

July 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 July - CAB 4

Date	June 30	July 18	July 29
	<p>June 30 <u>ORDER Secretary of the NRC Commission</u> On June 29, 2010, the Atomic Safety and Licensing Board issued LBP-10-11, which, among other things, denied the U.S. Department of Energy's motion to withdraw the construction authorization application at issue in this proceeding. The participants are invited to file briefs with the Commission as to whether the Commission should review, and reverse or uphold, the Board's decision. The briefing will proceed simultaneously, rather than sequentially. All participants' initial briefs are due July 9, 2010, and are limited to 40 pages, exclusive of title page, table of contents or table of authorities. All participants' responsive briefs must be filed by July 16, 2010, and are limited to 20 pages, exclusive of title page, table of contents or table of authorities.</p>	<p><u>NOTICE OF RECUSAL</u> by George Apostolakis - NRC Commissioner</p>	<p>ORDER On June 30, 2010, the participants in this proceeding were invited to file briefs with the Commission. Initial briefs were due July 9, 2010, and fourteen pleadings were timely filed on July 8 and 9. However, on those dates, NRC's Electronic Information Exchange (EIE) system did not send timely service notifications to participants on the service list. This occurred due to an internal firewall configuration setting that blocked e-mails from being sent. This issue was corrected on July 12, and EIE is now operating normally. Given that the participants received delayed service notifications, the time to file responsive briefs is hereby extended to Monday, July 19, 2010.¹ For the participants' convenience, appended to this order is a list of all filings served in this proceeding on July 8 and 9, 2010. This order is issued pursuant to my authority under 10 C.F.R. § 2.346(a).</p>

MOTIONS AND PLEADINGS

Date	July 8	July 9	July 9
	<p><u>AIKEN COUNTY RESPONSE IN OPPOSITION TO COMMISSION REVIEW OF ATOMIC SAFETY AND LICENSING BOARD ORDER</u></p> <p>As a preliminary matter, no participant in this proceeding is entitled to an appeal as of right from the Order of the Licensing Board denying DOE's motion with withdraw. The Licensing Board Order is interlocutory by its nature, because the order does not resolve the merits of the larger context of the proceeding, <i>i.e.</i> a merits decision on the construction authorization for the Yucca Mountain geologic repository. NRC regulations provide an exhaustive list of allowed appeals "as of right" in this proceeding, which does not include an appeal from the denial of DOE's motion to withdraw. See 10 C.F.R. § 2.1015. While the Commission retains the inherent authority to take review of the Licensing Board Order <i>as a matter of discretion</i>, the Commission should not accept review for the reasons set forth below.</p>	<p><u>NRC STAFF BRIEF IN RESPONSE TO THE SECRETARY OF THE COMMISSION'S JUNE 30, 2010 ORDER</u></p> <p>CONCLUSION</p> <p>As set forth above, Commission review of LBP-10-11 is warranted because the order raises unique questions that impact the structure of the proceeding and the Commission's ability to interpret and apply its statutory obligations and regulations. LBP-10-11 should be reversed because the Board erred in interpreting NWP § 114 to require a merits based determination and to preclude consideration of a motion to withdraw under 10 C.F.R. § 2.107.</p>	<p><u>STATE OF WASHINGTON, STATE OF SOUTH CAROLINA, AIKEN COUNTY, SOUTH CAROLINA, AND WHITE PINE COUNTY, NEVADA'S MOTION FOR RECUSAL/DISQUALIFICATION</u></p> <p>III. CONCLUSION</p> <p>For the reasons above, Movants respectfully request that Commissioners Magwood, Apostolakis, and Ostendorff address this motion before reaching any other issue in this case and, when they do so, that each recuse himself or be disqualified from this matter.</p>
Date	July 9	July 9	July 9
	<p><u>BRIEF OF THE STATE OF SOUTH CAROLINA PURSUANT TO COMMISSION ORDER DATED JUNE 30, 2010</u></p> <p>CONCLUSION</p> <p>For the foregoing reasons, as well as those set out in the motion for recusal, the State of South Carolina respectfully requests that the Commission decline to take discretionary interlocutory review of the ASLB's June 29, 2010 Order. Even if the Commission reviews the merits of the Board order, however, that order should be affirmed and upheld in its entirety, and the Commission should direct the Department of Energy to prosecute the License Application in good faith.</p>	<p><u>STATE OF CALIFORNIA'S RESPONSE TO THE NUCLEAR ENERGY COMMISSION'S ORDER RE:THE ATOMIC SAFETY AND LICENSING BOARD'S DENIAL OF THE DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW THE LICENSE APPLICATION</u></p> <p>III. CONCLUSION</p> <p>All parties have learned in this proceeding that the future cannot be predicted. The applicable NRC regulations provide both the Board and the NRC with the authority to prescribe the terms upon which any withdrawal of DOE's application to construct a repository at Yucca Mountain may be granted. California asks that any such ruling contain an explicit statement or finding that none of California's contentions regarding the adequacy of DOE's environmental documents has been litigated, and that California's right to fully contest the merits of DOE's environmental documents in any proceeding seeking a license to construct or operate a repository at Yucca Mountain or any other facility for the storage and/or disposal of spent nuclear fuel and high-level radioactive waste are not prejudiced by the termination of this proceeding.</p>	<p><u>BRIEF OF PRAIRIE ISLAND INDIAN COMMUNITY FOR AFFIRMANCE OF ATOMIC SAFETY AND LICENSING BOARD MEMORANDUM AND ORDER DENYING DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW CONSTRUCTION AUTHORIZATION APPLICATION</u></p> <p>CONCLUSION AND RELIEF</p> <p>For the reasons stated in this Brief, and in its March 15, 2010 Petition to Intervene, its May 11, 2010 Reply to Answers thereto, and its May 17, 2010 Response in Opposition to DOE's Motion to Withdraw, the PIIC respectfully requests that the Commission affirm, in its entirety, the Board's June 29, 2010 Memorandum and Order Denying DOE's Motion to Withdraw its License Application.</p>

