stricken, and it shall not be permitted to present argument to the Board.

<u>Legal Issue</u>	<u>First 20 minutes</u>	<u>Second 20 minutes</u>
1	NEI	DOE / NRC Staff
2	Nevada	DOE / NRC Staff
3 and 4 ⁵	Nevada	DOE / NRC Staff
5	Nevada	DOE / NRC Staff
6	Nevada	DOE / NRC Staff
7	Nevada	DOE / NRC Staff
8	Nevada	DOE / NRC Staff
9	Nevada	DOE / NRC Staff
10	Nevada	DOE / NRC Staff
11	Nevada / NRC Staff	DOE

On Wednesday, January 27, 2010, beginning at 9:00 a.m. PST, the Board will convene a conference to discuss matters raised by the LSNA's memorandum, dated December 17, 2009, and the Board's order concerning the LSNA's memorandum, dated December 22, 2009.⁶ Counsel for all parties must participate in this conference – either in person or by teleconference, although the Board would encourage all conveniently located counsel to participate in person. After the Board receives any written responses to our December 22 order, it may issue an order with further matters and questions to be discussed at the conference. At the conclusion of the conference, the Board will resume oral argument on any legal issues not completed on January 26, 2010.

⁵ Because both Legal Issues 3 and 4 are closely related to the Board's decision on the admissibility of NEV-SAFETY-202, we instructed the parties in our October 23, 2009 order to brief the legal issue presented by NEV-SAFETY-202 "in the same manner and pursuant to the same schedule as all other Phase I legal issues." CAB Order (Identifying Phase I Legal Issues for Briefing) (Oct. 23, 2009) at 1 (unpublished).

⁶ CAB Order (Concerning LSNA Memorandum) (Dec. 22, 2009) (unpublished).

The proceedings of January 26 and 27, 2010, will be open to the public. They will also be webstreamed for public viewing at the following links:

January 26: <http://www.visualwebcaster.com/event.asp?id=65080>

January 27: <http://www.visualwebcaster.com/event.asp?id=65081>

This web stream also will be available for viewing for 90 days after the proceeding concludes.

B. Logistical Matters

1. Las Vegas Hearing Facility

Upon arrival at the front entrance of the LVHF, all persons seeking to enter the building will be required to present at least one form of state or federal government-issued photo identification and then undergo a security screening process. Given that LVHF security procedures permit only a limited number of individuals to occupy the lobby at one time, people seeking entry may temporarily need to wait outside. Thus, everyone is encouraged to arrive at the LVHF well in advance of the beginning time for the argument and conference. Counsel should arrive even earlier to ensure that they do not disrupt the beginning of the proceedings.

2. Oral Argument Logistics

For purposes of the oral argument, counsel tables in the well of the LVHF are reserved for counsel and will be assigned to each of the four relevant parties. No other persons will be allowed in the well of the LVHF during the argument. On or before January 19, 2010, each party shall file a notice informing the Board of the names of counsel who will be presenting argument and the issues that counsel will address.

3. Case Management Conference Logistics

For purposes of the January 27 conference, counsel tables will be assigned to all parties attending the conference. On or before January 19, 2010, each party attending the conference in person shall file a notice informing the Board of the names of counsel who will be

representing the party. Counsel for those parties participating by telephone must notify both Karen Valloch (Karen.Valloch@nrc.gov) and Matthew Rotman (Matthew.Rotman@nrc.gov) by 5:00 p.m. EST on January 19, 2010. Each party shall provide the name of counsel that will be participating by telephone, and if more than one counsel, the number of locations from which counsel will be participating. Thereafter, on or before January 21, 2010, you will receive an email containing the phone number and pass code required to connect to the conference.

4. Digital Document Management System (DDMS)

Every filing in Docket No. 63-001-HLW that is available on the Electronic Hearing Docket (EHD) is capable of being displayed by the Clerk of Court on the computer monitors in the LVHF. Upon request, the Clerk of Court will retrieve for display on the DDMS any documents to be referenced during the oral argument.

5. Conference Rooms

Counsel for DOE, Nevada, NRC Staff, and NEI each will be assigned a conference room in the LVHF for use on January 26 and 27. The conference rooms are assigned as follows: DOE (Room 119), NRC Staff (Room 123), NEI (Room 114), and Nevada (Room 113). Access to the conference room is limited to a maximum of eight (8) authorized individuals who are part of the litigation team for the parties. Each party who wishes to use its assigned conference room must email Joe Deucher (DDMSWebmaster.Resource@nrc.gov) on or before January 19, 2010 and provide a list of all individuals who will need access to the conference room. Access and use is limited to the time period starting one hour prior to the oral argument and ending one hour after the Board has adjourned for the day. Conference rooms cannot be locked and should not be considered secure repositories for important and sensitive documents, briefcases, purses, or other valuables. In addition, access to the conference room area will require each authorized individual to obtain an access badge and four-number PIN to be used on, and only

on, January 26 and 27, 2010, and to comply with applicable security restrictions. Authorized individuals shall not allow non-authorized individuals to enter the conference room area.

Authorized individuals shall have no access to those areas of the LVHF used and occupied by the Board, their law clerks and staff, and other LVHF staff.

6. Parking

Counsel may obtain a reserved parking space at the LVHF in connection with the oral argument and conference. To do so, counsel should submit a request to Joe Deucher (DDMSWebmaster.Resource@nrc.gov) on or before January 19, 2010. Use of such reserved parking spaces for the oral argument will be limited to a maximum of three vehicles for each party, and spaces will be available on a first come, first serve basis. Parking is limited to the time period starting one hour prior to the prehearing conference and ending one hour after the Board has adjourned for the day. Significant security restrictions apply and must be followed.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 11, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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U.S. DEPARTMENT OF ENERGY)
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Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Logistics for Oral Argument)** dated January 11, 2010, have been served upon the following persons by Electronic Information Exchange.

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MEMORANDUM AND ORDER (Logistics for Oral Argument)

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MEMORANDUM AND ORDER (Logistics for Oral Argument)

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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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[Original Signed by Linda D. Lewis]
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