

January 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 Jan - CAB 4

Date	Jan 7	Jan 11	
	<p><a href="#">ORDER (Scheduling Oral Argument)</a></p> <p>Construction Authorization Board (CAB) 04 will hear oral argument on the legal issues identified in its order of October 23, 2009, at the Las Vegas Hearing Facility on January 26, 2010 at 9:00 a.m. PST and, if necessary, also on January 27, 2010. Counsel for the affected parties as defined in CAB Case Management Order #2 (i.e., DOE, NRC Staff, NEI and State of Nevada), shall appear to present argument. Counsel for all other parties are free to attend the oral argument on January 26, if they wish. Counsel for the affected parties shall also appear for a 9:00 a.m. PST case conference on January 27, 2010 to address, inter alia, the matters raised in the Licensing Support Network Administrator's December 17, 2009 Memorandum to the Licensing Board and the Board's December 22, 2009 order. Counsel for all other parties may attend the conference in person but, in any event, shall participate via telephone conference if they choose not to attend in person. Oral argument on any issues not completed on January 26, 2010 will be heard at the conclusion of the case conference on January 27, 2010.</p>	<p><a href="#">MEMORANDUM AND ORDER (Logistics for Oral Argument)</a></p> <p>As directed in our January 7, 2010 order,<sup>1</sup> 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.<sup>2</sup> This order sets forth the terms of the oral argument and other necessary logistical information.</p>	

## MOTIONS AND PLEADINGS

Date	Jan 6	Jan 6	Jan 6
	<p><a href="#"><u>REPLY OF THE NUCLEAR ENERGY INSTITUTE TO THE DEPARTMENT OF ENERGY AND NRC STAFF BRIEFS ON PHASE I LEGAL ISSUES I. INTRODUCTION</u></a></p> <p>In accordance with Case Management Order #2, NEI herein replies to the DOE Brief and the NRC Staff Brief, insofar as they pertain to contention NEI-SAFETY-005 (Legal Issue No. 1).</p> <p>NEI-SAFETY-005 challenges the postclosure criticality analysis described in Section 2.2.1.4.1.1 of the DOE License Application (“LA”) Safety Analysis Report (“SAR”) because, among other reasons, the LA is inconsistent with applicable regulations requiring that radiological doses be maintained “as low as reasonably achievable,” or “ALARA.”</p>	<p><a href="#"><u>NRC STAFF REPLY TO INITIAL BRIEFS ON PHASE I LEGAL ISSUES</u></a></p> <p>The legal issues presented by NEI-SAFETY-005, as admitted by the Board, are:(1) Whether 10 C.F.R. §§ 20.1002, 20.1003, 20.1101, 50.40 and 63.111 require ALARA considerations at individual nuclear plant sites that are remote from the 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 must show that it does so without any alleged unnecessary expenditures of resources.</p> <p>NEI argues that DOE’s consideration of ALARA issues outside of the GROA must include considering the effects of increased doses to nuclear workers at nuclear power plants not located in the vicinity of the repository.</p>	<p><a href="#"><u>NYE COUNTY, NEVADA REPLY BRIEF ON PHASE I LEGAL CONTENTION</u></a></p> <p>These six closely-related legal contentions raise a common issue regarding DOE’s climate change assessment: whether 10 C.F.R. § 63.305 requires DOE to project future levels of greenhouse gas emissions and evaluate the impact of such gases on future climate change at Yucca Mountain in the 10,000-year performance assessment, or whether DOE may analyze the effects of greenhouse gas emissions on future climate based upon the historical geological record.</p>

