



March 7, 2011

Executive Director for Operations  
c/o Freedom of Information Act and  
Privacy Act Officer  
Nuclear Regulatory Commission  
Washington, DC 20555-0001

FOIA/PA REQUEST

Case No.: 2011-0010A  
Date Rec'd: 3-14-11  
Specialist: Cullen  
Related Case: 2011-0015

Dear Sir:

RE: Appeal from Initial Freedom of Information Act Decision  
on NRC FOIA/PA 2011-0015 Under 10 CFR §9.29

Consistent with the Freedom of Information Act (FOIA)(5 U.S.C. §552), this is an appeal under section 9.29 of title 10 of the Code of Federal Regulations of the withholding of portions of records I requested from the Nuclear Regulatory Commission (NRC) on October 22, 2010.

Administrative Record

On October 22, 2010, I submitted under the FOIA by email to the NRC a request, assigned by NRC the number FOIA/PA 2011-0015, for "Volume 2 and Volume 3 of the Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada." (Exhibit 1)

By letter dated October 22, 2010, the NRC acknowledged receipt of my FOIA request. (Exhibit 2)

On January 31, 2011, I requested from the NRC an update on the status of my FOIA request and received from the NRC on February 2, 2011 an update advising that the records I requested were under review. (Exhibit 3)

By document dated February 14, 2011, the NRC responded that "Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room" and that "[c]ertain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II." Part II stated that the information withheld was withheld on the basis of FOIA Exemption 5 under the deliberative process privilege. The denying official was the Director, Office of Nuclear Material Safety & Safeguards. The NRC response released in their entirety four records, listed in Appendix A of the response, and released in part and withheld in part three records, listed in Appendix B of the response. (FOIA/PA 2011-0015, Response Number 1) (Exhibit 4)

## Appeal

I appeal the NRC's withholding of any portions of records listed in Appendix B to the NRC response (FOIA/PA 2011-0015, Response Number 1, Appendix B). FOIA Exemption 5 permits withholding of "interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. §552(b)(5). In withholding all the portions of records from me, the NRC claimed a single, all-encompassing basis for the withholdings: Exemption 5 of the FOIA as it incorporates the deliberative process privilege.

The NRC has a duty under the FOIA to act with reasonableness in response to my FOIA request. McGehee v. Central Intelligence Agency, 697 F. 2d 1095, 1100 (D.C. Cir. 1983)(" . . . it is well established that the adequacy of an agency's response to a FOIA request is measured by a standard of reasonableness.") The recent two Orders of the Atomic Safety and Licensing Board in the Matter of U.S. Department of Energy (High Level Waste Repository), Docket No. 63-001-HLW, ASLBP No. 09-892-HLW-CAB04 (both dated February 25, 2011)(Exhibit 5) call into question the reasonableness of the NRC staff in its handling, in a non-FOIA context, the records at issue in this FOIA appeal ("Volumes 2 and 3 of the SER"). Accordingly, I request that the Executive Director for Operations scrutinize in this FOIA appeal, even more closely than is customary, the action of the NRC staff in FOIA/PA 2011-0015.

The NRC has failed to act reasonably in FOIA/PA 2011-0015, for two adequate and independent reasons: (1) the NRC has failed to follow its own FOIA regulations with regard to its response to me, and (2) the NRC has failed to meet the requirements of providing at least some minimal information to me to show that each portion withheld falls within the deliberative process privilege as incorporated in Exemption 5.

