

November 9, 2009

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High-Level Waste Repository))	ASLBP Nos. 09-876-HLW-CAB01
)	09-877-HLW-CAB02
)	09-878-HLW-CAB03
)	09-892-HLW-CAB04

NRC STAFF MOTION REQUESTING EXTENSION OF
TIMEFRAME ASSOCIATED WITH WITHDRAWAL OR WAIVER OF PRIVILEGE CLAIM

INTRODUCTION

Pursuant to 10 C.F.R. § 2.323, the NRC staff (Staff) hereby moves Construction Authorization Board-04 (Board) to extend the three-day timeframe associated with withdrawal or waiver of a privilege claim set forth in the Revised Second Case Management Order (RSCMO). "Revised Second Case Management Order," dated July 6, 2007, at 10. Based upon the grounds set for below, the motion should be granted.

DISCUSSION

As grounds for this motion, the Staff states the following.

1. The RSCMO provides that "[a] potential party that withdraws or waives a privilege claim for a document shall, within three (3) days, make all necessary corrections to its [Licensing Support Network (LSN)] document collection and privilege logs." *Id.*
2. The Staff and Nevada have been engaged in consultations in an effort to reach a resolution regarding the disclosure of privileged documents listed in the Staff's privilege log filed on July 30, 2009. As a result of these discussions, the Staff is considering waiving its privilege

claim to a number of documents. However, the three-day timeframe for correcting LSN document collections and privilege logs after withdrawal or waiver of a privilege claim provided in the RSCMO may not be sufficient to allow for all of the document processing steps required to make documents available on the LSN. Therefore, the Staff requests that the Board extend the timeframe for updating the LSN collection and privilege logs to five (5) business days after the withdrawal of a claim of privilege.

3. In order for the Staff to make documents available via the LSN, the documents must first be made publicly available in the Agencywide Documents Access and Management System (ADAMS), which requires between two hours and one full business day. Affidavit of Alicia J. Mullins ¶ 2. After the documents are publicly available in ADAMS, staff from the NRC Office of Information Services (OIS) performs a series of checks to ensure that the documents meet all technical and formatting requirements for publication on the LSN and then converts the documents to XML files. *Id.* ¶ 3. In order for the NRC staff to add documents to its LSN collection that had previously been identified by "headers only," OIS must modify header records, link the new header to an image and/or text file, and check to make sure that documents being submitted are not duplicates of documents already available on the LSN. *Id.* These OIS activities take up to 12 hours and, therefore, may require more than one business day to complete, depending on the time they commence. *Id.* ¶ 4. After this, the documents are available for spidering and indexing by the LSN, which is performed as directed by the technical support staff of the Atomic Safety and Licensing Board Panel (ASLBP). *Id.* ¶ 5. Spidering and indexing requires, on average, one to two business days. *Id.* Additionally, because a technical problem could cause a document not to appear in the LSN collection, certain steps may have to be repeated, which could cause further delay. *Id.* ¶¶ 5 and 6. While the time period between a

document's public availability in ADAMS and availability on the LSN may be only three business days,¹ the Staff requests an extension of time to five business days to accommodate unanticipated events, such as technical problems, unavailability of either the NRC OIS staff or the LSNA staff, or a particularly large volume of documents to be processed at a given time. *Id.* ¶ 6.

4. The grant of the motion would be consistent with the Board's objectives for the proceeding, maximize the effectiveness of negotiations between participants regarding disclosure of documents, and avoid burdening the Board and participants with repeated last-minute extension requests in the event it becomes apparent that the current 3-day period cannot be met. See RSCMO at 4 (promoting efficient and timely resolution of discovery disputes). In addition, this extension would facilitate resolution of discovery issues by the parties without Board intervention, which has been encouraged in previous orders. CAB Case Management Order #2, September 30, 2009, at 12-13; see also Fifth Case Management Order, November 1, 2007, at 6-7 (mutually agreed corrections to encourage amicable resolution of matters without need for PAPO action). Therefore, the Staff requests that the Board extend the time period to update the LSN and privilege logs to five business days after the waiver or withdrawal of a claim of privilege for a document.

