

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

Before Administrative Judges:

Thomas S. Moore, Chairman
Alex S. Karlin
Alan S. Rosenthal

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository:
Pre-Application Matters)

Docket No. PAPO-00

ASLBP No. 04-829-01-PAPO

December 12, 2007

ORDER
(Denying Motion to Strike)

The motion by the State of Nevada to strike the October 19, 2007 certification by the United States Department of Energy (DOE) that DOE has made all of its documentary material available on the Licensing Support Network (LSN), and to suspend the obligation of other potential parties to make their documentary material available within 90 days thereof, is denied.¹ Nevada concedes, for the sake of argument, that DOE has made available all of DOE's documentary material "in existence as of a reasonable cutoff date' before certification."² The "crux of Nevada's complaint," however, is that DOE's document production "is incomplete because [DOE has not provided certain] key documents [that] are in development or not yet prepared."³

Nevada's legal position is incorrect. The regulations recognize that parties and potential parties, such as DOE, will continue to develop, prepare, and finalize additional documentary

¹ Motion to Strike DOE's October 19, 2007 LSN Recertification and to Suspend Certification Obligations of Others Until DOE Validly Recertifies (October 29, 2007).

² Id. at 18 n.4.

³ Id. at 17.

material, and to supplement their document production, after the date of initial certification. The regulations do not specify that DOE, or any other potential party, must finalize all documentary material before it can certify. The duty to produce documents applies to documentary material in existence (with a reasonable lag time) on the date of certification. Accordingly, Nevada's motion is denied.

The Pre-License Application Presiding Officer Board is issuing this order quickly to provide maximum advance notice to the State of Nevada, and other potential parties, who are obliged to produce their own documentary material, and submit their own certifications, on January 17, 2008. See 10 C.F.R. § 2.1003(a). The Board will issue a memorandum and order, more fully articulating its ruling on this matter in due course. The time period for filing an appeal to the Commission under 10 C.F.R. § 2.1015 will not start until that memorandum and order is issued.

It is so ORDERED.

The Pre-license Application
Presiding Officer Board

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

/RA/

Alex S. Karlin
ADMINISTRATIVE JUDGE

/RA/

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 12, 2007