

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
U.S. Department of Energy)	Docket No. 63-001-HLW
(High Level Waste Repository))	ASLB No. 09-892-HLW-CAB-04
)	
)	

REPLY OF THE NUCLEAR ENERGY INSTITUTE TO
THE DEPARTMENT OF ENERGY'S ANSWERS TO BOARD QUESTIONS

On February, 4, 2010, the Department of Energy (“DOE”) submitted information in response to questions from the Nuclear Regulatory Commission (“NRC”) Construction Authorization Board posed at the January 27, 2010, Case Management Conference. The questions concern the President’s Fiscal Year 2011 budget as it relates to the Yucca Mountain repository and to this licensing proceeding, DOE’s plans and responsibilities for its Licensing Support Network (“LSN”) collection, and various technical details related to archiving the LSN collection. The Board at the Case Management Conference appeared to contemplate responses from the parties (Tr. at 366-367), but did not subsequently set a time for such responses. The Nuclear Energy Institute (“NEI”) submits this response nonetheless.

DOE has now separately indicated its intent to withdraw the pending application for construction authorization for the Yucca Mountain repository, and moved for a stay of this proceeding pending its withdrawal motion. U.S. Department of Energy’s Motion to Stay the Proceeding, February 1, 2010. NEI consented to that stay request. On February 2, 2010, the Board issued an order suspending discovery pending resolution of the stay request.

NEI is not in a position to comment on the technical details of the DOE filing of February 4, 2010, addressing the LSN and DOE’s archiving plans. Moreover, DOE’s answers

remain ambiguous regarding certain important issues, such as the retrievability of the LSN collection. (“DOE will work with [National Archives and Records Administration (‘NARA’)] to ensure that the format of its archived LSN records comply with retrievability requirements of the Federal records Act and NARA regulations.”)

NEI’s position is that Yucca Mountain technical information, records, documents, and the LSN constitute an important and irreplaceable resource and, potentially, an important project legacy — funded by electric ratepayers through Nuclear Waste Fund fees. NEI will address appropriate terms and conditions on any license withdrawal in connection with the forthcoming DOE motion. In the meantime, in response to the vague nature of DOE’s present plans as submitted on February 4, 2010, the Board should act immediately to assure that DOE and all parties continue to maintain and preserve all Yucca Mountain technical information, records, documents, and the LSN in *status quo*, until a final NRC decision on the DOE motion to withdraw the license application is issued.

Respectfully submitted,

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Dated in Washington, D.C.
this 16th day of February 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing “Reply of the Nuclear Energy Institute to the Department of Energy’s Answers to Board Questions” have been served upon the following persons on this 16th day of February 2010 by Electronic Information Exchange.

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