Date	Jan 6	Jan 6	Jan 8
	<p><a href="#"><u>REPLY OF THE NUCLEAR ENERGY INSTITUTE TO THE DEPARTMENT OF ENERGY AND NRC STAFF BRIEFS ON PHASE I LEGAL ISSUES</u></a></p> <p>NEI-SAFETY-005 challenges the postclosure criticality analysis described in Section 2.2.1.4.1.1 of the DOE License Application ("LA") Safety Analysis Report ("SAR") because, among other reasons, the LA is inconsistent with applicable regulations requiring that radiological doses be maintained "as low as reasonably achievable," or "ALARA."</p> <p>In its initial brief, NEI fully articulated the basis for concluding that ALARA requirements apply to the DOE high level waste repository, and that the requirements include consideration of unnecessary impacts that occur offsite from the Geologic Repository Operations Area ("GROA").</p>	<p><a href="#"><u>STATE OF NEVADA REPLY BRIEF ON PHASE I LEGAL ISSUES</u></a></p> <p>Nevada argued in its Opening Brief that 10 C.F.R. Part 63 grants DOE no legal right to base its projections of future climate states on the historic geologic record. Whether DOE may analyze the effects of anthropogenic greenhouse gas emissions on future climate based solely on the historic geologic record presents a technical issue, not a legal one. DOE argues to the contrary that "NRC intended that prediction of future changes in climate over the next 10,000- year period be based on the geologic record" (DOE Brief on Nevada Safety Contentions 009, 010, 011, 012, 013, and 019 (DOE Issue II Brief) at 2). Staff's position is ambiguous. It seems to agree with DOE when it concludes that "Section 63.305 allows DOE to address the effects of anthropogenic greenhouse gas emissions on repository performance by using climate data in the historical geologic record" (Staff Brief on Phase I Legal Issues (Staff Brief) at 15), but then it seems to agree with Nevada when it concludes that "Section 63.305 does not prescribe factors can be assessed over time frames during which the geologic system is relatively stable or varies in a boundable manner" (NAS Report at 9). There is nothing in this finding about use of the historic geologic record. While the discussion on pages 77-78 and 91-92 of the NAS Report suggests that this finding was based, in part, on an assessment of the historic and geologic record, these pages contain no "findings" or "recommendations" and, indeed, seem to have been edited carefully to avoid any use of these terms.</p>	<p><a href="#"><u>U.S. DEPARTMENT OF ENERGY CONSOLIDATED REPLY BRIEF ON PHASE 1 LEGAL ISSUE SAFETY CONTENTIONS</u></a></p> <p>DOE does not have an ALARA obligation to workers at nuclear power plants remote from the GROA. NEI argues that DOE "must consider dose impacts that occur within the GROA <i>and at reactor sites</i>—where those dose impacts could be avoided if DOE were to change certain design elements for criticality control, without compromising acceptability of postclosure performance."<sup>8</sup> NEI is concerned about "unnecessary . . . occupational doses for [nuclear] plant employees . . ." that could result when nuclear power plants take certain actions (e.g., inserting disposal control rod assemblies into some fuel assemblies) to comply with DOE requirements.<sup>9</sup> According to NEI, DOE must consider how its design and operations could impact the dose received by nuclear power plant workers engaged in fuel assembly-related activities.<sup>10</sup> In short, NEI is asserting that DOE must apply ALARA principles in order to reduce doses to workers who are: (1) employed by <i>other</i> NRC licensees, and not by DOE; (2) working at NRC-licensed facilities located hundreds or thousands of miles from the GROA and not controlled by DOE; and (3) exposed to occupational doses that are attributable solely to radioactive waste located at these remote facilities. This novel view has no support in the NRC regulations or in prior NRC practice.</p>
Date	Jan 7	Jan 7	Jan 8
	<p><a href="#"><u>NOTIFICATION OF LEAD PARTY FOR CONSOLIDATED CONTENTIONS NEV-SAFETY-205 AND CLK-SAFETY-013</u></a></p> <p>.... Clark County, Nevada and the State of Nevada submitted joint notification to inform the Board of the Parties' designation of lead party for consolidated contentions NEV-SAFETY-205 and CLK-SAFETY-013.<sup>1</sup></p>	<p><b>STATE OF NEVADA'S NOTICE DUCES TECUM OF THE INTENTION TO TAKE THE ORAL DEPOSITION OF CHRISTINE LENORE PINEDA</b></p> <p><b>STATE OF NEVADA'S NOTICE DUCES TECUM OF THE INTENTION TO TAKE THE ORAL DEPOSITION OF DANIEL G. LEVITT</b></p>	<p><b>STATE OF NEVADA'S NOTICE DUCES TECUM OF THE INTENTION TO TAKE THE ORAL DEPOSITION OF DANIEL B. STEPHENS</b></p> <p><b>STATE OF NEVADA'S NOTICE DUCES TECUM OF THE INTENTION TO TAKE THE ORAL DEPOSITION OF DAVID R. TURNER</b></p>