### 1. NRC Failed to Follow Its Own Regulations and Has Deprived the Requester of Information to Which the Regulations Entitle Him That Would Assist His Appeal

The NRC response fails to comply with NRC regulations governing NRC responses to FOIA requests. Section 9.27(b) of title 10 of the Code of Federal Regulations sets forth requirements for NRC FOIA responses. Section 9.27(b) requires the NRC to "include as appropriate--(1) The reason for the denial; (2) a reference to the specific exemption under the Freedom of Information Act, or other appropriate reason, and the Commission's regulations authorizing the denial . . ." The texts of section 9.27(b)(1) and (2) make clear that "the reason for the denial" and "a reference to the specific exemption under the Freedom of Information Act" are two separate things; the separate provisions cannot be read to say the same thing twice. Rosen v. Brookhaven Capital Management Co. Ltd., 113 F. Supp. 2d 615, 626 (S.D.N.Y. 2000)("absent unequivocal language or legislative intent to the contrary, every provision of a statute or regulation is presumed to have separate meaning; no part may be deemed surplusage").

The mere giving of a citation to a FOIA exemption, which in the case of this request was a citation to Exemption 5/deliberative process, meets the requirement in section 9.27(b)(2) of the NRC regulation, but does not meet the separate requirement to give "the reason for the denial" required by section 9.27(b)(1). The NRC in the case of this request has failed to give me the "reason for the denial" of the various portions withheld -- that is, the NRC has not provided any information that would show how or why the portions withheld would each fall within the deliberative process privilege. The NRC has attempted to waive Exemption 5 as if it were a magic wand over a huge number of withheld portions, providing no "reason for the denial" that connects the portion withheld to the requirements of Exemption 5; that practice does not meet the requirements of the FOIA or of the NRC regulation. Among other things, the NRC failure to follow its regulation and provide the reason for the denial of the withheld material prejudices my interests under the FOIA and the NRC regulations, because it deprives me of the ability to present in my administrative appeal specific arguments against a reason given by the NRC for the withholding of each portion.

## 2. NRC Failed to Show that it Applied the Legal Standards for the Deliberative Process Privilege as Incorporated in FOIA Exemption 5 in Withholding Portions of Records

In Morley v. Central Intelligence Agency, 508 F. 3d 1108 (D.C. Cir. 2007), the U.S. Court of Appeals for the District of Columbia Circuit made clear the duties of an agency that claims Exemption 5 deliberative process privilege as the basis for withholding portions of records under FOIA. The deliberative process privilege incorporated in FOIA Exemption 5 permits withholding of pre-decisional, deliberative portions of records in certain circumstances. For the NRC to claim that the deliberate process privilege incorporated in Exemption 5 permits withholding of a portion of a record, the NRC must show that the portion is both "predecisional" and is "deliberative."

To conclude in the FOIA process that a portion of a record is predecisional, NRC must establish what deliberative process is involved and the role played by the withheld portion in that process leading to a decision. Hinckley v. United States, 140 F. 3d 277, 284 (D.C. Cir. 1998). The NRC response failed to provide even minimal information about what deliberative process is involved and the role played by the portions withheld from me in that process.

To conclude in the FOIA process that a withheld portion of a record is deliberative, the NRC must determine that the portion reflects the personal opinions of the writer rather than the policy of the agency; the NRC cannot withhold factual material that does not reveal the deliberative process. Morley at 1128. Again, the NRC response to me failed to provide even minimal information about how any of the portions withheld are deliberative in nature.

It is particularly noteworthy that a huge number of the withheld portions appear in the records under the headings "NRC Staff Review," "NRC Staff Evaluation," or "NRC Staff Conclusion," or "Evaluation Findings," or following sentences that begin "NRC staff reviewed" or "NRC staff evaluated." It is reasonable to conclude that, given such

headings and lead-in sentences, part of those portions withheld contain factual, rather than deliberative, information. The mere labeling of information under a heading of "review," "evaluation," "conclusion," or "findings" does not of itself make all of what follows predecisional and deliberative. The NRC has a duty under FOIA to pull out the factual portions of what appears under those headings or following those sentences and release them, withholding only the portions that are actually predecisional and deliberative information.

Nothing the NRC has communicated to me shows that any of the portions withheld are either predecisional or deliberative, let alone both, and, as discussed above, a review of the material released leads one to conclude that much of the material withheld includes factual material. Thus, the NRC appears to have no basis for a conclusion that the portions of records withheld from me fall within the deliberative process privilege incorporated in FOIA Exemption 5.

