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Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date. Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at: [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated February 29, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 5th day of March 2008.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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## NUCLEAR REGULATORY COMMISSION

[Docket No. PAPO–001; ASLBP No. 08–861–01–PAPO–BD01]

### Atomic Safety and Licensing Board; In the Matter of: U.S. Department of Energy: (High-Level Waste Repository: Pre-Application Matters, Advisory PAPO Board); Notice and Memorandum (Requesting Information From Potential Parties)

March 6, 2008.

Before Administrative Judges: Thomas S. Moore, Chairman; G. Paul Bollwerk, III; E. Roy Hawkens.

#### I. Introduction

On December 13, 2007, the Commission authorized the establishment of an Advisory Pre-License Application Presiding Officer Board (Advisory PAPO Board) to obtain input from potential parties<sup>1</sup> on the broad range of procedural matters expected to arise from, and associated case management requirements that could be imposed in, any adjudication regarding an application by the Department of Energy (DOE) for authorization to construct a high-level waste (HLW) repository at Yucca Mountain, Nevada.<sup>2</sup> Pursuant to this authority, this Board was established on February 13, 2008.<sup>3</sup> This memorandum is the first request from this Board for information from potential parties to the HLW repository proceeding on the construction permit application of DOE.<sup>4</sup>

#### II. Requests for Information

##### A. Request for Information From Any Potential Parties

The Nuclear Waste Policy Act of 1982, as amended, sets a three-year time period, with the possibility of a one-year extension, for the NRC to review and make a licensing determination on the application for the construction of the

<sup>1</sup> “Potential party,” as it is used here, means DOE, the NRC Staff, the State of Nevada, and any person or entity that meets the definitions of “party,” “potential party,” or “interested governmental participant” under 10 CFR 2.1001.

<sup>2</sup> Staff Requirements Memorandum COMSECY–07–0030—Requesting Authority to Issue Case Management Orders in High-Level Waste Proceeding Prior to the Issuance of a Notice of Opportunity for Hearing (Dec. 13, 2007).

<sup>3</sup> See 73 FR 9358 (Feb. 20, 2008).

<sup>4</sup> To ensure a wide dissemination of this Memorandum, it is being published in the **Federal Register**. It is also being served on the service list for the PAPO proceeding, docket number PAPO–00, which the Secretary of the Commission has incorporated as the initial service list for this proceeding.

HLW repository.<sup>5</sup> Appendix D of 10 CFR Part 2 establishes a schedule, based upon the time period prescribed by the Nuclear Waste Policy Act, for the adjudication arising from challenges to the DOE license application, and 10 CFR 2.1026 mandates that licensing boards in the HLW proceeding meet this schedule.<sup>6</sup>

The schedule in the Commission's regulations is rigorous, considering the potential complexity of the HLW proceeding,<sup>7</sup> with initial deadlines for the filing of contentions, answers to those contentions, and replies to answers due in relatively short order following the issuance of the initial hearing opportunity notice. Pursuant to 10 CFR 2.309(b)(2), potential parties (i.e., petitioners) must file petitions to intervene containing contentions within 30 days of the date of publication of the Notice of Opportunity for Hearing in the **Federal Register**.<sup>8</sup> Thereafter, Appendix D requires applicant DOE, the NRC staff, and any other potential party challenging the admission of contentions to file answers to any intervention petitions within 25 days.<sup>9</sup> After DOE, the NRC staff, and any other potential party challenging contention admissibility file their answers, potential parties (i.e., petitioners) have 7 days within which to file replies.<sup>10</sup>

If potential parties request extensions of time for filing answers or replies, the authority of any licensing board is expressly limited to extensions of an additional 15 days.<sup>11</sup> All requests for extensions of time in excess of 15 days must be referred to the Commission.<sup>12</sup> As a consequence, if licensing boards are to manage realistically these proceedings within the schedule set out in Appendix D, it is imperative that procedural standards be developed at the outset to organize potential party submissions.

Before we request input on such procedural standards from potential parties, however, we need a realistic estimation of the scope of the challenge we (and the potential parties) face.