5. In accordance with the requirements of 10 C.F.R. § 2.323(b), counsel for the Staff certifies that the Staff made a good faith effort to contact counsel for the other parties regarding this motion. Counsel for the State of Nevada, the State of California, the Department of Energy, the Nuclear Energy Institute, the Native Community Action Council, the Joint Timbisha Shoshone Tribal Group, Inyo County, Clark County, Lincoln County, Eureka County,

¹ Once a document is publicly available, a claim of privilege would be waived.

Nye County, White Pine County and Churchill, Esmerelda, Mineral, and Lander Counties stated that they do not object to the Staff's motion.

CONCLUSION

For the foregoing reasons, the Staff requests that the Board issue an order extending the time period provided in the RSCMO for updating LSN document collections and privilege logs to reflect withdrawal or waiver of a privilege claim to five business days.

Respectfully submitted,

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 9th day of November, 2009

November 9, 2009

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In the Matter of)	Docket No. 63-001-HLW
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)	09-877-HLW-CAB02
(High-Level Waste Repository))	09-878-HLW-CAB03
)	09-892-HLW-CAB04

AFFIDAVIT OF ALICIA J. MULLINS

I, Alicia J. Mullins, do hereby state as follows:

1. I am employed by the U.S. Nuclear Regulatory Commission as a Project Manager. I am the official responsible for the administration of the NRC staff's duty to duly supplement the NRC staff's Licensing Support Network (LSN) collection of electronic files of documentary material in accordance with 10 C.F.R. § 2.1003.
2. The purpose of this affidavit is to address the time period required to add NRC staff documentary materials to the LSN.
3. In order for the Staff to make documents available via the LSN, the documents must first be made publicly available in the Agencywide Documents Access and Management System (ADAMS), which requires between two hours and one full business day.
4. After the documents are publicly available on ADAMS, I publish the documents to an internal NRC server. Staff from the NRC Office of Information Services (OIS) performs a series of checks to ensure that the documents meet all technical and formatting requirements for publication on the LSN and then converts the documents to XML files. OIS also checks to make sure that documents being submitted are not duplicates of documents already available on the LSN. In order for the NRC staff to add documents to its LSN collection that had

previously been identified by "headers only," OIS must modify header records and link the new header to an image and/or text file. These OIS activities can take up to 12 hours and, therefore, may require more than one business day to complete, depending upon the time they commence.

5. Next, the documents are available for spidering and indexing by the LSN, which is performed as directed by the technical support staff of the Atomic Safety and Licensing Board Panel (ASLBP). After these activities are complete, ASLBP staff provides the Staff with an XML listing of what has been published. On average, this process is completed one to two business days after the ASLBP staff is notified that the NRC staff's document collection is available to spider.

6. After OIS converts the XML listing to an Excel file and sends it to me, I confirm that the documents in the Excel file are actually published on the LSN. Depending upon the number of documents that are to be published, this confirmation process could be completed in less than one hour. However, in my experience, there have been occasions where one or more documents were not published to the NRC staff's LSN collection, and the collection needed to be reprocessed, adding another one to two business days to the process.

7. While the time period between a document's public availability in ADAMS and availability via the LSN may be only three business days, unanticipated events such as technical problems, unavailability of either the OIS staff or the ASLBP staff, or a large volume of LSN documents being processed at a given time, could cause unexpected delay.

8. Based upon my experience with prior LSN supplementation activities, I routinely allow five business days to complete the entire process of making NRC staff documents available via the LSN.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

/RA/
Alicia J. Mullins, Project Manager
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission

Dated at Frederick, Maryland
this 9th day of November, 2009

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF MOTION REQUESTING EXTENSION OF TIMEFRAME ASSOCIATED WITH WITHDRAWAL OR WAIVER OF PRIVILEGE CLAIM" in the above-captioned proceeding have been served on the following persons this 9th day of November, 2009, by Electronic Information Exchange.

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