#### Relief Requested

For the foregoing reasons, I ask in the appeal of FOIA/PA 2011-0015 that the Executive Director for Operations release to me all portions withheld. I further ask that, if the Executive Director for Operations determines on appeal that any portion withheld is within the scope of FOIA Exemption 5, he provide to me, with respect to each such portion: (1) "the reason for the denial," as required by NRC regulations, for each portion of a record that is still withheld after this appeal, and (2) information that explains, for each portion of a record that is still withheld after this appeal, how and why the portion falls within the scope of the deliberative process privilege incorporated in FOIA Exemption 5.

Thank you for your time and attention to this appeal.

Sincerely,

  
Robert B. Bluey

# **EXHIBIT 1**

**FOIA Resource**

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**From:** Bluey, Robert [Robert.Bluey@heritage.org]  
**Sent:** Friday, October 22, 2010 11:18 AM  
**To:** FOIA Resource  
**Subject:** FOIA Request

**FOIA/PA REQUEST**

**Case No.:** 2011-0015  
**Date Rec'd:** 10-22-10  
**Specialist:** Culler  
**Related Case:** \_\_\_\_\_

Robert B. Bluey  
The Heritage Foundation  
214 Massachusetts Ave. NE  
Washington, DC 20002  
202-608-6155

October 22, 2010

FOIA/PA Officer  
U.S. Nuclear Regulatory Commission  
Mail Stop T6-D8  
Washington, DC 20555-0001

**FOIA REQUEST**

**Fee benefit requested**  
**Expedited processing requested**

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of Volume 2 and Volume 3 of the Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada.

I agree to pay reasonable duplication fees for the processing of this request.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on the Safety Evaluation Report for Yucca Mountain that is of current interest to the public because of the Nuclear Regulatory Commission's ongoing review of the nuclear waste repository. This information is being sought on behalf of The Heritage Foundation for dissemination to the general public. In addition to leading The Heritage Foundation's investigative reporting unit, I'm also a contributor to the Washington Examiner.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

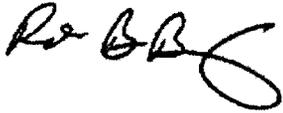
As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request.

Please provide expedited processing of this request which concerns a matter of urgency. As a journalist, I am primarily engaged in disseminating information. The public has an urgent need for information about Volume 2 and Volume 3 of the Safety Evaluation Report for Yucca Mountain because members of the public will benefit from the release of this information. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,



Robert B. Bluey

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**Rob Bluey**  
*Director, Center for Media and Public Policy*  
The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
202-608-6155  
heritage.org

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## **EXHIBIT 2**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

October 22, 2010

FOIA/PA-2011-00015

**Robert B. Bluey**  
**The Heritage Foundation**  
**214 Massachusetts Avenue NE**  
**Washington, DC 20002**

Dear Requester:

We received your Freedom of Information Act/Privacy Act (FOIA/PA) request on October 22, 2010.

Your request has been assigned the following reference number that you should use in any future communications with us about your request: **FOIA/PA-2011-00015**

To ensure the most equitable treatment possible of all requesters, the NRC processes requests on a first-in, first-out basis, using a multiple track system based upon the estimated time it will take to process the request. Based on your description of the records you are seeking, we estimate completion of your request will be within 20 working days. We will advise you of any change in the estimated time to complete your request.

For purposes of assessing fees in accordance with our regulations (10 CFR 9.33), we have placed your request in the following category: **News Media Representative**. If applicable, you will be charged appropriate fees for: **Duplication Only**.

A sheet has been enclosed that explains in detail the fee charges that may be applicable. **Please do not submit any payment unless we notify you to do so.**

A request for expedited processing can be granted only when the requester shows a "compelling need" based on meeting either of two conditions: When failure to obtain the records quickly "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;" or, if the requester is a person "primarily engaged in disseminating information," by demonstrating that an "urgency to inform the public about the actual or alleged Federal Government activity" exists.