<b>Date</b>	<b>Jan21</b>	<b>Jan 21</b>	<b>Jan 7</b>
	<p><b>STATE OF NEVADA'S COMMENTS ON LSNA QUERIES</b></p> <p>As stated by the LSNA, termination of the DOE participation in the LSN would raise a number of issues including:</p> <ul style="list-style-type: none"> <li>• the 98.9 percent of the LSN collection belong to DOE would become unavailable to the other parties and the public;</li> <li>• the DOE document collection could not operate in a "lights-out" mode, and any effort by DOE to do so for an extended period would render the DOE collection inaccessible;</li> <li>• the LSN portal itself operated by the LSNA would likely take five years and multiple millions of dollars to resurrect if decommissioned; and</li> <li>• the DOE document collection would be extremely difficult to salvage and so should be restructured into aggregated pdf document form instead of its current individual page level data files (exceeding 80 million) to avoid their loss.</li> </ul>	<p><b><u>NRC STAFF COMMENTS CONCERNING LSNA MEMORANDUM</u></b></p> <p>The items in the Staff's LSN collection are available via the Agencywide Documents Access and Management System (ADAMS) and those items that are currently publicly available would remain publicly available through ADAMS even if the LSN were suspended or terminated. In addition, privileged documents that are currently marked by only a header on the LSN are maintained in the non-public portion of ADAMS, and would be maintained in non-public ADAMS if the LSN were suspended or terminated. The Staff will preserve any documents that are not currently PDF or TIFF files in ADAMS consistent with the NRC's records retention requirements.</p>	<p><b>WHITE PINE COUNTY'S COMMENTS ON ARCHIVAL OF LSN DOCUMENTS</b></p> <p>White Pine County's LSN document collection can be stored on CDs. Both the text of each document and each related header could be stored on CDs with backup hard copies. The headers and documents making up the White Pine County LSN collection could be made available to parties by providing searchable copies of the CDs. Copies of the CDs and backup hard copies would be archived with the White Pine County Recorder.</p>
<b>Date</b>	<b>Jan22</b>	<b>Jan 21</b>	
	<p><b>COUNTY OF INYO'S RESPONSE TO DECEMBER 22, 2009 ASLB ORDER REGARDING DISPOSITION OF LSN DOCUMENTS</b></p> <p>The LSNA letter asks all the parties (assuming a scenario in which they would no longer be required to maintain an active LSN document collection) to identify each party's intended plans for all its data and documents that are currently regulated pursuant to 10 C.F.R. Part 2, Subpart J. In response to the inquiry, the County of Inyo states that if DOE deactivates its LSN database, all data and documents that are currently regulated pursuant to 10 C.F.R. Part 2, Subpart J, will be maintained in readily available and searchable form (unless LSN exempt) for a period long into the future as required by California state law.</p>	<p><b>LINCOLN COUNTY'S RESPONSE TO DECEMBER 22, 2009 ASLB ORDER REGARDING DISPOSITION OF LSN DOCUMENTS</b></p> <p>Lincoln County's believes that its LSN document collection could be readily copied to and stored on CDs. The text of each document and related header material can be stored on CDs with hard copies prepared for backup. Documents and header information which comprise the LSN collection of Lincoln County could be made available to parties in a searchable form by providing copies of the CDs. Copies of the CDs and backup hard copies would be archived with the Lincoln County Recorder.</p>	<p><b>RESPONSE OF THE NEVADA COUNTIES OF CHURCHILL, ESERALDA, LANDER AND MINERAL TO THE DECEMBER 22, 2009 BOARD ORDER</b></p> <p>The Four Nevada Counties currently do not have any provisions or plans in place for managing its LSN document collection if the Application is withdrawn or suspended. The Four Nevada Counties have not allocated any of its 2010 budget for potential, future archiving or administration maintenance costs of the LSN document collection in the event of a suspension or withdraw of the Application. The Four Counties rely on annual Congressional appropriations in order to comply with LSN requirements, which include covering costs to monitor, costs for a web server, and software needs. Without annual funding, these costs will impose a heavy burden on the limited financial resources of the Four Counties. Guidance from the Board with respect to the predicted LSN related requirements on individual parties, especially with respect to document retention and LSN collection maintenance requirements, should the Application be withdrawn or suspended, would be extremely helpful in ensuring that the Four Counties allocate their resources in a manner that allows for full compliance with future Board orders.</p>

