



UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, DC 20555 - 0001

February 18, 2011

MEMORANDUM TO: Administrative Judge Thomas S. Moore
Chair, Construction Authorization Board 4

Administrative Judge Paul S. Ryerson
Member, Construction Authorization Board 4

Administrative Judge Richard E. Wardwall
Member, Construction Authorization Board 4

FROM: Daniel J. Graser / **RA** /
Licensing Support Network Administrator

SUBJECT: Budgetary Support for Licensing Support Network

In accord with the Construction Authorization Board Order of February 9, 2006, this communication is to advise that, under the Administration's budget proposal for fiscal year (FY) 2012,¹ no Nuclear Waste Fund (NWF) resources, either funding or full-time equivalent (FTE) staffing, are allocated to the Nuclear Regulatory Commission to conduct the Yucca Mountain Licensing proceeding. Assuming the Administration's approach to FY 2012 funding is accepted by the Congress, given the agency's longstanding position that the agency's fee-based funding cannot be used for activities that relate purely to HLW matters, the Licensing Support Network (LSN) thus faces a shutdown that must be completed as of October 1, 2011, regardless of the status of the adjudication or the provisions of 10 C.F.R. Part 2, Subpart J, that govern the operation of, and party participation in, the LSN.²

When the LSN website is shut down, the parties' document collections will no longer be electronically accessible by others. Accordingly, as per the February 9, 2006 Order, I am providing my technical analysis and recommendations regarding this situation:

When Construction Authorization Board (CAB)-4 examined the issue of potential LSN termination previously, it anticipated that in such an eventuality the parties could forward the

¹ "The Appendix, Budget of the United States Government, Fiscal Year 2012", p. 1275.

² Under the agency's budget regime, although there may be prior fiscal year NWF "carry-over" funding remaining that could sustain the LSN operations and maintenance contract for some period of time in FY 2012, without authorized NWF FTEs available to staff the management of such an effort in FY 2012, the current LSN operations and maintenance contract will need to be terminated for convenience by the end of FY 2011.

contents of their document collections to the LSN Administrator (LSNA).³ However, that strategy presumed that the LSN website would be operational, and that there would be an LSNA to accept and take custody of those materials. Given the time period now available for system shutdown, that likely will not be the case. That strategy also presumed that the records of the LSNA would be accorded some degree of longevity in a proposed NRC records disposition schedule under consideration by the National Archives and Records Administration (NARA). Unfortunately a NARA determination that would allow such a records disposition is not likely to be forthcoming by the time system shutdown now will be necessary.⁴

As a consequence, the Board may want to consider alternative technology solutions that, while not analyzed for legality (as outside my purview) or compliance with the agency regulations under 10 C.F.R. §§ 2.1000 and 2.1007(a)(2), nonetheless could preserve the Commission's ability to resume the adjudication should circumstances change.

1. Revert to the classic document discovery process wherein, upon receipt of a document production request, each party provides a copy of its documentary material to other interested parties, so that they may continue to have access to documentary material. One major shortcoming of this approach, however, is that the parties are likely to need to know the LSN Accession Number or Participant Access Number to retrieve already-identified items.
2. Each party could establish an internet search and retrieval capability of its own choosing for its existing document collection, and make that available, at a minimum, to all of the other parties in the proceeding. A major shortcoming of this approach is that it shifts what was formerly an NRC fiscal and administrative responsibility to the participants. Additionally, it has the potential for introducing a wide range of non-standardized search and retrieval products.
3. The agency could apply its existing Enterprise Content Management search and retrieval capabilities (ADAMS P8) to participant collections that would have to be added to the document collections section of the NRC website. While potentially expensive and time consuming, the benefit of this approach is that, while consistent with the general intent of § 2.1007(a)(2) regarding availability of the material, it potentially could still be maintained using fee-based resources given the documentary material would not necessarily be utilized "exclusively" for HLW activity.
4. Direct that the materials, including bibliographic headers, be submitted to the official agency docket in searchable PDF format. This alternative has benefits similar to those noted above, and has the added benefit of being under an ongoing NARA records disposition schedule. Additionally, because the official docket is controlled by the Office of the Secretary, which is a Commission-level office, the Subpart J criteria of having the documentary material collection maintained by an entity that is not a party to the proceeding is maintained.

³ See Joint Report Concerning Conditions Regarding DOE LSN Document Collection dated June 18, 2010 (ADAMS ML101690367), and, Final Transcript Oral Argument and Case Management Conference held at Las Vegas Hearing Facility, June 3 and 4, 2010, p. 430 (ADAMS ML101620093).

⁴ Similarly, new arrangements will be required for materials delivered to the custody of the LSNA, such as the Department of Energy's Employee Concerns Program documents.

Because of the relatively short timeframe available in which to effectuate an orderly shutdown, I recommend that the Board expedite its consideration of these matters.