

January 2011 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 January - CAB 4

Date	Dec 8	Dec 14	
	<p>ORDER (Addressing Nevada's Motion and Discovery Status)</p> <p>Before us is the State of Nevada's November 18, 2010 "motion" requesting that the Board announce its schedule for deciding the outstanding Phase I legal issues.¹ The NRC Staff has no objection to the motion² and no other party has responded. The State of Nevada may be assured that the Board has the issue under active consideration and intends to issue a decision in the immediate future.</p> <p>The Board also has before it the Staff's November 29, 2010 notification stating that "the Staff will not be issuing SER [Safety Evaluation Report] Volume 3 in November and that a revised schedule is indeterminate at this time."³ Previously, the Staff had informed the Board at the January 27, 2010 case management conference that the Staff's schedule for issuing SER Volume 3 had slipped from September 2010 to November 2010,⁴ a date the Staff confirmed at the June 4, 2010 case management conference. The Staff had initially established the September 2010 issuance date for SER Volume 3 in its July 10, 2009 filing answering Board questions. In light of this long-established schedule for the issuance of SER Volume 3, the Board is surprised that on the next to the last day of the month in which the Staff was to issue the SER volume, the Staff now informs us, not only that the schedule had once again slipped, but that any new schedule was "indeterminate." No later than December 22, 2010, the Staff shall file a full explanation for its last minute schedule change and a full explanation of why, after so many months of preparation, the Staff cannot, at a minimum, establish a date by which it will issue Volume 3 of the SER.</p>	<p>MEMORANDUM AND ORDER (Deciding Phase I Legal Issues and Denying Rule Waiver Petitions)</p> <p>(Deciding Phase I Legal Issues and Denying Rule Waiver Petitions)</p> <p>This proceeding concerns the United States Department of Energy's (DOE's) application (License Application) for authorization to construct a high-level nuclear waste repository in Nye County, Nevada. Before the Board are ten legal issues and, in addition, two petitions for rule waivers pursuant to 10 C.F.R. § 2.335. The Board decides the legal issues, and denies both waiver petitions.</p>	

