

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

DOCKETED 11/21/06

SERVED 11/21/06

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

November 21, 2006

ORDER

Before us is the NRC Staff's motion seeking to "reclaim documents inadvertently published on the Licensing Support Network (LSN) that are subject to a secondary privilege (i.e., privacy and proprietary information)."¹ In seeking such relief, the Staff relies upon Part II. H of our Second Case Management Order [SCMO] that, as its title states, addresses "Re-Claiming Privileged Documents."² The motion then asks that we grant the motion "to remove these documents from the LSN and to substitute redacted versions with the appropriate bibliographic headers."³

Although the Staff's motion seeks to reclaim privilege documents, the provision of the SCMO that the Staff relies upon applies only to reclaiming privileged documents "from other

¹ NRC Staff's Second Motion to Reclaim Privileged Documents (Nov. 6, 2006) at 1 [hereinafter Staff Motion].

² See Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 8, 2005) at 8.

³ Staff Motion at 3.

potential parties.”⁴ Thus, Part II. H of the SCMO is inapposite in the circumstances posited in the Staff’s motion. Rather, the procedures set forth in our order of February 16, 2006 apply in the situation the Staff seeks to remedy.⁵ In pertinent part, that order states:

(3) If a potential party wishes to delete the full text of a Public LSN Document because the potential party subsequently has determined that the document is subject to a claim of privilege, the potential party shall provide the LSNA [Licensing Support Network Administrator] the accession number of the document. The LSNA shall delete the document from the potential party’s publicly available document collection on the LSN, permanently post on the LSN under an appropriate heading the accession number of the deleted document, and notify the potential party that it should delete the document from its document server. When the potential party provides the LSNA the accession number of the document to be deleted, the potential party shall also provide the LSNA an appropriate bibliographic header for the privileged document identifying the original LSN accession number. The LSNA shall promptly place the bibliographic header on the LSN.⁶

Accordingly, the Staff is free to take the necessary steps to have the subject documents deleted from the LSN and replaced with bibliographic header only documents without our intervention. In such circumstances, the Staff motion is improvidently filed and, therefore, the motion is dismissed.

It is so ORDERED.

For the Pre-License Application
Presiding Officer Board

[Original signed by:]

Thomas S. Moore, Chairman
Administrative Judge

Rockville, MD

November 21, 2006

⁴ SCMO at 8.

⁵ See Memorandum and Order (Deletion of Documents From the LSN) (Feb. 16, 2006).

⁶ Id. at 6.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing PAPO BOARD ORDER (DISMISSING NRC STAFF MOTION TO RECLAIM PRIVILEGE DOCUMENTS) have been served upon the following persons either by Electronic Information Exchange or electronic mail (denoted by an asterisk (*)).

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[Original signed by R. L. Giitter]

Office of the Secretary of the Commission

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