

December 2009
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 Dec - CAB 4

Date	Dec 8	Dec 22	Dec 17
	<p><u>Order Addressing new contentions</u> CAB-04 admitted two additional parties that had demonstrated subsequent compliance with the licensing support network (LSN) requirements. To date, ten petitioners have been admitted as parties to this proceeding, with 296 admitted contentions among them. The instant order sets forth CAB-04's rulings on the admissibility of six additional contentions that were filed subsequent to the original petitions.</p> <p>Two of these contentions (NEV-SAFETY-202 and -203) were filed in response to the NRC's final rule implementing the Environmental Protection Agency's (EPA) revised dose standard after 10,000 years. Both contentions allege that DOE improperly excluded certain features, events, and processes (FEPs) from its post-10,000 analysis – namely, climate change and land-surface erosion. NEV-SAFETY-203, although styled as a contention, is actually a petition for waiver of an NRC rule, and is addressed in Part II of this order.</p> <p>Three contentions (NEV-SAFETY-204 and -205 and CLK-SAFETY-013) were filed in response to DOE's February 19, 2009 updates and supplements to the initial application.5 All of these contentions allege problems related to DOE's Probabilistic Volcanic Hazard Analysis – Update (PVHA-U). Because CLK-SAFETY-013 is functionally equivalent to NEV-SAFETY-205, the two contentions are treated together.</p> <p>Finally, Nevada filed one contention (NEV-SAFETY-206) in response to two documents made available on July 31, 2009 as part of DOE's LSN document collection supplementation This contention alleges that DOE's application inadequately addresses generalized corrosion of Alloy-22 because it relies on flawed experimental data.</p>	<p><u>ORDER (Concerning LSNA Memorandum)</u></p> <p>The Licensing Support Network Administrator (LSNA) has provided the Board, and served on the parties, a memorandum dated December 17, 2009. For convenience, a copy is attached.</p> <p>The parties should be prepared to discuss the issues and questions raised by the LSNA during the oral argument on legal issues at one of the previously scheduled argument dates.</p> <p>The Board is especially interested in DOE's position with respect to the LSNA's conclusions that (1) "[t]echnologically, the DOE [LSN] collection will be extremely difficult to salvage if it is ever decommissioned;" and (2) "[t]o preserve this . . . information would require aggregating the current page-level data back into document-level entities and converting the document-level data to text-searchable Portable Document Format (PDF)."</p> <p>DOE and any other party that wishes to comment in writing on the LSNA's memorandum is encouraged to do so, preferably no later than January 21, 2010.</p> <p>The Board has not been advised by counsel that DOE intends to withdraw or suspend the Application. Until so advised, the Board expects the parties to proceed in accordance with Case Management Order #2 and all other applicable orders and regulations.</p>	<p><u>Order regarding preliminary dates for hearings</u></p> <p>ORDER (Reserving Additional Tentative Dates) By order dated October 23, 2009, the Board previously advised the parties that oral argument on pending legal issues might take place at the Las Vegas Hearing Facility on January 26 and (if necessary) 27, 2010.</p> <p>Certain developments may make it necessary to schedule argument and/or consideration of case management issues at the Las Vegas facility on February 23 and (if necessary) 24, 2010.</p> <p>As soon as practicable, the Board will announce by subsequent order on which date or dates counsel should appear. In the interim, counsel should plan to be available on the stated dates in both January and February.</p>

MOTIONS AND PLEADINGS

Date	Dec 7	Dec 7	Dec 7
