

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

March 5, 2010

ORDER
(Concerning Scheduling)

Before the Board are several related matters. First, the Department of Energy (DOE) has moved to withdraw its application.¹ Second, the State of South Carolina (South Carolina), the State of Washington (Washington), and Aiken County, South Carolina (Aiken County) have each petitioned to intervene, challenging whether DOE's motion should be granted and, if so, on what terms.² Third, the parties have not yet been afforded an opportunity to comment on DOE's filings regarding the preservation and archiving of its Licensing Support Network (LSN) document collection.³

The stay imposed by our February 16, 2010 Order does not prevent briefing of these matters, which shall proceed as follows:

¹ U.S. Department of Energy's Motion to Withdraw (Mar. 3, 2010).

² Petition of the State of South Carolina to Intervene (Feb. 26, 2010); State of Washington's Petition for Leave to Intervene and Request for Hearing (Mar. 3, 2010); Petition of Aiken County, South Carolina, to Intervene (Mar. 4, 2010).

³ The Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference (Feb. 4, 2010); The Department of Energy's Status Report on Its Archiving Plan (Feb. 19, 2010); see CAB Order (Granting Stay of Proceeding) (Feb. 16, 2010) at 2 (unpublished) (stating that a schedule for further filings regarding the preservation and archiving of the LSN documentation collection will be set in a subsequent order).

1. In accordance with CAB Case Management Order #1⁴ and Commission regulations,⁵ answers to the South Carolina, Washington and Aiken County petitions would ordinarily be due 25 days after service, and replies due seven days thereafter. For convenience, there shall be common filing dates: that is, answers to the three petitions shall be due Monday, March 29, 2010, and the replies of South Carolina, Washington and Aiken County shall be due Monday, April 5, 2010. To the extent practicable, the parties are encouraged to file answers jointly with other parties asserting similar positions.

2. The ten-day deadline for answers to DOE's motion to withdraw is waived.⁶ The Board will set a time for responses to DOE's motion to withdraw after it has determined whether South Carolina, Washington and Aiken County shall be permitted to intervene.

3. The Board expects shortly to seek written responses from DOE to additional questions concerning DOE's LSN collection. After the Board's questions have been answered, we will establish a schedule for comments by the parties on DOE's preservation and archiving plans.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
March 5, 2010

⁴ CAB Case Management Order #1 (Jan. 29, 2009) at 3 (unpublished).

⁵ See 10 C.F.R. § 2.309(h)(1)-(2).

⁶ See id. at § 2.323(c).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
U.S. DEPARTMENT OF ENERGY)
)
(High-Level Waste Repository))
)

Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (CONCERNING SCHEDULING), dated March 5, 2010, have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Construction Authorization Board (CAB) 04

Thomas S. Moore, Chair
Administrative Judge
tsm2@nrc.gov

Paul S. Ryerson
Administrative Judge
psr1@nrc.gov

Richard E. Wardwell
Administrative Judge
rew@nrc.gov

Anthony C. Eitreim, Esq., Chief Counsel
ace1@nrc.gov
Daniel J. Graser, LSN Administrator
djg2@nrc.gov
Zachary Kahn, Law Clerk
zxk1@nrc.gov
Matthew Rotman, Law Clerk
matthew.rotman@nrc.gov
Katherine Tucker, Law Clerk
katie.tucker@nrc.gov
Joseph Deucher
jhd@nrc.gov
Andrew Welkie
axw5@nrc.gov
Jack Whetstine
jgw@nrc.gov
Patricia Harich
patricia.harich@nrc.gov
Sara Culler
sara.culler@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Margaret J. Bupp, Esq.
mjb5@nrc.gov
Michael G. Dreher, Esq.
michael.dreher@nrc.gov
Karin Francis, Paralegal
kxf4@nrc.gov
Joseph S. Gilman, Paralegal
jsg1@nrc.gov
Daniel W. Lenehan, Esq.
daniel.lenehan@nrc.gov
Andrea L. Silvia, Esq.
alc1@nrc.gov
Mitzi A. Young, Esq.
may@nrc.gov
Marian L. Zobler, Esq.
mlz@nrc.gov
OGC Mail Center
OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-16C1
Washington, DC 20555-0001
OCAA Mail Center
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
hearingdocket@nrc.gov