Date	July 9	July 9	July 9
	<p><u>THE COUNTY OF INYO'S RESPONSE TO THE NUCLEAR ENERGY COMMISSION'S ORDER RE: THE ATOMIC SAFETY AND LICENSING BOARD'S DENIAL OF THE DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW ITS LICENSE APPLICATION</u> IV. CONCLUSION The Board and the NRC have the authority to prescribe the terms upon which any withdrawal of DOE's application to construct Yucca Mountain may be granted. If the Commission grants DOE's motion to withdraw the License Application, with or without prejudice, the County requests that any such ruling include the findings and the conditions identified above</p>	<p><u>NYE COUNTY BRIEF SUPPORTING CAB04 DECISION DENYING DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW WITH PREJUDICE ITS LICENSE APPLICATION FOR YUCCA MOUNTAIN REPOSITORY AND GRANTING INTERVENTION TO STATE OF WASHINGTON, STATE OF SOUTH CAROLINA, AKIN COUNTY, SOUTH CAROLINA, AND PIIC</u> Accordingly, Nye County requests that NRC either refuse to review CAB04's decision and simply certify it as a final agency decision, or expeditiously review and affirm CAB04's decision denying DOE's Motion to Withdraw it's License Application for a repository at Yucca Mountain, Nevada, for the reasons stated here-in.</p>	<p><u>INITIAL BRIEF OF NUCLEAR ENERGY INSTITUTE IN OPPOSITION TO REVIEW OF ATOMIC SAFETY AND LICENSING BOARD ORDER (LBP-10-11) DENYING MOTION TO WITHDRAW</u></p>
Date	July 9	July 9	July 9
	<p><u>BRIEF OF THE STATE OF NEVADA IN SUPPORT OF REVIEW AND REVERSAL OF THE LICENSING BOARD'S DECISION DENYING THE DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW ITS LICENSE APPLICATION WITH PREJUDICE</u> E. Conclusion. DOE's motion for a dismissal "with prejudice" must be granted because no other party (or petitioner) demonstrated that it would be prejudiced thereby. Moreover, a dismissal with prejudice does not constitute or presume any decision on the merits of the application; it would be speculative to presume that a dismissal with prejudice will tie the hands of future Administrations for all times; and factors which the CAB failed to address would have required a dismissal with prejudice even if DOE had not requested one. VII. OVERALL CONCLUSION. The Commission should reverse the CAB's M&O by granting DOE's motion to withdraw its application with prejudice.</p>	<p><u>U.S. DEPARTMENT OF ENERGY'S BRIEF IN SUPPORT OF REVIEW AND REVERSAL OF THE BOARD'S RULING ON THE MOTION TO WITHDRAW</u> VI. CONCLUSION For the reasons discussed herein, the Commission should reverse the Board's decision, order that DOE be permitted to withdraw its license application with prejudice, and further order that no other conditions be imposed on DOE.</p>	<p><u>FOUR NEVADA COUNTIES OF CHURCHILL, ESERALDA, LANDER AND MINERAL RESPONSE TO THE COMMISSION'S JUNE 30, 2010 ORDER</u> The Four Counties conclude that the Board's June 29, 2010 Memorandum and Order denying the U.S. Department of Energy's Motion to Withdraw is correct. The Commission should exercise its discretion and decline to review the Board's decision. However, if the Commission determines it should review the Board's decision, the Four Counties believe that the Commission should uphold the Board's Order denying the U.S. Department of Energy's Motion to Withdraw.</p>