	<p><u>U.S. DEPARTMENT OF ENERGY BRIEF ON NEVADA-SAFETY CONTENTION 202 AND POST 10,000 YEAR ASPECTS OF NEVADA-SAFETY CONTENTIONS 011 AND 019</u></p> <p>In its October 23, 2009 “Order (Identifying Phase I Legal Issues for Briefing),” Construction Authorization Board (CAB) 04 instructed that the legal issue presented by NEVSAFETY- 202 should be briefed in the same manner and pursuant to the same schedule as all other Phase I legal issues. The legal issue to be resolved is as stated in the first sentence of the contention:</p> <p>As provided in SAR Subsection 2.2.1.2 and 2.3.1.1, and as reflected in related SAR subsections, climate-change processes included as FEPs in the TSPA for the first 10,000 years are neither carried forward for the next 990,000 years, as the rule requires, nor represented by NRC’s specified deep percolation rate for that subsequent period.</p> <p>CAB 04 also stated that “Legal Issues 3 and 4 are closely related to the Board’s decision on the admissibility of NEV-SAFETY-202.”</p> <p>Argument The intent of the pertinent regulation, 10 C.F.R. § 63.342, is signaled by its very title: “Limits on Performance Assessments.”⁶ That intent is reflected throughout its content....</p> <p>Conclusion In sum, there is no question that the NRC regulations require that DOE analyze the effects of climate change in the post-10,000 year period. They do not require, however, that DOE do so by extrapolating its analyses for the first 10,000 year period. To the contrary, the NRC permitted instead the analytical method set forth in § 63.342(c)(2), which it found to adequately bound potential effects of climate change and to provide the DOE with reasonable assurance that its performance assessment would meet the requirements of the NRC and EPA regulations. DOE has used that permissible approach to model climate change. This is all that is legally required by the NRC regulations.</p>	<p><u>U.S. DEPARTMENT OF ENERGY BRIEF ON CONTENTION NEV-SAFETY-169</u></p> <p>In its May 11, 2009 “Memorandum and Order (Identifying Participants and Admitted Contentions),” Construction Authorization Boards (CABs) 01, 02 and 03 admitted for hearing Nevada Safety Contention 169 concerning DOE’s preparation of a retrieval plan.¹ The CAB identified this as a “legal” contention to be briefed.² DOE and the State of Nevada have agreed that this contention involves the following legal issue: Whether 10 C.F.R. §§ 63.21(c)(7) and 63.31 allow DOE to submit in the LA a description of its retrieval plans without having a full retrieval plan available for review. CAB 04 approved this formulation of the legal issue.</p> <p>As required by 10 C.F.R. §§ 63.21(c)(7), the Safety Analysis Report (SAR) in DOE’s license application (LA) includes a “description” of DOE’s plans for retrieval and alternate storage of the radioactive wastes, should retrieval be necessary.</p> <p>DOE explained in the SAR that it would develop and define in detail specific retrieval procedures “should the need for retrieval be identified.”</p> <p>The regulation’s plain language requires only “description” of DOE’s plans at this stage of the proceeding. DOE has provided such a description.</p> <p>Argument A. The Regulations Require That the LA Include a “Description” of Its Plans for Retrieval and Alternate Storage. There is no dispute that the LA contains DOE’s description of its plans for retrieval and alternate storage of the radioactive wastes, should retrieval be necessary. The relevant regulations require no more. On its face, § 63.21(c)(7) requires the LA to include a “description” of DOE’s plans for retrieval and alternate storage of radioactive wastes. Part 63 does not require the applicant to have or make available for review final detailed plans for retrieval and alternate storage at this stage of the proceeding.....</p>	<p><u>U.S. DEPARTMENT OF ENERGY BRIEF ON CONSOLIDATED CONTENTIONS NEV-SAFETY-146 / NEV-SAFETY-201</u></p> <p>Introduction In their May 11, 2009 “Memorandum and Order (Identifying Participants and Admitted Contentions),” Construction Authorization Boards (CAB) 01, 02 and 03 admitted for hearing Nevada Safety Contentions 146 and 201, in which Nevada contends that the Department of Energy’s (DOE) license application (LA) is legally insufficient because the repository design referenced therein is “preliminary” or “conceptual.” The CABs also identified these as “legal” contentions to be briefed, and stated their expectation that these two contentions be consolidated.