Your stated reason for requesting expedited processing does not meet the above criteria. Therefore, you have not demonstrated a compelling need and your request for expedited processing cannot be granted. You may appeal this determination. Any such appeal must be made in writing within 30 calendar days by addressing the appeal to the Executive Director for Operations.

The following person is the FOIA/PA Specialist who has been assigned responsibility for your request: **Barbara Culleen** at **301-415-6873**.

-2-

If you have questions on any matters concerning your FOIA/PA request please feel free to contact the assigned FOIA/PA Specialist or me at (301) 415-7169.

Sincerely,

*/S/*

Donna L. Sealing  
FOIA/Privacy Act Officer  
Office of Information Services

Enclosures:  
Incoming Request  
Explanation of Fees

## EXPLANATION OF FEES

### Requester Fee Categories

**Commercial:** Fees are charged for document search, duplication, and review, when records are requested for commercial purposes. Fees (above the minimum fee charge) cannot be waived for this category of requester.

**Educational, Non-Commercial Scientific, News Media and Privacy Act:** Fees may be charged only for document duplication when records are not sought for commercial use and the request is made by an Educational or Non-Commercial Scientific Institution, whose purpose is scholarly or scientific research; or a Representative of the News Media; or a person requesting his/her own records that are in a Privacy Act system of records. No fee is charged for the first one hundred pages of duplication for this category of requester.

**Non-Exempted:** For any request not described above (Non-Exempted), fees may be charged for document search and duplication. No fee is charged for the first two hours of search time or for the first one hundred pages of duplication for this category of requester.

### Fee Schedules

Fee schedules provide only for the recovery of the direct costs of search, duplication, or review. Review costs include only the costs for initial examination of a document to determine whether it must be disclosed and to determine whether to withhold portions that are exempt from disclosure. The fee schedule is as follows:

<u>Search &amp; Review Conducted By</u>	<u>Rate</u>	
! SES/COMMISSIONER	\$90.53/hour	(ES-maximum)
! PROFESSIONAL	\$56.36/hour	(GG-13, Step 6)
! CLERICAL	\$25.16/hour	(GG-7, Step 7)
<u>Duplication Charges</u>	\$ .20 per page	

Fees for non-standard search or duplication will be charged at the actual cost (e.g. providing copying of audio tapes or conducting computer searches).

**Minimum Fee:** No fee will be charged unless the fee is equal to or greater than \$25.00.

### When to Pay Fees

If we estimate that fees will not exceed \$25.00 or you have stated in your request a higher amount that you are willing to pay, we assume your willingness to pay up to \$25 or the amount stipulated and you will be billed after we have completed your request.

If we estimate that fees will exceed \$25.00 or any amount that has been stated by you in your request, we will not proceed with your request until we have notified you and obtained your agreement to pay the estimated fees.

If we estimate fees will exceed \$250, you will be required to pay the estimated fees in advance before we proceed further with your request. If, while processing your request, we find that the actual fees exceed the estimated fee, we will obtain your consent to pay the additional fees before continuing to process your request. If the actual fees to process your request are less than any advance payment you have made, you will be refunded the overpayment amount.

### Fee Waivers

A waiver or reduction of fees may be granted for furnishing documents if a requester, by fully addressing the eight factors in 10 CFR 9.41, clearly demonstrates that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

## **EXHIBIT 3**

## **Bluey, Robert**

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**From:** Culleen, Barbara [Barbara.Culleen@nrc.gov]  
**Sent:** Wednesday, February 02, 2011 9:41 AM  
**To:** Bluey, Robert  
**Cc:** FOIA Resource  
**Subject:** RE: FOIA/PA-2011-00015 Acknowledgment Letter with Attachments  
**Attachments:** image001.jpg

Mr. Bluey,

The 2 volumes of the SER are under review.

Thank you for your patience.