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue S.W.
Washington, DC 20585
Martha S. Crosland, Esq.
martha.crosland@hq.doe.gov
Nicholas P. DiNunzio, Esq.
nick.dinunzio@rw.doe.gov
Scott Blake Harris, Esq.
scott.harris@hq.doe.gov
Sean A. Lev, Esq.
sean.lev@hq.doe.gov
James Bennett McRae
ben.mcrae@hq.doe.gov
Cyrus Nezhad, Esq.
cyrus.nezhad@hq.doe.gov
Christina C. Pak, Esq.
christina.pak@hq.doe.gov

Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
Jocelyn M. Gutierrez, Esq.
jocelyn.gutierrez@ymp.gov
Josephine L. Sommer, Paralegal
josephine.sommer@ymp.gov

Office of Counsel, Naval Sea Systems Command
Nuclear Propulsion Program
1333 Isaac Hull Avenue, SE, Building 197
Washington, DC 20376
Frank A. Putzu, Esq.
frank.putzu@navy.mil

For U.S. Department of Energy
USA-Repository Services LLC
Yucca Mountain Project Licensing Group
1160 N. Town Center Drive, Suite 240
Las Vegas, NV 89144
Stephen J. Cereghino, Licensing/Nucl Safety
stephen_cereghino@ymp.gov

For U.S. Department of Energy
Talisman International, LLC
1000 Potomac St., NW, Suite 300
Washington, DC 20007
Patricia Larimore, Senior Paralegal
plarimore@talisman-intl.com

Counsel for U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Clifford W. Cooper, Paralegal
ccooper@morganlewis.com
Lewis M. Csedrik, Esq.
lcsedrik@morganlewis.com
Jay M. Gutierrez, Esq.
jgutierrez@morganlewis.com
Raphael P. Kuyler, Esq.
rkuyler@morganlewis.com
Charles B. Moldenhauer, Esq.
cmoldenhauer@morganlewis.com
Thomas D. Poindexter, Esq.
tpoindexter@morganlewis.com
Alex S. Polonsky, Esq.
apolonsky@morganlewis.com
Thomas A. Schmutz, Esq.
tschmutz@morganlewis.com
Donald J. Silverman, Esq.
dsilverman@morganlewis.com
Shannon Staton, Legal Secretary
sstaton@morganlewis.com
Annette M. White, Esq.
Annette.white@morganlewis.com
Paul J. Zaffuts, Esq.
pzaffuts@morganlewis.com

Counsel for U.S. Department of Energy
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Kelly L. Faglioni, Esq.
kfaglioni@hunton.com
Donald P. Irwin, Esq.
dirwin@hunton.com
Stephanie Meharg, Paralegal
smeharg@hunton.com
Michael R. Shebelskie, Esq.
mshebelskie@hunton.com
Belinda A. Wright, Sr. Professional Assistant
bwright@hunton.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1750 K Street, NW, Suite 350
Washington, DC 20006
Martin G. Malsch, Esq.
mmalsch@nuclearlawyer.com
Susan Montesi:
smontesi@nuclearlawyer.com

Egan, Fitzpatrick, Malsch & Lawrence, PLLC
12500 San Pedro Avenue, Suite 555
San Antonio, TX 78216
Laurie Borski, Paralegal
lborski@nuclearlawyer.com
Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com

Counsel for Lincoln County, Nevada
Whipple Law Firm
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
baileys@lcturbonet.com
Adam L. Gill, Esq.
adam.whipplelaw@yahoo.com
Eric Hinckley, Law Clerk
erichinckley@yahoo.com
Bret Whipple, Esq.
bretwhipple@nomademail.com

Lincoln County Nuclear Oversight Program
P.O. Box 1068
Caliente, NV 89008
Connie Simkins, Coordinator
jcciac@co.lincoln.nv.us

Counsel for Nye County, Nevada
Ackerman Senterfitt
801 Pennsylvania Avenue, NW, #600
Washington, DC 20004
Robert Andersen, Esq.
robert.andersen@akerman.com

Bureau of Government Affairs
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
Marta Adams, Chief Deputy Attorney General
madams@ag.nv.gov