</p> <p>In response to the September 30, 2009 Case Management Order #2 (issued by CAB 04), DOE and the State of Nevada agreed that these contentions involve the following legal issue: Whether, under 10 C.F.R. Part 63, DOE is required to provide and rely upon final design information in the LA. Nevada also proposed that the two contentions be consolidated and referred to as Consolidated Contentions NEV-SAFETY-146/NEV-SAFETY-201.</p> <p>Part 63 does not require “final” design information to be included in the LA. A number of provisions in Part 63 explicitly acknowledge that the “final” repository design will not be included in the LA. Among these are provisions that: (1) require that DOE identify items in the LA that “might affect design” or “may significantly influence the final design;” (2) specify that the LA will be “as complete as possible in light of ... reasonably available” information;⁶ (3) require updating the LA;⁷ and (4) recognize that there will be “gaps in knowledge.” Furthermore, the relevant regulatory history also makes it clear that final design is not required for the LA. Finally, the absence of a requirement that the LA include final design information is consistent with years of NRC licensing practice. Therefore, this contention should be dismissed as a matter of law.....</p>

Date	Dec 7	Dec 7	Dec 7
	<p>U.S. DEPARTMENT OF ENERGY BRIEF ON CONTENTION NEV-SAFETY-171</p> <p>Introduction In their May 11, 2009 “Memorandum and Order (Identifying Participants and Admitted Contentions),” Construction Authorization Boards (CAB) 01, 02 and 03 admitted as a legal issue contention Nevada Safety Contention 171, relating to the use of the Performance Margin Analysis (PMA) to validate or provide confidence in the U.S. Department of Energy’s (DOE or Department) Total System Performance Assessment (TSPA).</p> <p>In response to the September 30, 2009 Case Management Order #2 (issued by CAB 04), DOE and the State of Nevada agreed that this contention involves the following legal issue: The legal issue presented is whether, under 10 C.F.R. §§ 63.113, 63.114, and Part 63 Subpart G, the PMA can be used to validate or provide confidence in the TSPA, if its data and models are not qualified under DOE’s quality assurance program.2 CAB 04 approved this formulation of the legal issue.</p> <p>Nothing in 10 C.F.R. §§ 63.113, 63.114, or Part 63 Subpart G requires that the PMA be qualified under DOE’s quality assurance (QA) program, or prohibits DOE from using the PMA to validate or provide additional confidence in the TSPA.</p> <p>Argument A. 10 C.F.R. §§ 63.113, 63.114, and Part 63 Subpart G Do Not Impose QA Requirements On the PMA None of the regulations cited above specifies QA requirements applicable to the PMA or requires that validation of tools, such as the PMA, be subject to the QA provisions that apply to the TSPA. The QA requirements under Part 63 are in Subpart G, not in § 63.113 or § 63.114. Neither § 63.113 nor § 63.114 imposes requirements on qualification of data or models, nor any other form of QA requirements. Moreover, the PMA is not the performance assessment that is required by 10 C.F.R. § 63.113. Rather, the performance assessment used in the License Application to demonstrate compliance with § 63.113 is the TSPA. Accordingly, the PMA is not subject to the requirements specified in 10 C.F.R. § 63.114 because that regulation only applies to the performance assessment required under § 63.113....</p>	<p>U.S. DEPARTMENT OF ENERGY BRIEF ON CONTENTION NEV-SAFETY-162</p> <p>Introduction In their May 11, 2009 “Memorandum and Order (Identifying Participants and Admitted Contentions),” Construction Authorization Boards (CAB) 01, 02 and 03 admitted for hearing NEV-SAFETY-162 relating to the U.S. Department of Energy’s (DOE or Department) drip shield installation schedule. The relevant parties identified this as a “legal” contention to be briefed. In response to the September 30, 2009 Case Management Order #2 (issued by CAB 04), DOE and Nevada expressed differing views on the nature of the legal issue to be briefed.3 In its October 23, 2009 “Order (Identifying Phase 1 Legal Issues for Briefing),” CAB 04 directed the parties to “brief [this legal issue] in the form stated by Nevada.” Nevada stated the legal issue as follows: Whether, in making the pre-construction authorization finding required by 