Date	Jan 31	Feb 1	Feb 1
	<p><b>ERRATA TO U.S. DEPARTMENT OF ENERGY CONSOLIDATED REPLY BRIEF ON PHASE 1 LEGAL ISSUE SAFETY CONTENTIONS</b></p> <p>It has come to the U.S. Department of Energy's (DOE) attention that its Consolidated Reply Brief on Phase 1 Legal Issue Safety Contentions (DOE's Reply), filed on January 6, 2010, contains an error in the section addressing contention NEV-SAFETY-171 (Legal Issue 11). The error appears in the "Conclusion" on page 52. The sentence should read: "Therefore, 10 C.F.R. §§ 63.113, 63.114, and Part 63 Subpart G, do not prohibit use of the PMA to validate or provide confidence in the TSPA, regardless of its limited use of data and software that were not qualified under DOE's QA program <i>for direct use in the TSPA.</i>" The italicized text does not appear in DOE's Reply as filed. Attached is a Table (Attachment 1), which identifies the page on which this error occurs and identifies the text to be corrected. Also attached is a replacement for the affected page (Attachment 2), reflecting the correction identified in the table.</p>	<p><b>U.S. DEPARTMENT OF ENERGY'S MOTION TO STAY THE PROCEEDING</b></p> <p>Today, the President announced the Administration's budget for fiscal year 2011. In that budget, the President directed that the Department of Energy "discontinue its application to the U.S. Nuclear Regulatory Commission for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010 . . ." <i>Budget of the U.S. Government, Fiscal Year 2011</i>, Appendix at 437 (available at <a href="http://www.whitehouse.gov/omb/budget/fy2011/assets/doe.pdf">http://www.whitehouse.gov/omb/budget/fy2011/assets/doe.pdf</a>); see <i>id.</i>, <i>Terminations, Reductions, and Savings</i> at 62 (available at <a href="http://www.whitehouse.gov/omb/budget/fy2011/assets/trs.pdf">http://www.whitehouse.gov/omb/budget/fy2011/assets/trs.pdf</a>) (Attached). Moreover, the budget specifies that "all funding for development of the Yucca Mountain facility will be eliminated" for fiscal year 2011. <i>Id.</i> In accord with these determinations, DOE has advised the undersigned counsel that DOE intends to withdraw the pending application with prejudice and to submit a separate Motion, pursuant to 10 C.F.R. § 2.107(a), within the next 30 days, to determine the terms and conditions if any, of that withdrawal. To avoid the unnecessary expenditure of resources by the Board, the NRC Staff, and all other parties to this proceeding, DOE hereby requests that the Board stay proceedings (with one exception discussed below) in this matter through the disposition by the Board of any DOE motion under Section 2.107 filed within the next 30-days. See <i>Duke Energy Corp.</i> (Catawba Nuclear Station, Units 1 and 2), unpublished Commission Order (Jan. 30, 2004) and <i>Yankee Atomic Elec. Co.</i> (Yankee Nuclear Power Station), 1966 WL 627, 640 (N.R.C.) (Oct. 2, 1996) (Commission granting "housekeeping" stay to accommodate time for future Staff filings and parties' responsive filings); see generally <i>Nat'l Audubon Soc'y, Inc. v. Watt</i>, 678 F.2d 299, 307 (D.C. Cir. 1982) (discussing parties' agreement "to a stay of the proceedings 'to conserve judicial resources' . . . [T]he need for a stay was premised, in large part, on a new policy toward federal water projects adopted by an incoming Administration"). (continued next column)</p>	<p>The one exception that DOE proposes to this stay of proceedings would apply to DOE's submission addressing the Board's questions at the January 27, 2010 Case Management Conference, as well as the other parties' written responses to that filing. DOE intends to adhere to its commitment to make that filing. That document, and other parties' responses, may provide information relevant to the winding up of this proceeding.<sup>1</sup> Finally, DOE notes that Answers to this Motion are due in 10 days, but depositions are scheduled to begin approximately two weeks from today, and the electronic indexes associated with derivative discovery for those depositions under 10 C.F.R. § 2.1019 are due next week. In order to preserve the resources of the parties, DOE requests that the Board issue as soon as possible an interim Order suspending discovery pending its resolution of this Motion. DOE counsel has made a sincere attempt to confer with counsel for the other parties prior to filing this Motion, per 10 C.F.R. § 2.323(b), including holding a telephone conference to which counsel for each party was invited. As a result of that consultation, the following parties concur with this Motion: State of Nevada, State of California, Nuclear Energy Institute, Clark County, Nye County, Inyo County, and Eureka County. The following parties take no position as of the time of this filing: the NRC Staff, JTS, NCAC, and the "Four Counties" (<i>i.e.</i>, Nevada Counties of Mineral, Lander, Churchill, and Esmeralda). White Pine County opposes the Motion.</p> <p><b>Jan 2, 2010 - WHITE PINE COUNTY NOTICE OF NON OPPOSITION TO DOE'S MOTION TO STAY</b> Richard W. Sears here notifies the parties that White Pine County do not oppose the Department of Energy's Motion to Stay.</p> <p><b>NRC STAFF RESPONSE TO U.S. DEPARTMENT OF ENERGY MOTION TO STAY THE PROCEEDING</b> After reviewing DOE's filing, the Staff does not oppose the Motion.</p>