Nevada Agency for Nuclear Projects
Nuclear Waste Project Office
1761 East College Parkway, Suite 118
Carson City, NV 89706
Steve Frishman, Tech. Policy Coordinator
steve.frishman@gmail.com
Susan Lynch, Administrator of Technical Prgms
szeee@nuc.state.nv.us

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403
Gregory Barlow, Esq.
lcd@lcturbonet.com

For Lincoln County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
mikebaughman@charter.net

Counsel for Nye County, Nevada
Jeffrey VanNiel, Esq.
530 Farrington Court
Las Vegas, NV 89123
nbrjdv@gmail.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

Nye County Regulatory/Licensing Advisor
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy, Esq.
mrmurphy@chamberscable.com

Nye Co. Nuclear Waste Repository Project Office
2101 E. Calvada Boulevard, Suite 100
Pahrump, NV 89048
Zoie Choate, Secretary
zchoate@co.nye.nv.us
Sherry Dudley, Admin. Technical Coordinator
sdudley@co.nye.nv.us

Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155
Phil Klevorick, Sr. Mgmt Analyst
klevorick@co.clark.nv.us
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdavn.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
8330 W. Sahara Avenue, #290
Las Vegas, NV 89117
Bryce Loveland, Esq.
bloveland@jsslaw.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
1350 I Street, N.W., Suite 810
Washington, DC 20005-3305
Alan I. Robbins, Esq.
arobbins@jsslaw.com
Debra D. Roby, Esq.
droby@jsslaw.com

Eureka County, Nevada
Office of the District Attorney
701 S. Main Street, Box 190
Eureka, NV 89316-0190
Theodore Beutel, District Attorney
tbeutel.ecda@eurekanv.org

Counsel for Eureka County, Nevada
Harmon, Curran, Speilberg & Eisenberg, LLP
1726 M. Street N.W., Suite 600
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com
Matthew Fraser, Law Clerk
mfraser@harmoncurran.com

Eureka County Public Works
PO Box 714
Eureka, NV 89316
Ronald Damele, Director
rdamele@eurekanv.org

Nuclear Waste Advisory for Eureka
County, Nevada
1983 Maison Way
Carson City, NV 89703
Abigail Johnson, Consultant
eurekanrc@gmail.com

For Eureka County, Nevada
NWOP Consulting, Inc.
1705 Wildcat Lane
Ogden, UT 84403
Loreen Pitchford, Consultant
lpitchford@comcast.net

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

Counsel for Churchill, Esmeralda, Lander,
and Mineral Counties, Nevada
Armstrong Teasdale, LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
Jennifer A. Gores, Esq.
jgores@armstrongteasdale.com
Robert F. List, Esq.
rlist@armstrongteasdale.com

Esmeralda County Repository Oversight Program-
Yucca Mountain Project
PO Box 490
Goldfield, NV 89013
Edwin Mueller, Director
muellered@msn.com

Mineral County Nuclear Projects Office
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Director
yuccainfo@mineralcountynv.org

For City of Caliente, Lincoln County, and
White Pine County, Nevada
P.O. Box 126
Caliente, NV 89008
Jason Pitts, LSN Administrator
jayson@idtservices.com

White Pine County, Nevada
Office of the District Attorney
801 Clark Street, #3
Ely, NV 89301
Richard Sears, District Attorney
rwsears@wpcda.org

White Pine County Nuclear Waste Project Office
959 Campton Street
Ely, NV 89301
Mike Simon, Director
wpnucwst1@mwpower.net
Melanie Martinez, Sr. Management Assistant
wpnucwst2@mwpower.net

For White Pine County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
bigboff@aol.com

Counsel for Inyo County, California
Greg James, Attorney at Law
710 Autumn Leaves Circle
Bishop, CA 93514
E-Mail: gljames@earthlink.net

Inyo County Yucca Mountain Repository
Assessment Office
P. O. Box 367
Independence, CA 93526-0367
Alisa M. Lembke, Project Analyst
alembke@inyocounty.us

Counsel for Inyo County, California
Law Office of Michael Berger
479 El Sueno Road
Santa Barbara, CA 93110
Michael Berger, Esq.
michael@lawofficeofmichaelberger.com
Robert Hanna, Esq.
robert@lawofficeofmichaelberger.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Kevin, W. Bell, Senior Staff Counsel
kwbell@energy.state.ca.us