10 C.F.R. § 63.31(a)(2), it must be considered whether, given DOE’s plan to install drip shields only after all of the wastes have been emplaced, it will be impossible to make the preoperational finding in 10 C.F.R. § 63.41(a) that construction of the underground facility has been substantially completed in accordance with the license application, as amended, the Atomic Energy Act, and applicable regulations. As discussed below, in making the finding required by § 63.31(a)(2) necessary for issuance of the construction authorization, the NRC is not required to consider whether it will be possible to make the “pre-operational” findings set forth in 10 C.F.R. § 63.41(a). Argument - 10 C.F.R. § 63.31(a)(2) states: Construction Authorization On review and consideration of an application and environmental impact statement submitted under this part, the Commission may authorize construction of a geologic repository operations area at the Yucca Mountain site if it determines: (a) <i>Safety.</i> (2) That there is reasonable expectation that the materials can be disposed of without unreasonable risk to the health and safety of the public. In order to make the pre-construction authorization finding required by 10 C.F.R. § 63.31(a)(2), the only determination that NRC is required to make is that there is a “reasonable expectation” that disposal will create no “unreasonable risk” to public health and safety.....</p>	<p>U.S. DEPARTMENT OF ENERGY BRIEF ON NEVADA-SAFETY CONTENTION 149</p> <p>U.S. DEPARTMENT OF ENERGY BRIEF ON NEVADA-SAFETY CONTENTION 149</p> <p>Introduction In their May 11, 2009 “Memorandum and Order (Identifying Participants and Admitted Contentions),” Construction Authorization Boards (CAB) 01, 02 and 03 admitted as a legal issue contention NEV-SAFETY-149, relating to the use of the quality assurance (QA) program in connection with the U.S. Department of Energy’s (DOE or Department) Total System Performance Assessment (TSPA). In response to the September 30, 2009 Case Management Order #2 (issued by CAB 04), DOE and the State of Nevada agreed that this contention involves the following legal issue: Whether, under 10 C.F.R. § 63.114, DOE may rely upon its quality assurance program and procedures as a basis for excluding from consideration in the TSPA, potential deviations from repository design or errors in waste emplacement. On October 23, 2009, CAB 04 issued its “Order (Identifying Phase 1 Legal Issues for Briefing)” approving this formulation of the legal issue to be briefed.....</p> <p>Argument DOE is required by § 63.113(b) to conduct a performance assessment that meets the requirements of §§ 63.114, 63.303, 63.305, 63.312 and 63.342. The NRC and EPA rules require that only those FEPs found to have sufficient consequence and probability of occurrence be included in the performance assessment.7 There is nothing in § 63.114 or any other NRC regulation that indicates that in determining which FEPs must be included and which can be excluded DOE must ignore the effects of the QA program and procedures.....</p>

Date	Dec 7	Dec 7	Dec 7
	<p><u>U.S. DEPARTMENT OF ENERGY BRIEF ON CONTENTION NEV-SAFETY-161</u> Introduction In its May 11, 2009 “Memorandum and Order (Identifying Participants and Admitted Contentions),” Construction Authorization Boards (CABs) 01, 02 and 03 admitted for hearing Nevada Safety Contention 161 relating to the role of drip shields in ensuring safety through the use of a “multiple barrier” system. The CABs identified this as a “legal” contention to be briefed. DOE and the State of Nevada have agreed that this contention involves the following legal issue: Whether, under NWPA § 121(b)(1)(B) or 10 C.F.R. §§ 63.113(a) through (d) and 63.115(a) through (c), DOE is required to evaluate the absence or failure of <i>all</i> drip shields. CAB 04 approved this formulation of the legal issue. DOE plans to install drip shields as set forth in its License Application (LA). As required by the NWPA § 121(b)(1)(B) (42 U.S.C. § 10141(b)(1)(B)) and the NRC’s implementing regulations (10 C.F.R. §§ 63.113, 63.115), DOE has designed a multiple barrier system consisting of both natural barriers and an engineered barrier system (EBS) to isolate waste and limit radiological exposure. Along with other components, DOE has incorporated drip shields into the EBS design. DOE also designated the drip shields as important to waste isolation. In addressing the identified legal issue, two cases must be distinguished: (1) the “absence” of all of the drip shields (either because of, for example, a design change or an inability to install the drip shields); and (2) the “failure” of all of the installed drip shields. Each of these cases is addressed below. In short, DOE is <i>not</i> required to evaluate the complete “absence” of the drip shields (<i>i.e.