

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)	Docket No. 63-001
)	
U.S. DEPARTMENT OF ENERGY)	ASLBP No. 09-892-HLW-CAB04
)	
(High-Level Waste Repository))	April 16, 2010
)	

**DEPARTMENT OF ENERGY'S NOTICE OF DEFERRAL OF FILING
OF REQUEST FOR RECORDS DISPOSITION AUTHORITY**

On February 19, 2010, the U.S. Department of Energy ("DOE") filed with this Board a status report on its plans for archiving its LSN collection ("Status Report").¹ In the Status Report DOE stated its intention to file with the National Archives and Records Administration ("NARA") a "Request for Records Disposition Authority" (Standard Form 115 or SF-115) for its LSN collection, and to do so within 60 days, barring unforeseen circumstances. Status Report at 2-3. That 60-day period ends next Monday, April 19, 2010.

On April 14, 2010, in litigation pending in the U.S. Court of Appeals for the D.C. Circuit stemming from DOE's request to withdraw its license application, DOE committed to refrain from "undertak[ing] further actions to effectuate a shutdown of the Yucca Mountain Program . . .

¹ The Department of Energy's Status Report on Its Archiving Plan (Feb. 19, 2010).

for a period of 21 days from this filing through May 5, 2010.”² On April 14, 2010, the Court of Appeals, citing “reliance on the government’s representation” quoted immediately above, issued a *per curiam* Order denying petitioner’s motion for a preliminary injunction.³ The Order also required a series of further filings, the latest of which is scheduled for April 28, 2010.

Given DOE’s representation to the Court of Appeals and the Court’s April 14, 2010 *per curiam* Order, and out of an abundance of caution, DOE will refrain from filing the SF-115 form anticipated in the Status Report until at least May 5, 2010.

² Respondents’ Motion for Extension of Time to Respond to the Petitioner State of Washington’s Motion for Preliminary Injunction, *State of Washington, Petitioner v. U. S. Department of Energy, et al., Respondents* (D.C. Cir. No. 10-1082) (April 14, 2010) at 3.

³ *Per Curiam* Order (D.C. Cir. No. 10-1082) (April 14, 2010). A copy of the Order is attached hereto.

Respectfully submitted,

U.S. DEPARTMENT OF ENERGY

By Electronically Signed by Donald P. Irwin

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April 16, 2010

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CERTIFICATE OF SERVICE

I hereby certify that copies of the DEPARTMENT OF ENERGY'S NOTICE OF DEFERRAL OF FILING OF REQUEST FOR RECORDS DISPOSITION AUTHORITY have been served on the following persons on this 16th day of April 2010 through the Nuclear Regulatory Commission's Electronic Information Exchange.

CAB 04

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**DEPARTMENT OF ENERGY'S
NOTICE OF DEFERRAL OF FILING
OF REQUEST FOR RECORDS
DISPOSITION AUTHORITY**

**ATTACHMENT
A**

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-1082

September Term 2009

DOE-Yucca Mtn

Filed On: April 14, 2010

State of Washington,

Petitioner

v.

United States Department of Energy, et al.,

Respondents

BEFORE: Ginsburg, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the motion to extend time to file a response to the motion for preliminary injunction, and in reliance on the government's representation that the Department of Energy will not "undertake further actions to effectuate a shutdown of the Yucca Mountain Program" for a period of 21 days through May 5, 2010, it is

ORDERED that the motion be granted. Respondents shall file their response, not to exceed 20 pages, by Friday, April 23, 2010, at 4:00 p.m. Petitioner may file a reply, not to exceed 10 pages, by Wednesday April 28, 2010, at 4:00 p.m. In addition to the electronic filing, the parties are directed to hand-deliver paper copies of their submissions to the court by the time and date due.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:

Jennifer M. Clark
Deputy Clerk/LD