<p>Date</p>	<p>July 9</p> <p><u>NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS BRIEF SUPPORTING THE JUNE 29, 2010 DECISION OF THE ATOMIC SAFETY AND LICENSING BOARD AND RESPECTFULLY SUGGESTING ADDITIONAL REVIEW IS BOTH UNNECESSARY AND A WASTE OF COMMISSION RESOURCES</u></p> <p>CONCLUSION</p> <p>The issues presented for review are currently being considered by the Court of Appeals. The Board’s decision incinerates DOE’s legal rationale beyond rehabilitation. Moreover, both efficiency and principles of comity compel the Commission to forego any additional review of the Licensing Board Order and certify it as a final agency decision ripe for judicial review. If review is undertaken, the Licensing Board’s correct interpretation of the NWPA should be upheld <i>in toto</i>.</p>	<p>July 19</p> <p><u>AIKEN COUNTY REPLY BRIEF TO COMMISSION</u></p> <p>.....Before filing its motion to withdraw, DOE acknowledged that NRC had a “<i>statutory obligation to complete</i> its licensing proceeding in three years.”⁴⁰ Now, DOE incredibly argues that there “is <i>not</i> a substantive obligation on the NRC to reach the merits,” but “simply a time deadline.”.....</p>	<p>July 19</p> <p><u>NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS REPLY BRIEF TO THE COMMISSION</u></p> <p>CONCLUSION</p> <p>The issues presented for review are currently being considered by the Court of Appeals. The Board’s decision incinerates DOE’s legal rationale beyond rehabilitation. Moreover, both efficiency and principles of comity compel the Commission to forego any additional review of the Licensing Board Order and certify it as a final agency decision ripe for judicial review. Therefore, NARUC respectfully requests the Commission decline to take discretionary interlocutory review of the Board’s June 29, 2010, Order. If the Commission chooses to review that Order, we request the Order be upheld in all respects.</p>
<p>Date</p>	<p>July 19</p> <p><u>NRC STAFF ANSWER TO STATE OF WASHINGTON, STATE OF SOUTH CAROLINA, AIKEN COUNTY, SOUTH CAROLINA, AND WHITE PINE COUNTY - NEVADA’S MOTION FOR RECUSAL/DISQUALIFICATION</u></p> <p>CONCLUSION</p> <p>In sum, the Movants have failed to meet their burden to demonstrate that three Commissioners should be recused or disqualified because of a prior statement during their confirmation hearing. While a decision on whether to recuse is within the discretion of each Commissioner, neither recusal nor disqualification is required if the affected Commissioners determine that their prior comments do not reflect prejudice or the appearance of prejudice of adjudicatory issues associated with the DOE motion and that, in fact, they have not prejudged the DOE withdrawal motion.</p>	<p>July 19</p> <p><u>NRC STAFF RESPONSE TO INITIAL BRIEFS REGARDING REVIEW OF LBP-10-11</u></p> <p>The Staff, however, does not object, as a general matter, to the preservation of information and recognizes the benefit of preserving this information, but notes that such conditions are not necessary. DOE has stated that it would maintain its LSN throughout the proceeding and archive LSN materials in accordance with the Federal Records Act and other relevant laws. DOE Initial Brief at 37. Should DOE ever re-submit an application to the NRC for a high-level waste geologic repository, it would be required by 10 C.F.R. § 2.1003 to “make available, no later than six months in advance of submitting its license application for a geologic repository, . . . [a]n electronic file including bibliographic header for all documentary material . . .” 10 C.F.R. § 2.1003(a)(1). Accordingly, while the Staff does not object, as a general matter, to the preservation of LSN information, attaching such conditions to DOE’s withdrawal is unnecessary.</p>	<p>July 19</p> <p><u>NUCLEAR ENERGY INSTITUTE ANSWER TO MOTION FOR RECUSAL/DISQUALIFICATION</u></p> <p>III. CONCLUSION</p> <p>The Motion requesting that Commissioners Magwood and Ostendorff recuse themselves and be disqualified from addressing any consideration of the Board decision denying the DOE motion to withdraw the Yucca Mountain license application is premature with respect to the threshold issue of whether the Commission should take review. NEI instead again urges, as it did in its July 9 Brief, that the Commission not take review, mooted the Motion. Should the Commission opt to take review, the Motion should be considered in the context of the precise issue under review and further explanation by the Commissioners of what was intended in their responses during the confirmation hearings. Based on the present bare record, NEI does not believe that the one-word answers constitute a prejudice of any or all the issues.</p>