</i>, failure to install) but is required, and has in fact, evaluated the “failure” of all installed drip shields as appropriate under the regulations. NEV-SAFETY-161 therefore must be dismissed in its entirety.....</p>	<p><u>U.S. DEPARTMENT OF ENERGY BRIEF ON CONTENTION NEV-SAFETY-041ONS 009, 010, 011, 012, 013 AND 01</u> Introduction This brief addresses a single legal issue raised by six closely related contentions sponsored by the State of Nevada regarding the analysis in the U.S. Department of Energy’s (DOE or Department) Total System Performance Assessment (TSPA) of climate change during the first 10,000 years after disposal at the Yucca Mountain repository. The legal issue, as approved by CAB 4 in its October 23, 2009, “Order (Identifying Phase 1 Legal Issues for Briefing), is as follows: Whether 10 C.F.R. § 63.305 requires DOE to project future levels of anthropogenic greenhouse gas emissions such as CO2 and evaluate the impact of these gases on future climate at Yucca Mountain in the 10,000-year performance assessment, or whether it is sufficient under that regulation for DOE to analyze the effects of anthropogenic greenhouse gas emissions on future climate based upon the historical geologic record. As discussed below, the regulatory history of 10 C.F.R. § 63.305 makes clear that NRC intended that prediction of future changes in climate over the next 10,000 year period be based on the geologic record. Argument Nothing in the plain language of the regulation is inconsistent with DOE’s position. Moreover, the relevant statutory and regulatory background conclusively establishes that this provision should be read to authorize usage of the geological record to determine the potential for climate change in the first 10,000 year period. More specifically, in the Energy Policy Act of 1992 , Congress instructed EPA to contract with the National Academy of Sciences (NAS) to provide “findings and recommendations on reasonable standards for protection of the public health and safety” for the Yucca Mountain Site, and “[to] promulgate, by rule, public health and safety standards” for the site “based upon and consistent with the [NAS] findings and recommendations.” Congress then instructed the NRC to modify its regulations “as necessary, to be consistent with” the EPA’s standards, hydrology, and climate based upon cautious, but reasonable assumptions of the changes in these factors that could affect the Yucca Mountain disposal system during the period of geologic stability.....</p>	<p><u>U.S. DEPARTMENT OF ENERGY BRIEF ON NEVADA SAFETY CONTENTION</u> Introduction In their May 11, 2009 “Memorandum and Order (Identifying Participants and Admitted Contentions),” Construction Authorization Boards (CABs) 01, 02 and 03 admitted for hearing Nevada Safety Contention 041, relating to the treatment of erosion in the U.S. Department of Energy’s (DOE or Department) Total System Performance Assessment (TSPA). The CABs also identified NEV-SAFETY-041 as a “legal” contention to be briefed. In response to the September 30, 2009 Case Management Order #2 (issued by CAB 04), DOE and the State of Nevada agreed to brief the following legal issue: Whether 10 C.F.R. § 63.342(c) requires the post-10,000 year performance assessment to include the continued effects of erosion if, assuming for purposes of legal argument, in the 10,000-year rates and thereby be potentially adverse to performance, with that potential increasing over time both before and after 10,000 years, but there is no showing that erosion causes increases in radiological exposures or releases within the first 10,000 years. On October 23, 2009, CAB 04 issued its “Order (Identifying