

**April 2010**  
**High-level Waste Hearings**  
**Summary Table**

# High-Level Waste hearing

Request for Additional Information table (RAI's) [here](#)

## ORDERS Electronic Hearing Docket Board Orders for April - CAB 4

| Date | April 6                                                                                                                                                                                                                                                                                                                                                                                         | April 21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | April 1                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|      | <p><a href="#">NRC Commission Order</a><br/>Conclusion:</p> <p>Accordingly, the Board will withhold decision on the five new petitions and DOE's motion to withdraw, pending further developments in the related actions in the United States Court of Appeals for the District of Columbia Circuit. The parties are encouraged to seek expedited resolution of their claims in that Court.</p> | <p><a href="#">ORDER</a><br/><a href="#">(Questions for Several Parties and LSNA)</a></p> <p>By earlier order, the Construction Authorization Board (CAB) 04 directed all "parties not to take any actions at this time that would prevent or hinder their ability to archive LSN documentary material in a readily accessible format, such as PDF."1 At the January 27, 2010 case management conference concerning the possible need to preserve the parties' Licensing Support Network (LSN) document collections, CAB-04 posed a number of questions to each of the parties. Counsel for Lincoln County, an interested governmental participant, neither attended nor participated by telephone in the conference and therefore could not answer the Board's questions. The NRC Staff, in response to several questions, indicated it would need to confirm several matters and respond later. Counsel for the Department of Energy (DOE) was not in a position to respond to many of the Board's questions and the Board, therefore, directed it to file written responses.</p> | <p><a href="#">CLI-10-13</a><br/><a href="#">MEMORANDUM AND ORDER</a></p> <p>...we vacate the Board's Suspension Order and remand the matter to the Board for prompt resolution of DOE's motion to withdraw. We direct the Board to establish a briefing schedule on DOE's motion to withdraw and issue a decision on that motion no later than June 1, 2010. The Board should continue case management and resolve all remaining issues promptly.</p> |

## MOTIONS AND PLEADINGS

| Date | April 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | April 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | April 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|      | <p><u><a href="#">REPLY OF AIKEN COUNTY TO ANSWERS TO PETITION TO INTERVENE</a></u></p> <p>Aiken County’s petition at this point is for a narrow proposition, not a scientific one. Aiken County simply seeks to have the application process move forward without withdrawal so that the Board may consider, then grant or deny, the application in accordance with applicable law. For the reasons set forth above, Aiken County’s petition to intervene should be GRANTED.</p> <p>Aiken County addressed the following arguments in this filing.</p> <p>I. Aiken County Has Standing To Intervene.</p> <p>II. Aiken County’s Petition to Intervene and Contentions Should Not Be Rejected as Untimely.</p> <p>III. Aiken County Has Complied with the LSN Requirements.</p> <p>IV. Miscellaneous Arguments</p> <p>V. Waivers are Justified in the Circumstances.</p> <p>VI. Conclusion.</p> | <p><u><a href="#">REPLY BRIEF OF THE STATE OF SOUTH CAROLINA ON ITS PETITION TO INTERVENE</a></u></p> <p><b>ARGUMENT</b></p> <ol style="list-style-type: none"> <li>1. South Carolina’s Petition was timely filed, in view of the recentness of the events that prompted the filing.</li> <li>2. South Carolina has standing to intervene.</li> <li>3. Other factors cited by Nevada.             <ol style="list-style-type: none"> <li>a. Factor (ii)—Nature of Petitioner’s right to be made a party.</li> <li>b. Factor (iii)—Nature of Petitioner’s other interests.</li> <li>c. Factor (iv)—Effect on Petitioner’s interests.</li> <li>d. Factor (v)—Availability of other means to protect Petitioner’s interests.</li> <li>e. Factor (vi)—Extent to which petitioner’s interests will be represented by existing parties.</li> <li>f. Factor (vii)—Extent to which petitioner’s participation will broaden the issues or delay the proceedings.</li> <li>g. Factor (viii)—Extent to which petitioner’s participation may assist in developing a sound record.</li> </ol> </li> <li>4. South Carolina’s contentions are within the scope of the proceeding.</li> <li>5. South Carolina is in compliance with LSN requirements.</li> <li>6. Alternative request for participation as a government participant.</li> </ol> <p><b>CONCLUSION</b></p> <p>For the foregoing reasons, the State of South Carolina respectfully submits that the Board should grant its Petition to Intervene, and permit further argument as necessary, both in writing and at a hearing, on the legal issues presented herein and in its Petition to Intervene.</p> | <p><u><a href="#">U.S. DEPARTMENT OF ENERGY’S PETITION FOR INTERLOCUTORY REVIEW</a></u></p> <p>The DOE argues that the Board should allow interlocutory review.</p> <p>The M&amp;O is the type of decision that the Commission’s supervisory power is intended to correct. DOE respectfully urges the Commission to accept the M&amp;O for interlocutory review and to reverse it as promptly as possible. If the Commission grants review, DOE is willing to accept any expedited schedule for resolution of the issues presented by its petition. DOE is likewise willing to agree to an expedited schedule for review of the underlying motion to withdraw, either by the Board or, if the Commission so chooses, by the Commission in the first instance.</p> |

