

June 9, 2008

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of)	Docket No. PAPO-00
)	
U.S. DEPARTMENT OF ENERGY)	ASLBP No. 04-829-01-PAPO
)	
(High Level Waste Repository: Pre-Application Matters))	DEN-6
)	

**AGREED MOTION OF DEPARTMENT OF ENERGY TO TOLL ANY TIMELY
CHALLENGE TO LSN CERTIFICATION OF CALIFORNIA ENERGY COMMISSION**

On May 30, 2008, the California Energy Commission (CEC) on behalf of the State of California filed with this Board a "Certification of LSN Supplementation." The certification states that it "covers any Documentary Material identified and made available via the Licensing Support Network subsequent to [CEC's] Initial Certification dated January 12, 2008."

Following service of that certification, counsel for the Department of Energy (DOE) conferred with California's counsel regarding CEC's LSN compliance. In that discussion, DOE stated its position that California is not in substantial and timely compliance with 10 C.F.R. Part 2, Subpart J and this Board's orders, because California did not file with this Board an initial certification within 90 days of DOE's initial LSN certification or at any other time. California also did not file monthly supplemental certifications until that of May 30, 2008. In addition, DOE maintained that California's certification is facially deficient because it does not certify that all extant documentary material has been made available, subject to a reasonable cut-off for processing. DOE also maintained that CEC's LSN procedures are inadequate to permit any such

certification, with respect both to extant documentary material and for any additional documentary material that California may subsequently generate or acquire.

California disagreed with DOE's positions. California maintained that it had in fact substantially complied through its timely submission to the Office of the Secretary of the Commission of a valid initial certification dated January 12, 2008. California also stated that it believed it was not required to file monthly supplements with this Board until May 30, 2008 because it did not identify or create any new documentary material between its initial certification and May. California maintained that its LSN procedures are in fact adequate, and that it continues to work in good faith to fully comply with the Commission's regulations.

Notwithstanding the differences in their positions, DOE and California agreed to cooperate to try to resolve their differences on these matters without the need for action by this Board. Part of that cooperative effort will entail California's consideration of proposals by DOE to augment CEC's LSN procedures, which may require additional efforts by California to identify extant documentary material as well as enhancements to its procedures to ensure that future documentary material is identified and made available. DOE and California expect to reach agreement that the California will implement any changes to its LSN procedures agreed to between DOE and California and that DOE will not challenge the CEC's LSN certification or its procedures as a result.

To foster those discussions, DOE and California desire that the Board toll the need for DOE to file any timely challenge to California's Certification of LSN Supplementation. DOE and California currently believe that they can resolve their differences on this matter within 60 days, and therefore request that the Board enter the accompanying proposed order that would extend until August 8, 2008, any need for DOE to seek relief with respect to the CEC's May 30,

2008 Certification of LSN Supplementation. Both DOE and California believe that the proposed order furthers the efficiency of these proceedings and serves the interest of justice.

Counsel for California has authorized DOE to represent that the California joins in this motion and the relief requested.

Respectfully submitted,

U.S. DEPARTMENT OF ENERGY

By Original Signed by Michael R. Shebelskie

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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U.S. DEPARTMENT OF ENERGY)	ASLBP No. 04-829-01-PAPO
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(High-Level Waste Repository: Pre-Application Matters))	DEN-6

AGREED MOTION OF DEPARTMENT OF ENERGY TO TOLL ANY TIMELY
CHALLENGE TO LSN CERTIFICATION OF CALIFORNIA ENERGY COMMISSION
CERTIFICATE OF SERVICE

I certify that copies of the foregoing Agreed Motion of Department of Energy to Toll Any Timely Challenge to LSN Certification of California Energy Commission in the above-captioned proceeding has been served on the following persons on June 9, 2008 through the Electronic Information Exchange.

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U.S. DEPARTMENT OF ENERGY

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ATTACHMENT

Jointly Proposed Order

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of)	Docket No. PAPO-00
)	
U.S. DEPARTMENT OF ENERGY)	ASLBP No. 04-829-01-PAPO
)	
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)	June __, 2008

ORDER

(Ruling on Agreed Motion of Department of Energy to Toll Any Timely Challenge to LSN Certification of California Energy Commission)

On June 9, 2008, the Department of Energy (DOE) filed with the Pre-License Application Presiding Officer (PAPO) Board a motion to toll any timely challenge to the Licensing Support Network (LSN) certification of the California Energy Commission (CEC) on behalf of the State of California, as a consequence of California's: Certification of LSN Supplementation, filed May 30, 2008. Upon the representation of DOE that the California joins in DOE's motion, and deeming it just and proper to do so, the PAPO hereby ORDERS that DOE shall have until and including August 8, 2008 to file any timely challenge to the California's LSN certification. In the event DOE and California resolve their differences regarding the California's LSN certification prior to August 8, 2008, they shall file a joint stipulation by that date advising the Board of that resolution.

It is so ORDERED.

THE PRE-LICENSE APPLICATION
PRESIDING OFFICER BOARD

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Alex S. Karlin
ADMINISTRATIVE JUDGE

Alan S. Rosenthal
ADMINISTRATIVE JUDGE

Rockville, Maryland

June __, 2008