Phase 1 Legal Issues for Briefing)” approving this formulation of the legal issue to be briefed.4 As discussed below, § 63.342(c) does not require the post-10,000 year performance assessment to include the effects of erosion in the circumstances stated in this legal issue. Argument A. The Explicit Language of The Regulations Does Not Require Erosion to be Included in the Post-10,000 Year Performance Assessment Under the Assumptions Set Forth in the Legal Issue The agreed-upon legal issue requires the parties to “assum[e] for purposes of legal argument” that erosion will in fact increase infiltration and seepage rates and thereby be potentially “adverse to performance” during and beyond the first 10,000 year period. The agreed-upon legal issue also explicitly requires the parties to assume that there is “no showing [of resulting] increases in radiological exposures or releases within the first 10,000-years.” 10 C.F.R. § 63.342(c) requires, as a general matter, that if features, events or processes (FEPs) are included in the performance assessment for the first 10,000 year post-disposal period</p>

Date	Dec 7	Dec 2	Dec 7
	<p>U.S. DEPARTMENT OF ENERGY BRIEF ON NEI-SAFETY CONTENTION 05</p> <p>Introduction In their May 11, 2009 "Memorandum and Order (Identifying Participants and Admitted Contentions)," Construction Authorization Boards (CABs) 01, 02 and 03 admitted for hearing NEI-Safety Contention 05. The NRC Staff appealed the CABs' decision, and on June 30, 2009, the Commission affirmed the CABs' decision and explained that the "Board should consider whether ALARA considerations at individual plant sites are appropriately part of this proceeding." In response to the September 30, 2009 Case Management Order #2 (issued by CAB 04), DOE and the NEI agreed that this contention involves the following legal issues: (1) whether the above regulations [<i>i.e.</i>, 10 C.F.R. §§ 20.1002, 20.1003, 20.1101, 50.40 and 63.111] require ALARA considerations at individual nuclear plant sites remote from the [Geologic Repository Operations Area] GROA to be addressed in DOE's LA; and (2) whether DOE must demonstrate that the repository not only meets applicable safety and environmental regulatory standards, but also must show that it does so without any alleged unnecessary expenditures of resources. On October 23, 2009, CAB 04 issued its "Order (Identifying Phase 1 Legal Issues for Briefing)," approving this formulation of the legal issue to be briefed. The regulations do not require DOE to address in its LA ALARA considerations at nuclear power plant sites remote from the Geologic Repository Operations Area (GROA). Furthermore, neither the Nuclear Waste Policy Act (NWPA) nor the Atomic Energy Act require NRC to make a regulatory finding based upon a demonstration by DOE that the repository meets applicable NRC regulatory requirements without incurring "unnecessary expenditures." Argument A. DOE is not required to address ALARA considerations at nuclear power plant sites remote from the GROA. The regulations require DOE to comply with the ALARA principle with regard to preclosure operations at the GROA.⁵ The regulations, however, do not require DOE to address ALARA considerations at nuclear power plant sites remote from the GROA.....</p>	<p>MOTION FOR A PLAN AND SCHEDULE MOTION FOR A PLAN AND SCHEDULE Fuel is essential to power America's operations, heat and cool its businesses and its homes, and fuel farming, manufacturing, and the transportation of the United States. But now the world is approaching its end-of-oil, so a new fuel will have to be manufactured, which will require magnitudes of energy more than has been used in the past industrial century. Undisputedly our best power is electricity and our best potential fuel is hydrogen manufactured from water with the atomic energy of uranium....</p>	<p>NRC STAFF WITNESS IDENTIFICATION UPDATE On September 30, 2009, Construction Authorization Board-04 ("the Board") issued "CAB Case Management Order #2" ("Order") addressing matters related to discovery in the above-captioned proceeding. The Order opened discovery for Phase I of the proceeding, consisting of legal issue, NEPA, and safety contentions related to Volumes 1 and 3 of the SER. Order at 3. Pursuant to the Order, the parties, including the NRC staff ("Staff") with respect to Phase I NEPA contentions, were required to identify the witnesses it intends to call at the hearing in support or defense of each contention included in Phase I of discovery within 10 days, and to update the witness disclosures every sixty days thereafter. <i>Id.</i> at 5.</p>

