

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

Before Administrative Judges:

Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

November 13, 2009

ORDER

(Granting Staff's Motion to Amend Provision of Revised Second Case Management Order)

On November 9, 2009, the NRC Staff filed a motion styled "NRC Staff Motion Requesting Extension of Timeframe Associated with Withdrawal or Waiver of Privilege Claim."<sup>1</sup> The Staff motion requests that the Board amend a provision first appearing in the Pre-License Application Presiding Officer (PAPO) Board's July 8, 2005, Second Case Management Order, Part II.J,<sup>2</sup> and republished in the PAPO Board's July 6, 2007, Revised Second Case Management Order (RSCMO), also as Part II.J, titled "Withdrawal of a Waiver of Privilege Claims."<sup>3</sup> The provision in question, since adopted by the January 29, 2009, Construction Authorization Boards' (CABs') CAB Case Management Order #1, provides that "[a] potential party that withdraws or waives a privilege claim for a document shall, within three (3) days,

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<sup>1</sup> NRC Staff Motion Requesting Extension of Timeframe Associated with Withdrawal or Waiver of Privilege Claim (Nov. 9, 2009) [hereinafter Staff Motion].

<sup>2</sup> PAPO Board Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 8, 2005) (unpublished).

<sup>3</sup> PAPO Board Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007) (unpublished).

make all necessary corrections to its LSN [Licensing Support Network] document collection and privilege logs.”<sup>4</sup>

In its motion and accompanying affidavit from the responsible NRC employee, the Staff claims that three days is insufficient time. The Staff asserts that up to five days may be required to produce documents on the LSN and correct its privilege logs after it has withdrawn a claim of privilege.<sup>5</sup> The Board is surprised that, apparently, the Staff only now has awakened to the fact that it likely cannot comply with a provision that has been in effect for over four years. Because none of the other parties objects, however, the Board will grant the Staff’s motion.

Further, since the Pre-License Application Phase of the High Level Waste Repository Proceeding has now been completed, and potential parties have become parties, Part II.J of the RSCMO is amended to read: “A party that withdraws or waives a privilege claim for a document shall, within five (5) days, make all necessary corrections to its LSN document collection and privilege logs.” All parties may wish to make an appropriate notation on their working copies of the RSCMO, as the Board will not republish the entire order with this amendment included.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 13, 2009

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<sup>4</sup> Id. at 10.

<sup>5</sup> Staff Motion at 2-3.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (GRANTING STAFF'S MOTION TO AMEND PROVISION OF REVISED SECOND CASE MANAGEMENT ORDER) dated November 13, 2009, have been served upon the following persons by Electronic Information Exchange.

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[Original Signed by Christine M. Pierpoint]  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 13<sup>th</sup> day of November 2009