MOTIONS AND PLEADINGS

Date	January 21	January 20	January 21
	<p><u>NUCLEAR ENERGY INSTITUTE'S POSITION ON EFFECT OF RULING ON PHASE I LEGAL ISSUE 1 (NEI-SAFETY-05)</u> On December 14, 2010, the Atomic Safety and Licensing Board ("Board") issued its Memorandum and Order (Deciding Phase I Legal Issues and Denying Rule Waiver Petitions).¹ Among other legal issues, the Board decided Legal Issue 1. Legal Issue 1 was defined by agreement of the parties² in response to CAB Case Management Order 2,3 and was subsequently adopted by Board order dated October 23, 2009.⁴ In accordance with the stipulation of the parties, Legal Issue 1 related to one Phase I contention: NEI-SAFETY-05 on alleged excessive conservatism in the post-closure criticality analysis resulting in unnecessary radiation doses, environmental impacts, and economic costs.</p>	<p><u>STATE OF NEVADA'S MOTION FOR RECONSIDERATION OF THE REJECTION OF NEV-MISC-001</u> The State of Nevada (Nevada) believes that the Construction Authorization Board's (CAB's) December 14, 2010 Memorandum and Order "Deciding Phase 1 Legal Issues and Denying Rule Waiver Petitions," LBP-10-22, requires reconsideration of the CAB's much earlier rejection of NEV-MISC-001, and that this contention must now be admitted.</p>	<p><u>U.S. DEPARTMENT OF ENERGY'S JOINT REPORT IN RESPONSE TO CAB ORDERS OF DECEMBER 8, 2010 AND LBP-10-22</u> By Orders dated December 8 and 14,² 2010, this Board instructed the parties to confer and submit by January 21, 2011 their views regarding (1) the status of discovery in this proceeding and any proposals for modifications to CAB Case Management Order (CMO) #2, and (2) the effects of LBP-10-22 on admitted contentions. The parties have conferred as directed, including a telephonic meet-and-confer on January 14, 2011, in which all parties other than the "Four Counties" participated either live or by proxy. This joint report and its attachment respond to the Board's Orders. It is submitted on behalf of DOE and (except where otherwise noted) the State of Nevada, the Nuclear Energy Institute (NEI), the NRC Staff, Clark County, White Pine County, Inyo County, State of Washington, Aiken County, and Native Community Action Council (NCAC).</p>
Date	Jan 21		
	<p><u>U.S. DEPARTMENT OF ENERGY'S STATEMENT OF ADDITIONAL VIEWS ON THE CONTENTIONS AFFECTED BY THE CAB ORDER OF DECEMBER 14, 2010</u> By Order dated December 14, 2010,¹ this Board instructed the parties to confer and submit their views concerning the effects of LBP-10-22 on admitted contentions. The parties have submitted a report and attached matrix summarizing the areas of agreement and disagreement with respect to these contentions. The U.S. Department of Energy (DOE) submits its additional views on those contentions affected by the Board's Order on which DOE and the State of Nevada could not reach agreement.</p>	<p><u>U.S. DEPARTMENT OF ENERGY'S MOTION TO RENEW TEMPORARY SUSPENSION OF THE PROCEEDING</u> Requested Relief The United States Department of Energy (DOE) requests a stay of further proceedings before the Board through May 20, 2011. The stay would be without prejudice to any party's right to move to lift the stay before its expiration because of changed circumstances. The stay would also be without prejudice to the parties' right to move for, or to oppose, any additional stay. DOE further proposes that the parties meet and confer in advance of the stay's expiration and report to the Board on May 13, 2011 their views regarding the resumption and schedule for discovery. The parties held a meet-and-confer on January 14, 2011 regarding this issue. The following parties support the requested relief at the meet-and-confer: Eureka County; and Nuclear Energy Institute (NEI).</p>	<p><u>STATE OF NEVADA'S SEPARATE COMMENTS REGARDING THE IMPACT OF LBP-10-22 ON NEV-SAFETY-130, 149, 161, and 162</u> As indicated in the "U.S. Department of Energy's Joint Report in Response to CAB Order of December 8, 2010 and to LBP-10-22," also filed today, Nevada, DOE, and NRC Staff have differing views regarding the effect of the Construction Authorization Board's (CAB's) rulings on Phase 1 Legal Issues 7, 8 and 10 on NEV-SAFETY-130, 149, 161 and 162. Nevada's position in this regard is stated briefly in DOE's stipulation chart, and is explained more fully below.</p>
Date	January 21	January 31	

	<p><u>DIFFERING POSITION OF THE NRC STAFF IN RESPONSE TO LBP-10-22 INTRODUCTION</u></p> <p>The Board also directed the parties to submit a separate differing position on any contention for which the parties cannot fully agree on a stipulation. The Board also directed the parties to submit a separate differing position on any contention for which the parties cannot fully agree on a stipulation.</p> <p>Discussion and conclusion on following issues in the filing. NEV-SAFETY-130 – DRIP SHIELD EMPLACEMENT PLAN, EQUIPMENT, AND SCHEDULE, NEV-SAFETY-161 – CRITICAL ROLE OF DRIP SHIELD, AND NEV-SAFETY-162 – DRIP SHIELD INSTALLATION SCHEDULE</p> <p>NEV-SAFETY-149 – DEVIATIONS IN DESIGN AND WASTE EMPLACEMENT</p> <p>NEI-SAFETY-06 - DRIP SHIELDS ARE NOT NECESSARY</p>	<p><u>U.S. DEPARTMENT OF ENERGY'S OPPOSITION TO THE STATE OF NEVADA'S MOTION FOR RECONSIDERATION</u></p> <p>On January 20, 2011, the State of Nevada (Nevada) filed a motion for reconsideration (Reconsideration) in which it asked the Board to reconsider the earlier rejection of NEV-Misc-001 in LBP-09-06. Nevada's Reconsideration is based on the Board's holding on Legal Issue 5 in LBP-10-22, where the Board held that there is no legal requirement for DOE to consider the effects of erosion for "the post-10,000 year performance assessment" when "there is no showing that erosion causes increases in radiological exposures or releases within the first 10,000 years."</p> <p>The U.S. Department of Energy (DOE) opposes Nevada's Reconsideration because NEV-Misc-001 was properly dismissed in LBP-09-06, and LBP-10-22 reinforces the earlier dismissal of that contention.</p>	
--	--	--	--