Accordingly, we request the following:

1. Each potential party considering filing a petition to intervene should

<sup>5</sup> Nuclear Waste Policy Act of 1982, as amended, section 114(d), 42 U.S.C. 10134(d).

<sup>6</sup> See 10 CFR Part 2, App. D; 10 CFR 2.1026(a).

<sup>7</sup> The Commission has acknowledged the potential complexity of the HLW repository proceeding. See 69 FR 2182, 2204 (Jan. 14, 2004).

<sup>8</sup> 10 CFR 2.309(b)(2).

<sup>9</sup> CFR Part 2, App. D (Day 55).

<sup>10</sup> *Id.* (Day 62).

<sup>11</sup> CFR 2.1026(b)(1).

<sup>12</sup> 10 CFR 2.1026(b)(2).

provide us with its current, best, good-faith estimate of the number of initial contentions it intends to file, using the number ranges provided below.

We recognize that until DOE files, *inter alia*, a license application, no potential party will know definitively how many contentions it will file or the subject matter of its contentions, so an exact figure is not possible. Thus, we are seeking only best, good-faith estimates, nothing more. Further, because we are seeking this information for the purpose of developing standards for the effective and efficient management of the proceeding, potential party estimates will be used solely and exclusively for that purpose, and no other, and is without prejudice to the potential party's ability subsequently to file a larger (or smaller) number of contentions.

#### Estimated Number of Contentions

- (1) 1–10
- (2) 11–25
- (3) 26–50
- (4) 50–100
- (5) 101–250
- (6) 251–500
- (7) 501–1000
- (8) 1001–2000
- (9) 2001–3000
- (10) 3001+

2. DOE, the NRC Staff, and any potential party challenging the admissibility of contentions should provide a best, good-faith estimate of the number of days it realistically will need to file reasoned answers to each range of contentions listed above to aid the licensing boards in resolving the admissibility of contentions. In estimating the time it will take to file such reasoned answers, DOE and any potential party challenging the admissibility of contentions should keep in mind that 10 CFR Part 2, Subpart J eliminates the apparent need in other proceedings for applicants and other challengers of contention admissibility to challenge the admissibility of all proffered contentions to preserve the right to an interlocutory appeal of a licensing board's ruling admitting any contention.<sup>13</sup> Instead, Subpart J provides for an interlocutory appeal to the Commission on a licensing board's contention admissibility decisions regardless of whether the party took the initial position that the petition should have been "wholly denied."<sup>14</sup>

<sup>13</sup> See 10 CFR 2.311(c) (allowing interlocutory appeal of licensing board decision granting petition to intervene only if issue is "whether the request/petition should have been wholly denied").

<sup>14</sup> 10 CFR 2.1015(b); see also 10 CFR Part 2, App. D (Day 110).

3. Each potential party expecting to file a petition to intervene should provide a best, good-faith estimate of the number of days it realistically will need to file replies to the answers, keeping in mind that the filing of a reply is the first (and only written) opportunity a petitioner has to defend its contentions.

Again, we recognize that at this stage before the application has been filed plans for filing contentions have not been finalized. We emphasize, however, that we are only looking for best, good-faith estimates to establish a format for the filing of contentions that will best enable the Appendix D schedule to be met. Whether they support or oppose the potential DOE application, any potential parties that are reluctant to cooperate should realize that the work of the Advisory PAPO Board is intended to assist them in meeting deadlines once an application is filed.<sup>15</sup>

#### B. Request for Information From DOE

Our goal in issuing this Memorandum is, among other things, to obtain information to better enable us to propose to potential parties for comment one or more potential organizational structures that will ensure (1) each contention is clear on its face in addressing each of the admissibility requirements of section 2.309(f)(1)(i)–(vi); (2) those opposing the admissibility of a contention are able readily to identify and challenge only those portions of a contention that fail to meet the admissibility requirements of section 2.309(f)(1)(i)–(vi); (3) potential parties are able effectively to defend the admissibility of their contentions in any reply pleadings; and (4) licensing boards are able to see how each contention addresses the factors in section 2.309(f)(1) and what challenges and defenses have been interposed relative to that contention, in order to make a timely, reasoned decision regarding whether each contention is admissible.

One approach we believe could provide an organizational structure that

<sup>15</sup> In this regard, although we recognize that the State of Nevada consistently has maintained that its ability to provide an estimate of the number of contentions is severely constrained by its lack of access to the application and its major supporting documentation, such as the total system performance assessment model/analysis for the license application, see, e.g., Motion to Strike DOE's October 19, 2007 LSN Recertification and to Suspend Certification of Others Until DOE Validly Recertifies (Oct. 29, 2007) at 34, we are hopeful its ability to make a best, good-faith estimate may be enhanced considerably by DOE's apparent recent submission of that document into the Licensing Support Network. See Total System Performance Assessment Model/Analysis for the License Application Volume I, Volume II, and Volume III (C), LSN Accession No. DEN001574936.

would accomplish these purposes would be to label contentions in a way that models the Table of Contents (TOC) of the DOE License Application to show the specific portion of the application being challenged, which petitioners are required to demonstrate under 10 CFR 2.309(f)(1)(vi) when contentions are filed. In addition, knowing the level of granularity of DOE's TOC may assist the Board to develop a proposal regarding the specificity necessary for petitioners to state their issues of law or fact to be controverted under section 2.309(f)(1)(i). Contentions that are modeled on the TOC might in turn assist those who will be filing answers, including DOE, to ascertain quickly the focus of the contention and to challenge directly, as necessary, the admissibility of contentions in a timely manner.

To enable us to develop this proposal, it would be helpful if DOE would file the current draft version of the TOC of its License Application. If DOE has a legitimate reason which it believes precludes it from filing the draft TOC for the entire License Application, we request that it file the draft TOC for the general information section of the License Application.<sup>16</sup> If DOE believes it has a legitimate reason that precludes it from filing the draft TOC for the general information section, we request that it provide a full description of the level of detail (*i.e.*, complete hierarchical structure) that it plans to use in the TOC. If DOE chooses not to file any part of the draft TOC, we also request that it explain fully its reasons for withholding the TOC so we, in turn, can explain to the Commission the reason DOE has been unable to aid our efforts to make the HLW proceeding more efficient for all involved.<sup>17</sup>

#### III. Filing and Service

The first filing by any potential party wishing to respond that has *not* filed a notice of appearance in the initial PAPO proceeding, docket number PAPO-00, should be accompanied by a notice of appearance from that potential party's authorized representative or counsel containing all required information under 10 CFR 2.314(b). The notice of appearance will provide the information necessary to establish and maintain a service list, so that participants can be accurately identified and duly notified

<sup>16</sup> See 10 CFR 63.21(a), (b); see also Office of Nuclear Materials Safety & Safeguards, U.S. Nuclear Regulatory Comm'n, Yucca Mountain Review Plan, NUREG-1804, at 1–1 to 1–31 (rev. 2 July 2003).

<sup>17</sup> Additionally, if DOE declines to provide the application TOC, it should suggest an alternative organizational structure for contentions that can be utilized by potential intervenors without having to await the filing of its HLW application.

during this advisory phase of the proceeding.<sup>18</sup>

Responses to this memorandum and any other responses to information or requests for input from the Advisory PAPO Board must be submitted and served electronically through the NRC's Electronic Information Exchange (EIE) system, docket number PAPO-001. Potential parties that already have been participating in the PAPO proceeding, docket number PAPO-00, and using the EIE system do not need to do anything additional to be able to file in this Advisory PAPO proceeding. Those that have not been participating in the PAPO proceeding but wish to make submissions before this Board should consult the NRC's Web site, which provides detailed instructions on the steps necessary to access and make EIE submissions, including (1) obtaining a digital certificate from the NRC Office of the Secretary and installing that certificate into the participant's Web browser (<http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>); (2) loading the viewer software currently needed to submit and view documents in the EIE system (<http://www.nrc.gov/site-help/e-submittals/install-viewer.html>); (3) creating a document in the portable document format (PDF) suitable for EIE submission (<http://www.nrc.gov/site-help/electronic-sub-ref-mat.html>); and (4) accessing the EIE Web site and submitting the document (<http://www.nrc.gov/site-help/e-submittals/submit-documents.html>). A potential party that is not currently participating in the PAPO proceeding and using EIE should begin this process no less than five days before it wishes to make an initial submission. In submitting their responses, potential parties should make sure they are filing them on this docket, PAPO-001, which is denominated as the "Advisory PAPO Board" on the dropdown list of proceedings that is part of the EIE filing form.

We request that all potential parties (including DOE and the NRC Staff) provide us with a filing that includes the information described above in Part II.A and that in its filing DOE also provide us with the information described above in Part II.B. All filings should be submitted through the agency's EIE system and served on the service list for the Advisory PAPO Board proceeding, docket number PAPO-001, by Monday, March 24, 2008.

<sup>18</sup> We caution that for potential parties that have not already been participating in the PAPO proceeding, docket number PAPO-00, filing a notice of appearance with this Advisory PAPO Board, docket number PAPO-001, will not suffice for participation in the PAPO proceeding.

March 6, 2008, Rockville, Maryland.

The Advisory Pre-License Application, Presiding Officer Board.

**Thomas S. Moore,**  
*Chairman, Administrative Judge.*

**G. Paul Bollwerk, III,**  
*Administrative Judge.*

**E. Roy Hawkins,**  
*Administrative Judge.*

[FR Doc. E8-4918 Filed 3-11-08; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### Proposed License Renewal Interim Staff Guidance LR-ISG-2008-01: Staff Guidance Regarding the Station Blackout Rule (10 CFR 50.63); Associated With License Renewal Applications; Solicitation of Public Comment

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on its Proposed License Renewal Interim Staff Guidance LR-ISG-2008-01 (LR-ISG) for clarification to its previously issued LR-ISG-02, "Staff Guidance on Scoping of Equipment Relied on to Meet the Requirements of the Station Blackout (SBO) Rule (10 CFR 50.63) for License Renewal," dated April 1, 2002, which has been incorporated in the License Renewal Standard Review Plan. This LR-ISG provides additional clarification to the staff position on the license renewal scoping requirements regarding the offsite power system for SBO recovery. The NRC staff issues LR-ISGs to facilitate timely implementation of the license renewal rule and to review activities associated with a license renewal application. Upon receiving public comments, the NRC staff will evaluate the comments and make a determination to incorporate the comments, as appropriate. Once the NRC staff completes the LR-ISG, it will issue the LR-ISG for NRC and industry use. The NRC staff will also incorporate the approved LR-ISG into the next revision of the license renewal guidance documents.

**DATES:** Comments may be submitted by May 12, 2008. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be submitted to: Chief, Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Comments should be delivered to: 11545 Rockville Pike, Rockville, Maryland, Room T-6D59, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Persons may also provide comments via e-mail at [NRCREP@NRC.GOV](mailto:NRCREP@NRC.GOV). The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail at [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Stacie Sakai, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-1884 or by e-mail at [sxs11@nrc.gov](mailto:sxs11@nrc.gov).

**SUPPLEMENTARY INFORMATION:** Attachment 1 to this **Federal Register** notice, entitled *Staff Position and Rationale for the Proposed License Renewal Interim Staff Guidance LR-ISG-2008-01: Staff Guidance Regarding the Station Blackout Rule (10 CFR 50.63) Associated with License Renewal Applications*, contains the NRC staff's rationale for publishing the proposed LR-ISG-2008-01. Attachment 2 to this **Federal Register** notice, entitled *Proposed License Renewal Interim Staff Guidance LR-ISG-2008-01: Staff Guidance Regarding the Station Blackout Rule (10 CFR 50.63) Associated with License Renewal Applications*, contains the additional clarification to the current staff position on the license renewal SBO scoping requirements.

The NRC staff is issuing this notice to solicit public comments on the proposed LR-ISG-2008-01. After the NRC staff considers any public comments, it will make a determination regarding issuance of the proposed LR-ISG.

Dated at Rockville, Maryland this 5th day of March, 2008.