

April 2011 High-level Waste Hearings Summary Table

High-Level Waste hearing

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ORDERS Electronic Hearing Docket Board Orders for February - CAB 4

Date	April 11		
	<p>ORDER(Concerning LSNA Memorandum and Parties' LSN Document Collections)</p> <p>On February 18, 2011, the Licensing Support Network (LSN) Administrator (LSNA) submitted to CAB-04, and served on all parties, a memorandum addressing the likely end of funding for the LSN. According to the LSNA's memorandum, "under the Administration's budget proposal for fiscal year (FY) 2012, no Nuclear Waste Fund (NWF) resources, either funding or full-time equivalent (FTE) staffing, are allocated to the Nuclear Regulatory Commission to conduct the Yucca Mountain Licensing proceeding." Should Congress acquiesce in the Administration's proposal, the LSNA's memorandum states that LSN shutdown must be completed by September 30, 2011 "regardless of the status of the adjudication or the provisions of 10 C.F.R. Part 2, Subpart J, that govern the operation of, and party participation in, the LSN."</p> <p>Accordingly, in order to fulfill our responsibility to preserve the document discovery materials residing on the LSN, a system mandated by 10 C.F.R. Part 2, Subpart J, and over which CAB-04 was established to preside, the Board directs, pursuant to its authority under 10 C.F.R. § 2.319, that each party shall take the following actions:</p> <p>(Continued next column)</p>	<ul style="list-style-type: none">• preserve all LSN documents in "PDF" format;• submit its LSN document collection together with the associated bibliographic files to the NRC Office of the Secretary (SECY) on optical storage media as specified in Guidance for Electronic Submissions to the Commission for inclusion into the docket, notifying all other parties when the submission has been completed;• for large collections taking more than a month to complete the PDF conversion, submit the documents that have been converted no later than the seventh day of the month for those documents converted the previous month. <p>Once received, SECY shall install the documents and associated bibliographic information into a separate LSN docket library of ADAMS for public access via www.nrc.gov taking care to: (1) utilize all existing LSN bibliographic header information; and (2) maintain the integrity and availability of the existing LSN Accession Number and Participant Accession Number identifications Each party shall certify at the time of submission to SECY the accuracy and completeness of its submission stating that it is a true and accurate representation of the materials available on the LSN at the time of submission. Delivery to SECY shall be completed by August 31, 2011.</p> <p>It is so ORDERED.</p>	