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| <b>Date</b> | <b>April 14</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>April 14</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>April 14</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|             | <p><b><u>STATE OF NEVADA ANSWER IN SUPPORT OF THE DEPARTMENT OF ENERGY'S PETITION FOR INTERLOCUTORY REVIEW</u></b></p> <p>DOE's motion to withdraw raises questions regarding how the Nuclear Waste Policy Act and the Commission's regulations should be interpreted. Among other things, DOE's petition raises questions regarding whether various provisions in the NWPA and Public Law No. 107-200 somehow operate to supersede the full application of section 114(d) of the NWPA, which provides that the Commission shall consider DOE's pending Yucca Mountain license application "in accordance with the laws applicable to such applications." 10 C.F.R. § 2.107, which allows any applicant to move to withdraw its license application, appears quite clearly to be one example of a law – and NRC licensing regulation - made applicable by section 114(d). The existence or absence of a fully developed factual record is irrelevant. The Commission has expertise in how the NWPA should be construed, has exercised this expertise in the past, and should do so again so that the Court has the benefit of NRC's thinking and may properly defer to its reasonable interpretation.</p> | <p><b><u>US Court of Appeals – Letter to Annette Vietti-Cook Secretary of the Commission U.S. Nuclear Regulatory Commission In the Matter of the U.S. Department of Energy (High-Level Waste Repository), Docket No. 63-001-HLW</u></b></p> <p>For the foregoing reasons, this Court (US Court of Appeals) should hold these cases in abeyance for at least 30 days to allow time for the NRC to consider DOE'S request for review. Respondents propose that at the end of the 30-day period a status report be filed by respondents and that the Court then reassesses how these cases should proceed. The Court should deny petitioners' motions to expedite. In the alternative, if the cases are expedited, respondents request that their proposed schedule be adopted.</p>                                                                                                                    | <p><b><u>STATE OF NEVADA ANSWER IN SUPPORT OF THE DEPARTMENT OF ENERGY'S PETITION FOR INTERLOCUTORY REVIEW</u></b></p> <p>On April 12, 2010, the Department of Energy (DOE) petitioned the Commission to take interlocutory review of the Memorandum and Order (Suspending Briefing and Consideration of Withdrawal Motion) issued by Construction Authorization Board-04 (CAB) on April 6, 2010.</p> <p>The State of Nevada (Nevada) uses three points to show their support for DOE's petition.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Date</b> | <b>April 14</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>April 14</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>April 20</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|             | <p><b><u>NYE COUNTY NEVADA'S PETITION FOR INTERLOCUTORY REVIEW OF CAB04 APRIL 6, 2010 ORDER</u></b></p> <p>While Nye County does not support DOE's Motion to Withdraw with prejudice in this case, the County joins DOE in its Petition for Interlocutory Review filed on April 12, 2010, on procedural grounds and supports DOE's request that the Nuclear Regulatory Commission ("Commission" or "NRC") expeditiously review the M&amp;O, and reverse it, for the reasons stated herein.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p><b><u>AIKEN COUNTY'S RESPONSE TO TWO PETITIONS FOR INTERLOCUTORY REVIEW</u></b></p> <p>The NWPA clearly dictates that NRC procedures should be used except to the extent their application jeopardizes the fulfillment of NRC's duty to render a final approval or disapproval of the construction authorization within three years. This forbids interpretation of a regulation in such a way as to preclude final approval or disapproval, <i>i.e.</i> by granting withdrawal. To suggest that consideration of DOE's motion to withdraw requires nothing more than a mechanical employment of 10 C.F.R. § 2.107, which doesn't seem to contemplate denial of a motion to withdraw an license application,<sup>2</sup> is erroneous. The Licensing Board correctly noted that "no agency adjudicatory tribunal has addressed this issue in the context of the unique NWPA." M&amp;O at 11.</p> | <p><b><u>DEPARTMENT OF ENERGY'S SUPPLEMENT TO ITS NOTICE OF DEFERRAL OF FILING OF REQUEST FOR RECORDS DISPOSITION AUTHORITY</u></b></p> <p>On April 16, 2010, the U.S. Department of Energy ("DOE") filed with this Board a Notice of Deferral of Filing of Request for Records Disposition Authority ("Notice") in light of the Government's representation to the D.C. Circuit Court of Appeals that DOE would not be undertaking further actions to effectuate a shutdown of the Yucca Mountain Program through May 5, 2010. Based in part on this representation, the Court of Appeals granted the Government's motion to extend the time to file a reply to the petitioner's motion for a preliminary injunction. A copy of the Court of Appeals' Order granting the Government's motion was attached to the Notice. Contrary to the statement in the Notice, the Court of Appeals Order did not rule on the request for a preliminary injunction. We are filing this supplement to the Notice to clarify the record before this Board.</p> |