California Department of Justice
Office of the Attorney General
1300 I Street, P.O. Box 944255
Sacramento, CA 94244-2550
Susan Durbin, Deputy Attorney General
susan.durbin@doj.ca.gov
Michele Mercado, Analyst
michele.Mercado@doj.ca.gov

California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Floor, P.O. Box 70550
Oakland, CA 94612-0550
Timothy E. Sullivan, Deputy Attorney General
timothy.Sullivan@doj.ca.gov

California Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Brian Hembacher, Deputy Attorney General
brian.hembacher@doj.ca.gov

Native Community Action Council
P.O. Box 140
Baker, NV 89311
Ian Zabarte, Member of Board of Directors
mrizabarte@gmail.com

Nuclear Energy Institute
Office of the General Counsel
1776 I Street, NW Suite 400
Washington, DC 20006-3708
Michael A. Bauser, Esq.
mab@nei.org
Anne W. Cottingham, Esq.
awc@nei.org
Ellen C. Ginsberg, Esq.
ecg@nei.org

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Jay E. Silberg, Esq.
jay.silberg@pillsburylaw.com
Timothy J.V. Walsh, Esq.
timothy.walsh@pillsburylaw.com
Maria D. Webb, Senior Energy Legal Analyst
maria.webb@pillsburylaw.com

Counsel for Nuclear Energy Institute
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
William A. Horin, Esq.
whorin@winston.com
Rachel Miras-Wilson, Esq.
rwilson@winston.com
David A. Repka, Esq.
drepka@winston.com
Carlos L. Sisco, Senior Paralegal
csisco@winston.com

Counsel for Native Community Action Council
Alexander, Berkey, Williams & Weathers LLP
2030 Addison Street, Suite 410
Berkeley, CA 94704
Curtis G. Berkey, Esq.
cberkey@abwwlaw.com
Rovianne A. Leigh, Esq.
rleigh@abwwlaw.com
Scott W. Williams, Esq.
swilliams@abwwlaw.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (CONCERNING SCHEDULING)

Counsel for Joint Timbisha Shoshone Tribal Group
Fredericks, Peebles, & Morgan LLP
1001 Second St.
Sacramento, CA 95814
Felicia M. Brooks, Data Administrator
fbrooks@ndnlaw.com
Ross D. Colburn, Law Clerk
rcolburn@ndnlaw.com
Sally Eredia, Legal Secretary
seredia@ndnlaw.com
Darcie L. Houck, Esq.
dhouck@ndnlaw.com
Brian Niegemann, Office Manager
bniegemann@ndnlaw.com
John M. Peebles, Esq.
jpeebles@ndnlaw.com
Robert Rhoan, Esq.
rrhoan@ndnlaw.com

Fredericks, Peebles, & Morgan LLP
3610 North 163rd Plaza
Omaha, NE 68116
Shane Thin Elk, Esq.
sthinelk@ndnlaw.com

For State of South Carolina
Davidson & Lindemann, P.A.
1611 Devonshire Drive
P.O. Box 8568
Columbia, SC 29202
Kenneth P. Woodington, Esq.
kwoodington@dml-law.com

Counsel for Joint Timbisha Shoshone Tribal Group
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P. O. Box 2719
Madison, WI 53701-2719
Julie Dobie, Legal Secretary
jdobie@gklaw.com
Steven A. Heinzen, Esq.
sheinzen@gklaw.com
Douglas M. Poland, Esq.
dpoland@gklaw.com
Hannah L. Renfro, Esq.
hrenfro@gklaw.com
Jacqueline Schwartz, Paralegal
jschwartz@gklaw.com

Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
Arthur J. Harrington, Esq.
aharrington@gklaw.com

For Joint Timbisha Shoshone Tribal Group
3560 Savoy Boulevard
Pahrump, NV 89601
Joe Kennedy, Executive Director
joekennedy08@live.com
Tameka Vazquez, Bookkeeper
purpose_driven12@yahoo.com

For the State of Washington
Office of the Attorney General
P. O. Box 40117
Olympia, WA 98504-0117
Andrew A. Fitz, Esq.
andyf@atg.wa.gov
Michael L. Dunning, Esq.
michaeld@atg.wa.gov
H. Lee Overton, Esq.
leo1@atg.wa.gov
Diana MacDonald
dianam@atg.wa.gov

[Original Signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 5th day of March 2010