Date	Dec 7		
	<p><u>THE NUCLEAR ENERGY INSTITUTE'S BRIEF ON PHASE I LEGAL ISSUE NO. 1</u></p> <p>I. INTRODUCTION By Order dated October 23, 2009,1 this Atomic Safety and Licensing Board accepted the joint statement of Phase I legal issues for briefing submitted by the Department of Energy ("DOE"), the State of Nevada, and the Nuclear Energy Institute ("NEI") on October 6, 2009. In accordance with CAB Case Management Order #2, dated September 30, 2009, the Licensing Board established a schedule for briefs on the issues by the affected parties. NEI herein briefs Legal Issue No. 1, pertaining to its contention NEI-SAFETY-005.</p> <p>II. ISSUE NEI-SAFETY-005 challenges the postclosure criticality analysis described in Section 2.2.1.4.1.1 of the License Application ("LA") Safety Analysis Report ("SAR") because, among other reasons, it is inconsistent with applicable regulations requiring that occupational doses be maintained "as low as reasonably achievable," or "ALARA." As summarized in the joint statement of legal issues: NEI alleges that DOE's LA violates 10 C.F.R. §§ 20.1002, 20.1003, 20.1101, 50.40 and 63.111 because the "safety margin" is so substantial and excessively conservative that it will lead to the unnecessary insertion of disposal control rod assemblies into some fuel assemblies at nuclear power plants prior to shipment for disposal. This safety margin is allegedly inconsistent with the principles of ALARA because it will lead to unnecessary occupational radiation exposures, economic costs and environmental costs. More fully, as articulated in NEI's Petition to Intervene, the contention asserts that DOE's postclosure criticality analysis will effectively require licensees to unnecessarily insert control rods for criticality control into some fuel assemblies prior to transportation to the repository site. This requirement will: (a) increase occupational doses to workers at the reactor sites tasked with inserting the control rods; (b) increase operational complexity and environmental costs associated with the loading and shipping operations; (c) require unnecessary design and operational costs to be paid out of the Nuclear Waste Fund; and (d) potentially cause delays in the licensing of new Transportation, Aging and Disposal ("TAD") canister designs....</p>	<p><u>NRC STAFF BRIEF ON PHASE I LEGAL ISSUES</u></p> <p>On October 23, 2009, Construction Authorization Board-04 ("the Board") issued an Order directing the parties to brief legal issues associated with Phase I of the proceeding. Order (Identifying Phase I Legal Issues for Briefing), dated October 23, 2009 ("October 23 Order"). The NRC staff ("Staff") brief on the Phase I Legal Issues is set forth below.</p> <p>BACKGROUND On June 3, 2008, the U.S. Department of Energy (DOE) submitted a license application (LA) to the NRC, seeking authorization to construct a geologic repository at Yucca Mountain, Nevada, and the Commission published a notice of opportunity for a hearing on October 22, 2008. 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, 73 Fed....</p>	<p><u>STATE OF NEVADA RESPONSE TO NRC STAFF ANSWERS TO BOARD QUESTIONS</u></p> <p>On December 9, 2009, the Construction Authorization Board (Board) issued a Memorandum and Order admitting five new contentions and requiring NRC Staff (Staff) to answer three questions by December 21, 2009 related to the State of Nevada's (Nevada's) petition for waiver in NEV-SAFETY-203. The Memorandum and Order also provided that Nevada could file a response to Staff's answers by December 30, 2009. Nevada's response is set forth below....</p>

Date	Dec 13	Dec 17	Dec 22
