

## New issued schedule as of July 21<sup>st</sup>, 2009

On July 10, 2009, the NRC Staff responded to the Board's July 2, 2009 order concerning scheduling. The Staff stated that it will not be able to issue its Safety Evaluation Report (SER) in accordance with the schedule in 10 C.F.R. Part 2, Appendix D. Rather, at present, the Staff intends to issue the SER serially. The Staff estimates that the SER will be issued as follows:

**Volume 1 (Review of General Information)**

**March 2010**

**Volume 3 (Review of Repository Safety After Permanent Closure)**

**September 2010**

The Staff asserts that completion dates for three other volumes 2, 4 and 5 cannot be estimated with a reasonable degree of certainty at this time. In the absence of a Staff estimate, unless and until informed to the contrary, the Board will assume solely for case management purposes that these volumes will be issued approximately as follows:

Volume 2 (Review of Repository Safety Before Permanent Closure);

**(October 2011)**

Volume 4 (Review of Administrative and Programmatic Requirements);

**(December 2010)**

and Volume 5 (License Specifications and Conditions)

**(February 2012)**

The fact that the Staff will likely issue the SER serially, over several years, requires a different approach to scheduling discovery and hearings than would be appropriate if the entire SER were available in April 2010, as contemplated by Appendix D. Few non-NEPA contentions can be adjudicated before relevant portions of the SER are issued. To proceed expeditiously and efficiently, therefore, the Board believes that discovery and hearings should proceed serially as well. Accordingly, to assist the Board in preparing a Case Management Order, the Board directs the parties as follows:

**First**

The NRC Staff shall clarify the subject matter of each of the five volumes of the SER. Specifically, on or before July 31, 2009, the Staff shall file and serve electronically an explanation of which specific sections of the Safety Analysis Report (SAR) or other portions of the Application pertain to each of the five SER volumes.

**Second**

All parties shall consult and seek agreement upon responses to the following questions:

1. Which admitted contentions are associated with each of the five proposed volumes of the SER?
2. Separately, which admitted legal issue contentions, as identified in the Construction Authorization Boards' May 11, 2009 Memorandum and Order, are associated with each of the five proposed volumes of the SER?
3. As to each admitted legal issue contention, what other admitted Safety, NEPA or Miscellaneous contentions might potentially be resolved on the basis of how that legal issue contention is decided?
4. Which admitted NEPA contentions have no safety component, such that they could efficiently and appropriately be adjudicated without regard to the status of the SER or any similar safety-related contention?
5. Which, if any, admitted NEPA contentions (in addition to NYE-NEPA-001) involve matters that are the subject of pending supplementation of DOE's environmental impact statement concerning the proposed repository?
6. Which, if any, contentions identified in response to question 4, but not in response to question 5, require discovery before being ripe for adjudication? Describe the general nature of any such discovery.

The parties shall file their joint response to the foregoing six questions on or before August 17, 2009.