MOTIONS AND PLEADINGS

April 8	April 8	April 8
<p><u>U.S. DEPARTMENT OF ENERGY'S MOTION TO DISMISS NEVADA SAFETY CONTENTIONS 149, 161, 162, AND 130</u></p> <p>By Order dated March 24, 2011,¹ this Board instructed the U.S. Department of Energy (DOE) to timely file dispositive motions, such as a motion to dismiss, regarding those contentions that DOE indicated should be dismissed as a result of the Board's decision in LBP- 10-22 but that the party sponsoring the contention has not stipulated should be dismissed.</p> <p>Accordingly, DOE submits that the Board's resolution of Legal Issues 7, 8, and 10 on December 14, 2010 in LBP-10-22 renders the following State of Nevada contentions inadmissible and they should be dismissed: NEV-Safety 149 (Legal Issue 7); and NEV-Safety-161, NEV-Safety-162, and NEV-Safety-130 (Legal Issues 8 and 10).</p>	<p><u>U.S. DEPARTMENT OF ENERGY'S MOTION TO DISMISS NEI SAFETY CONTENTION 05</u></p> <p>By Order dated March 24, 2011,¹ this Board instructed the DOE to timely file dispositive motions, such as a motion to dismiss, regarding those contentions that DOE indicated should be dismissed as a result of the Board's decision in LBP-10-22 but that the party sponsoring the contention has not stipulated should be dismissed. Accordingly, in response to the March 24, 2011 Order, DOE moves to dismiss NEI-Safety-05 filed by the Nuclear Energy Institute (NEI). The Board's resolution of Legal Issue 1 on December 14, 2010 in LBP-10-22 makes NEI-Safety-05 inadmissible as a matter of law.</p>	
April 18	April 18	April 18
<p><u>NUCLEAR ENERGY INSTITUTE'S ANSWER TO THE DEPARTMENT OF ENERGY'S MOTION TO DISMISS NEI SAFETY-05</u></p> <p>On December 14, 2010, the Safety and Licensing Board ("Licensing Board") issued a Memorandum and Order entitled "Deciding Phase I Legal Issues and Denying Rule Waiver Petitions."¹ Among other legal issues, the Licensing Board decided Legal Issue 1 related to one Phase I contention: NEI-SAFETY-05, asserting excessive conservatism in the analysis and design related to criticality control in spent fuel transportation and disposal canisters, resulting in unnecessary radiation doses, environmental impacts, and economic costs. The Licensing Board held that, as a matter of law, the Department of Energy ("DOE") is not required to take into account NRC requirements for maintaining occupational exposures "as low as reasonably achievable" ("ALARA"), with respect to activities that occur outside of the Yucca Mountain geologic repository operations area ("GROA"). In addition, the Licensing Board decided that the excessive design conservatism and the associated economic and environmental costs asserted in the contention are matters beyond the scope of this licensing proceeding. By order dated March 24, 2011, the Licensing Board instructed DOE to file timely dispositive motions regarding the Phase I contentions for which the parties did not jointly stipulate dismissal.² On April 8, 2011, DOE filed a motion for summary disposition of NEISAFETY- 05. DOE takes the position that the Licensing Board's resolution of Legal Issue 1 renders NEI-SAFETY-05 inadmissible as a matter of law. NEI acknowledges that, as the law of the case, the Licensing</p>	<p><u>STATE OF NEVADA ANSWER OPPOSING THE DEPARTMENT OF ENERGY'S MOTION TO DISMISS NEVADA SAFETY CONTENTIONS 149, 161, 162, AND 130</u></p> <p>On April 8, 2011, the U.S. Department of Energy (DOE) moved to dismiss NEVSAFETY-149, 161, 162, and 130. DOE did so in accordance with this Board's March 24, 2011 Order, which provided that motions to dismiss contentions based on the Board's rulings on legal issues (LBP-10-22) should be filed on a timely basis, but without regard for the ten-day period prescribed in 10 C.F.R. § 2.323(a). For the reasons set forth below, Nevada opposes DOE's Motion. If NRC Staff files a motion to dismiss contentions in accordance with the Board's March 24, 2011 Order, Nevada will file a separate answer.....</p> <p>CONCLUSION</p> <p>Wherefore, based on all of the foregoing, Nevada respectfully requests this Licensing Board to deny DOE's Motion to Dismiss NEV-SAFETY-149, 161, 162, and 130.</p>	<p><u>NRC STAFF RESPONSE TO U.S. DEPARTMENT OF ENERGY MOTION TO DISMISS NEI SAFETY CONTENTION 05</u></p> <p>On March 24, 2011, the Atomic Safety and Licensing Board (Board) issued an Order dismissing four legal contentions in the above-captioned proceeding. Order (Dismissing Contentions), dated March 24, 2011 (Order) (unpublished).¹ With respect to the remaining Phase I legal contentions identified by the parties in the joint stipulation, the Board stated that the DOE or the U.S. NRC staff "should timely file dispositive motions seeking appropriate relief, such as a motion to dismiss a contention in whole or in part." <i>Id.</i> at 2.3</p> <p>On April 8, 2011, DOE filed "DOE's Motion to Dismiss NEI Safety Contention 05" (Motion) and on April 16, 2011, filed a supplement to its Motion.</p> <p><u>DISCUSSION</u></p>