	<p><u>STATE OF NEVADA'S OPENING BRIEF ON PHASE I CONTENTION LEGAL ISSUES</u> STATE OF NEVADA'S OPENING BRIEF ON PHASE I CONTENTION LEGAL ISSUES In accordance with the Construction Authorization Board's (CAB) order dated October 23, 2009, the State of Nevada (Nevada) hereby submits its opening brief on the agreed-upon or authorized legal issues affecting its Phase I contentions. These legal issues are within the scope of admitted contentions NEV-SAFETY-009, 010, 011, 012, 013, 019, 041, 146/201, 149, 161, 162, 169, and 171. In some cases, resolution of the specified legal issue completely resolves the affected contention or contentions, but in other cases, resolution of the legal issue leaves other technical or policy issues still unresolved. This is explained in each section of the brief. (55 pages)</p>	<p><u>Issues Regarding LSN Operations Funding</u> (Dan Graser) In accord with 10 C.F.R. § 2.1011(c) (1), I wish to advise Construction Authorization Board (CAB) 4 of a potential matter for its consideration. Recent press reports have indicated that the Department of Energy (DOE) is seriously considering attempting to withdraw the Yucca Mountain high-level waste (HLW) repository construction authorization application or otherwise suspend its participation in the HLW repository licensing proceeding. Presumably, this would also involve some action that would suspend or terminate its involvement in the Licensing Support Network (LSN). As a search and retrieval interface using internet technology, the LSN has been implemented in such a way that each party operates and pays for the maintenance of its own document collection, with no single organization being the custodian of the entire corpus. As a consequence, for any scenario that involves long-term suspension or termination of the licensing proceeding, a number of technical issues arises relative to the LSN, including:</p> <ol style="list-style-type: none"> 1. If DOE takes its existing document collection offline and/or archives that collection, all of the DOE collection pointers in the LSN portal will generate an internet error message that the file is not available. Because DOE's material represents 98.9 percent of the entire LSN collection content, this would be a significant blow to the continued viability of the LSN. 2. Based on my understanding of the computer infrastructure of the DOE system, it is questionable whether that system could operate in a "lights-out" mode (i.e., left "on" under the care of a contractor but with no active maintenance or oversight by DOE employees) for any extended period of time without some hardware or software failure being experienced that would render the DOE collection inaccessible. 3. It is also questionable whether the LSN system – including the current LSN portal website as it is operated by the LSN Administrator -- could be restored once it has been decommissioned for any extended period of time. To resurrect the LSN portal site alone likely would require five years and multiple millions of dollars. 4. Technologically, the DOE collection will be extremely difficult to salvage if it is ever decommissioned. ... 	<p><u>NRC Staff Response to Board Questions</u> INTRODUCTION On December 9, 2009, Construction Authorization Board-04 ("the Board") issued a Memorandum and Order addressing six contentions filed after the original intervention petitions. <i>U.S. Dep't of Energy</i> (High-Level Waste Repository), LBP-09-29, 70 NRC __ (Dec. 9, 2009). With respect to NEV-AFETY-203, a petition for a rule waiver pursuant to 10 C.F.R. § 2.335, the Board directed the NRC staff ("Staff") to answer certain questions about the waiver petition filings. <i>Id.</i> at 13. The Staff answers to these questions are set forth below. DISCUSSION A. Question 1 The authors of the NRC Staff's affidavit assert that the information underlying the Stuewe model has "been available" for many years. Yet the affiants do not state that the Commission was aware of that information or actually considered the Stuewe model when it conducted the rulemaking. What information, if any, in the rulemaking record before the Commission demonstrates that the Commission considered the Stuewe model or the data underlying that model? Where is any such information located? LBP-09-29 at 13 (citation omitted). During the rulemaking for the Implementation of a Dose Standard After 10,000 Years, 74 Fed. Reg. 10,811 (Mar. 13, 2009) ("Final 10,000 Years Rule"), the Commission considered</p>