Date	July 19	July 19	July 19
	<p><u>NYE COUNTY REPLY BRIEF SUPPORTING CAB04 DECISION DENYING DEPARTMENT OF ENERGY'S MOTION TO WITHDRAW WITH PREJUDICE ITS LICENSE APPLICATION FOR YUCCA MOUNTAIN REPOSITORY AND GRANTING INTERVENTION TO STATE OF WASHINGTON, STATE OF SOUTH CAROLINA, AKIN COUNTY, SOUTH CAROLINA, AND PIIC</u></p> <p>CONCLUSION</p> <p>As demonstrated above, the briefs filed by DOE, NRC Staff, Nevada, and others fail to demonstrate that the CAB04 decision should be reviewed, or, if reviewed, reversed. Accordingly, Nye County renews its requests that NRC either refuse to review CAB04's decision and simply certify it as a final agency decision, or expeditiously review and affirm CAB04's decision denying DOE's Motion to Withdraw its License Application for construction authorization for the repository at Yucca Mountain, Nevada.</p>	<p><u>REPLY BRIEF OF PRAIRIE ISLAND INDIAN COMMUNITY IN RESPONSE TO INITIAL BRIEFS OF DOE, STATE OF NEVADA ET AL, AND NRC STAFF</u></p> <p>V. CONCLUSION AND RELIEF</p> <p>For the reasons stated in its Initial Brief, dated July 9, 2010, and in this Reply Brief (and also in its March 15, 2010 Petition to Intervene, its May 11, 2010 Reply to Answers thereto, and its May 17, 2010 Response in Opposition to DOE's Motion to Withdraw), the PIIC respectfully requests that the Commission affirm, in its entirety, the Board's June 29, 2010 Memorandum and Order Denying DOE's Motion to Withdraw its License Application.</p>	<p><u>REPLY BRIEF OF THE STATE OF SOUTH CAROLINA PURSUANT TO COMMISSION ORDER DATED JUNE 30, 2010</u></p> <p>CONCLUSION</p> <p>For the foregoing reasons, the State of South Carolina respectfully submits that the Board Order should be affirmed in its entirety.</p>
Date	July 19	July 19	July 19
	<p><u>RESPONSE BRIEF OF THE STATE OF WASHINGTON PURSUANT TO THE JUNE 30, 2010, COMMISSION ORDER</u></p> <p>III. CONCLUSION</p> <p>Washington requests that the Commission decline to take discretionary interlocutory review of the ASLB's June 29, 2010, Order. If the Commission chooses to review that Order, Washington respectfully requests that the Order be upheld in all respects as outlined above and in Washington's Brief.</p>	<p><u>RESPONSIVE BRIEF OF THE NUCLEAR ENERGY INSTITUTE ADDRESSING REVIEW OF ATOMIC SAFETY AND LICENSING BOARD ORDER DENYING MOTION TO WITHDRAW</u></p> <p>IV. CONCLUSION</p> <p>As discussed in the NEI Initial Brief and above, the Board decision denying DOE's motion to withdraw the license application for the Yucca Mountain high level waste repository should be allowed to stand as the final agency determination. In the alternative, if the Commission does review the Board's decision, it should first identify with specificity the issues to be considered on review. NEI believes that in that context the Commission should uphold the Board decision on the merits.</p>	<p><u>STATE OF NEVADA ANSWER IN OPPOSITION TO MOTION FOR RECUSAL/DISQUALIFICATION</u></p> <p>IV. CONCLUSION.</p> <p>The Motion for Recusal/Disqualification should be denied.</p>
Date	July 19	July 19	July 19
	<p><u>STATE OF NEVADA RESPONSE BRIEF SUPPORTING COMMISSION REVIEW AND REVERSAL OF THE LICENSING BOARD'S DECISION DENYING DOE'S MOTION TO WITHDRAW ITS LICENSE APPLICATION WITH PREJUDICE</u></p> <p>IV. CONCLUSION.</p> <p>The Commission should take review of the M&O and reverse it insofar as it denies DOE's motion to withdraw its Yucca Mountain license application with prejudice.</p>	<p><u>U.S. DEPARTMENT OF ENERGY'S REPLY BRIEF IN SUPPORT OF REVIEW AND REVERSAL OF THE BOARD'S RULING ON THE MOTION TO WITHDRAW</u></p> <p>III. CONCLUSION</p> <p>The opponents offer no valid arguments to justify the Board's Order. The Commission should reverse that decision.</p>	<p><u>U.S. DEPARTMENT OF ENERGY'S RESPONSE TO THE MOTION FOR RECUSAL/DISQUALIFICATION</u></p> <p>V. Conclusion</p> <p>The Commission should deny the Motion.</p>