	<p>Board's Memorandum and Order on legal issues will apply (unless ultimately reversed or modified by the Commission) in this and subsequent phases of this proceeding. The decision does not render the contention inadmissible, given that the contention was previously admitted for hearing, and that admissibility was upheld by the Commission. However, the Licensing Board's ruling would appear to preclude the Licensing Board from providing any remedy in connection with the occupational exposures outside the GROA asserted in NEI-SAFETY-05, or the unnecessary design measures proposed by DOE for criticality control, NEI does not oppose the DOE motion for summary disposition. NEI reserves its right to appeal the Board's December 14, 2010, Memorandum and Order addressing Legal Issue 1 and summary disposition of NEI-SAFETY-05 at the appropriate time, as governed by the Commission's regulations in 10 CFR § 2.1015.</p>		
April 21		April 21	
	<p>NRC STAFF MOTION FOR STAY OF APRIL 11, 2011 BOARD ORDER INTRODUCTION</p> <p>On April 11, 2011, the Construction Authorization Board (Board) issued an Order directing (1) parties to preserve and submit all Licensing Support Network (LSN) documents in portable document format (PDF) along with associated bibliographic files to the Nuclear Regulatory Commission (NRC) Office of the Secretary (SECY), and (2) SECY to "install the documents and associated bibliographic information into a separate LSN docket library of ADAMS for public access via www.nrc.gov."</p> <p>...the Staff filed a motion for reconsideration of the Order, or in the alternative, petition for certification to the Commission. Reconsideration Motion at 1. The Commission's regulations provide that neither the filing of a motion nor a petition for certification "stays the proceeding or extends the time for the performance of any act."</p> <p>In order to preserve the status quo until the Board has an opportunity to consider the Reconsideration Motion or the Commission has an opportunity to consider the certification, the Staff respectfully requests a stay of the effectiveness of the provision that all parties submit their LSN document collections to the NRC SECY and that SECY install the documents into a "separate LSN docket library of ADAMS for public access."</p> <p>1. Staff Made a Strong Showing that Reconsideration or Certification is Appropriate The Staff made a strong showing that compelling circumstances exist that could not have been reasonably anticipated warranting reconsideration. Reconsideration Motion at 5-6. Specifically, the Staff demonstrated that it could not have reasonably anticipated that the Board would act contrary to Commission policy and decisions regarding the LSN. <i>Id.</i> at 5. As the LSNA observed, assumptions underlying the Board's earlier LSN</p>	<p>NRC STAFF REQUEST FOR LEAVE TO FILE MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION OF THE BOARD'S APRIL 11, 2011 ORDER, OR PETITION FOR CERTIFICATION</p> <p>Legal Standards for Reconsideration and Certification</p> <p>....A motion for reconsideration may not be filed except upon leave of the presiding officer and must show "compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid."</p> <p>NRC estimates the cost to follow the board orders at 3.2 million and 1- 2 million a year to maintain.</p> <p>The NRC is asking the board to reconsider and rescind the order.</p>	

	<p>preservation efforts changed due to potential lack of NRC funding for LSN. Further, the Board did not seek comments from the parties regarding implications the 2011 LSNA Memorandum as it did for the December 17, 2009, Memorandum from the LSNA to the Administrative Judges. The Staff demonstrated that the Order is contrary to the LSN design and stated purpose because it requires SECY to create and maintain a docket for discovery documents in ADAMS, resulting in the NRC assuming litigation expenses previously borne by the parties.</p> <p>Without a stay of the Order, the Staff and the agency will suffer imminent, irreparable harm because as described below, implementing the Order requires the NRC to incur significant costs, in excess of mere litigation expenses. The Order directs the NRC to take costly actions and bear litigation expenses of other litigants by installing, storing and making publicly accessible via the internet millions of documents in an LSN facsimile (<i>i.e.</i>, ADAMS library), rendering them official agency records.</p> <p>3. The Granting of a Stay Will Not Harm Other Parties....</p> <p>4. The Public Interest Lies in Granting a Stay</p> <p>CONCLUSION</p> <p>For the foregoing reasons, the request for a stay pursuant to § 2.342, or in the alternative a housekeeping stay, should be granted.</p>		
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