| Date | April 20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | April 22                                                                                                                                                                                                                                                                                                                                   | April 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|      | <p><a href="#"><u>NRC STAFF ANSWER TO U.S. DEPARTMENT OF ENERGY PETITION FOR INTERLOCUTORY REVIEW</u></a><br/>           There is no need to postpone rulings on the five new intervention petitions or the Motion to Withdraw until the Court of Appeals has acted. Thus, it is reasonable for the Commission to exercise its inherent supervisory authority and review the Board's Order, and, if necessary, provide guidance or direction to the Board regarding the matters raised. Or, the Commission may decide the pending matters itself. This could include the Commission ruling on both the Board's order to delay further consideration of DOE's motion to withdraw and, after completion of briefing by the parties, the merits of DOE's Motion to Withdraw</p> | <p><b>ANSWER OF THE STATE OF SOUTH CAROLINA TO PETITIONS FOR INTERLOCUTORY REVIEW</b><br/>           The State of South Carolina, proposed intervenor, adopts in its entirety, and hereby incorporates by reference, the Response of the State of Washington to Petitions for Interlocutory Review, which was filed on April 21, 2010.</p> | <p><a href="#"><u>ANSWER OF CLARK COUNTY, NEVADA IN SUPPORT OF THE DEPARTMENT OF ENERGY'S PETITION FOR INTERLOCUTORY REVIEW</u></a><br/>           ... The M&amp;O allows this proceeding to be taken over by plaintiffs in the appellate proceedings who are non-parties to the instant proceeding. Thus, the M&amp;O effectively elevates the desire of non-parties to be heard over the rights and desires of admitted parties, including Clark County. Rather than fulfill its obligations to proceed with the matters before it in this docket, unless and until duly constrained by a valid order of this Commission or of the Court of Appeals, CAB04 has effectively left parties to this proceeding with no voice in deference to the plaintiffs in the appellate proceedings</p> <p>Clark County respectfully requests that the Commission accept the M&amp;O for interlocutory review and promptly reverse it.</p> |
| Date | April 26                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|      | <p><a href="#"><u>STATE OF WASHINGTON'S RESPONSE TO PETITIONS FOR INTERLOCUTORY REVIEW</u></a><br/>           ... The Licensing Board correctly decided that it should withhold ruling on both DOE's withdrawal motion and the pending petitions to intervene. The Commission should decline to take interlocutory review as requested by DOE and Nye County.</p>                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|      | April 29                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|      | <p><a href="#"><u>ANSWER OF THE STATE OF NEVADA TO THE STATE OF WASHINGTON'S PETITION TO INTERVENE</u></a><br/>           On April 3, 2010, the State of Washington ("Washington") filed a petition for leave to intervene in this proceeding. For the reasons set forth below, the State of Nevada ("Nevada") opposes Washington's petition. This Answer by Nevada is adopted in its entirety by the Native Community Action Council ("NCAC").</p>                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |