

Follow-up Questions or Actions from the June 19-20, 2007, AULG Workshop

NRC's Overall Licensing Review and Hearing Process

1. NRC staff should provide a written description of the licensing board decision process, the Commission review process, and the process for issuance (or denial, as the case may be) of construction authorization. In this effort, NRC should explicitly emphasize any schedules or deadlines that affect participation by Affected Units of Local Government (AULGs).

See attached document, "NRC's process for deciding whether or not to authorize construction of a repository at Yucca Mountain, Nevada: *Estimated Timeline and Deadlines for Participants.*"

2. Can an AULG adopt a contention proposed by another party? Can an AULG use this adopted contention as the basis to obtain party status?

Yes, an AULG may adopt a contention proposed by another party. However, the AULG that seeks to adopt the contention must either agree that the sponsoring party shall act as the representative with respect to that contention, or, working with that party, jointly designate a representative who shall have the authority to act for the AULG and the sponsoring party with respect to that contention. The Licensing Board will decide whether an AULG has met the requirements for becoming a party to the proceeding. AULGs are strongly encouraged to consult with counsel on this point.

3. Can AULGs submit joint contentions?

Yes. If two or more petitioners seek to co-sponsor a contention, the petitions must jointly designate a representative who will have the authority to act for the petitioners with respect to that contention.

4. Will there be multiple, simultaneous licensing boards conducting hearings on the admitted contentions? If so, this could cause unacceptable impacts on AULG participation. How does NRC plan to address this?

The Chief Counsel of the Atomic Safety and Licensing Board Panel (ASLBP) provides the following response:

It is likely there will be multiple boards conducting hearings, possibly simultaneously. Congress has imposed an extremely challenging, three to four-

year schedule for completing the agency's HLW repository licensing review, including the adjudicatory proceeding. This schedule can only be met by employing aggressive case management practices. NRC's ASLBP intends to utilize such procedures to the maximum extent possible consistent with due process. As a consequence, it is likely NRC will convene multiple licensing boards that will operate throughout the HLW repository construction authorization proceeding. NRC's ASLBP will do its best to avoid simultaneous evidentiary hearings. Pre-hearing conferences with admitted parties and interested government participants will provide a venue for addressing and resolving scheduling conflicts.

5. NRC and the ASLBP judges, in particular, should characterize the purpose and value of limited appearance statements in a more sensitive and constructive manner.

The Chief Counsel of the Atomic Safety and Licensing Board Panel (ASLBP) provides the following response:

Settled Commission case law indicates that the purpose of the limited appearance statements authorized by 10 C.F.R. § 2.315(a) is to provide members of the public who are not parties to the proceeding with the opportunity to raise questions they believe should be answered in connection with the intervenors' issue statements/contentions so as to alert the licensing board and the parties to areas in which evidence may need to be adduced. At the same time, those statements do not constitute evidence and, accordingly, a licensing board is not obligated to discuss them in its decision on those issues. See Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1087 n.12 (1983); Iowa Electric Light and Power Co. (Duane Arnold Energy Center), ALAB-108, 6 AEC 195, 196 n.4 (1973).

6. Can NRC staff inform AULGs of important budget process and schedule deadlines that might affect NRC staff's review of proposals made consistent with 10 CFR 63.63, or the availability of NRC funds to support the services and activities requested by the AULGs in such proposals?

As much as possible, the NRC staff will try to accommodate AULG requests within existing resources. The sooner a request is received, the sooner NRC staff can evaluate whether it is consistent with our regulations and can be accommodated within existing resources.

NRC's Decision Whether to Adopt DOE's Environmental Impact Statement (EIS)

7. If NRC does not adopt DOE's EIS, will NRC delay docketing of the license application?

No. The NRC staff's position on whether it is practicable to adopt DOE's EIS, without further supplement, will not delay the staff's decision to docket, or not docket, the application. The staff's docketing decision and EIS adoption position will be announced concurrently in the Notice of Hearing. NRC's regulations regarding the timing of these decisions can be found at 10 CFR 51.109(a)(1).

8. Will the NRC review the overall adequacy of DOE's EIS, or just decide whether there is new information or a change in the proposal?

The NRC staff's review of DOE's final EIS and the staff's position on the practicability of adoption, are governed by the criteria in 10 CFR 51.109(c). These criteria specify that it is practicable for NRC to adopt the EIS unless there is a change in the proposal and the change may significantly affect the quality of the human environment, or significant and substantial new information or new considerations render the EIS inadequate. The NRC staff's conclusions about the adoptability of the EIS will be documented in a publicly available report. See also Nuclear Energy Institute v. EPA, 373 F.3d 1251, 1312-16 (D.C. Cir. 2004)

9. What is the status of the April 8, 2005 "Petition by the State of Nevada to amend 10 CFR 51.109?" [In its petition, Nevada asks NRC to change the criteria that govern the scope of NRC's review and the basis for NRC adoption of the DOE's EIS.]

The petition is still under consideration.

10. NRC staff should provide a plain language summary once the Commission issues a decision on Nevada's petition on NRC's criteria for adoption of DOE's EIS.

The NRC staff will provide copies of the Commission's decision on the petition once it is issued. The rationale for the Commission's decision will be set forth in the decision. The NRC staff will provide a plain language summary of the Commission's response to the petition.

11. Is the NRC hearing the correct forum for AULG's to raise issues of adequacy of DOE's EIS? If not, what is? And what are the relevant deadlines that affect AULG participation?

Section 51.109 of NRC's regulations sets forth the requirements for contentions addressing the NRC staff's adoption decision. Determinations about the admissibility of contentions will be made by the Licensing Board. Potential parties are strongly encouraged to consult with counsel regarding the preparation of contentions. Any potential party that wishes to contend that it is not practicable to adopt DOE's EIS must file a contention to that effect within 30 days of the publication of the Notice of Hearing in the *Federal Register* (see timeline attached in response to Question 1, above).

12. Does NRC have the authority to condition its adoption of DOE's EIS on the successful implementation of mitigation measures? What options does NRC have to address the adequacy of EIS mitigation measures? For example, can NRC take any action to ensure that DOE properly addresses socioeconomic impacts, negotiates measures with the county, etc?

The NRC would not condition its adoption of DOE's EIS on whether DOE is implementing the mitigation measures addressed in the EIS. The Commission has stated previously that it sees no basis for policing DOE's compliance with its own mitigation plans. To permit the mitigation measures to be litigated in NRC administrative proceedings--legitimate as this may be in other contexts--would run counter to the direction of the NWPA (see the *Federal Register* Notice issuing NRC's final rule on review procedures for high-level waste geologic repositories, at 54 FRN 27867).

Means for Enhancing Public Access to and Transparency of NRC's Process

13. Will pre-license application proceedings be web streamed?
14. Will the licensing hearings themselves be web streamed?

The answers to these questions are not yet determined, but are being explored. ASLBP has prepared a statement of work and a contract may be awarded sometime this fall to establish a pilot program to test the efficacy of webstreaming ASLBP hearings. If any PAPO hearings are convened during the pilot period, it is possible that one or two of them may be included in the pilot program.

At the conclusion of the pilot, ASLBP will report back to the Commission with information regarding the webstreaming pilot's costs and usage, including viewer numbers and feedback associated with the various webstreaming pilot sessions, so an assessment can be made regarding the effectiveness and value of webstreaming proceedings. At this time, we cannot promise that webstreaming will be utilized for HLW repository pre-hearing and hearing sessions until we receive further direction from the Commission. If webstreaming is approved by the Commission, based on the results of the pilot program, there may be limits imposed on the type, number, and length of sessions that are broadcast, depending on the availability of funds.

15. Can NRC provide equipment to AULG communities for use by AULGs for web streaming or for other means to improve access to and transparency of NRC's hearing and licensing processes?

The NRC staff continues to seek viable means for improving access to and transparency of NRC's hearings and its licensing processes. However, NRC is prohibited by law from providing direct funding or purchasing equipment for the AULGs.

16. On behalf of the AULGs and the public, can the NRC staff encourage the Commission to support web streaming of both pre-application and repository licensing proceedings?

ASLBP already has recommended to the Commission a pilot program for determining the effectiveness and value of webstreaming. However, this has been done in the context of general public outreach and not on behalf of potential interested government participants or members of the public in any particular case. HLWRS staff members have informed the Chairman of the AULGs' interest in web streaming HLW proceedings.

17. Can NRC increase the number of small conference rooms in the facility, increase the number of tables in the hearing room, and reserve the small conference rooms, during the hearings, for use by specified parties?

According to the Chief Counsel of the ASLBP, there are no current plans to increase the number of tables or work stations in the hearing room. It is not possible to increase the number of conference rooms. Conference rooms will be assigned or allocated based on the number of participants expected for any given pre-hearing conference or evidentiary hearing, on any given day. It is important to understand, however, that the conference rooms are not intended to be, nor will they be permitted to become, onsite office space for any participant. The rooms will not be available when the hearing facility is not in use for a pre-hearing conference or evidentiary hearing. During such proceedings they will only be accessible during, and shortly before and after, the period when the proceeding is in session. The rooms also are not capable of being locked. The security of any material left in conference rooms during a hearing thus cannot be assured.

18. Parking for the parties and for public observers needs to be improved.

Parking on the hearing facility grounds is limited, and is handled by the Federal Protective Service and the NRC Office of Administration. ASLBP is willing to aid the NRC's Office of Administration (which is responsible for hearing facility building management) in exploring with Clark County, Nevada, whether additional offsite parking can be made available in the vicinity of the facility.

19. Security procedures governing facility access should be improved and streamlined for the large number of people that will want to attend the Yucca Mountain proceedings.

Security and access controls at the hearing facility are handled by the Federal Protective Service and the NRC Office of Administration. These procedures are consistent with those at other federal facilities that host public meetings, including the U.S. NRC Headquarters. Specific procedures employed may vary as a function of the assessed threat level at any given time or location. We have alerted the NRC Office of Administration to your concerns and will work with that office to implement workable improvements that continue to assure the safety and security of hearing participants and observers.

20. How do we get a copy of the video of the June 19-20, 2007 workshop?

We are working with our audiovisual staff to prepare a condensed version that can be posted on NRC's HLW website. As soon as it is available we will notify workshop participants by email and provide the link.