**Barbara Culleen, FOIA/PA Specialist  
FOIA/Privacy Section, Information Services Branch  
Information & Records Services Division  
Office of Information Services  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-5 F09; Washington, DC 20555  
301-415-6873  
[Barbara.Culleen@nrc.gov](mailto:Barbara.Culleen@nrc.gov)**

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**From:** Bluey, Robert [mailto:Robert.Bluey@heritage.org]  
**Sent:** Monday, January 31, 2011 3:51 PM  
**To:** Culleen, Barbara  
**Cc:** FOIA Resource  
**Subject:** RE: FOIA/PA-2011-00015 Acknowledgment Letter with Attachments

Barbara—

I just left you a voicemail regarding this FOIA request I made on Oct. 22, 2010. Could you please provide an update on its status?

Thanks,  
Rob

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**Rob Bluey**  
*Director, Center for Media and Public Policy*  
The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
202-608-6155  
heritage.org

**From:** Admin, Admin [mailto:foia.resource@nrc.gov]  
**Sent:** Friday, October 22, 2010 2:38 PM  
**To:** Bluey, Robert  
**Cc:** barbara.culleen@nrc.gov; foia.resource@nrc.gov  
**Subject:** FOIA/PA-2011-00015 Acknowledgment Letter with Attachments

Acknowledgment letter signed by Donna L. Sealing, FOIA/Privacy Act Officer, with attachments. No hard copy to follow.

If you are unable to open either document, please let us know by return email ([FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov)) or call 301-415-7169.

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## **EXHIBIT 4**

**APPENDIX A  
RECORDS BEING RELEASED IN THEIR ENTIRETY**

<b><u>NO.</u></b>	<b><u>DATE</u></b>	<b><u>DESCRIPTION (PAGE COUNT)/EXEMPTIONS</u></b>
1.	undated	Vol. 3 – Appendix A – Commitments (3 pages)
2.	undated	Vol 2 – Chapter 22 – Glossary (14 pages)
3.	undated	Appendix A – Yucca Mountain Commitments (Safety Evaluation Report Volume 2) (7 pages)
4.	undated	Glossary (18 pages)

**APPENDIX B  
RECORDS BEING WITHHELD IN PART**

Chapter 6 – 2.1.1.6 Identification of Structures, Systems, and Components Important to Safety, Safety Controls, and Measures to Ensure Availability of the Safety Systems (pages 46) (ex. 5)

Chapter 7 – 2.1.1.7 Design of Structures, Systems, and Components Important to Safety and Safety Controls (pages 127) (ex. 5)

Chapter 8 – 2.1.1.8 As Low As Is Reasonably Achievable for Category 1 Sequences (pages 16) (ex. 5)

Chapter 9 – 2.1.2 Plans for Retrieval and Alternate Storage of Radioactive Wastes (pages 9) (ex. 5)

Chapter 10 – 2.1.3 Permanent Closure and Decontamination (pages 11) (ex. 5)

Vol 2 – Conclusions (pages 2) (ex. 5)

## **EXHIBIT 5**

except for classified and safeguards information, Volume 3 of the SER in its LSN document collection as circulated draft documentary material in accordance with 10 C.F.R. § 2.1001 and its continuing obligation to "make a diligent good faith effort to include all after-created . . . documents as promptly as possible in each monthly supplementation of documentary material."<sup>3</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 25, 2011

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<sup>3</sup> Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007) at 21 (unpublished). See CAB Case Management Order #1 (Jan. 29, 2009) at 2 (unpublished).

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

February 25, 2011

MEMORANDUM AND ORDER

(Denying Motion to Renew Temporary Suspension of the Proceeding)

On January 21, 2011, the United States Department of Energy (DOE) moved to stay further proceedings before the Board through May 20, 2011, without prejudice to moving for additional stays.<sup>1</sup> Eureka County, Nevada and the Nuclear Energy Institute support DOE's motion.<sup>2</sup> Aiken County, South Carolina and Nye County, Nevada oppose the motion.<sup>3</sup> The other parties either do not object or take no position.<sup>4</sup>

In support of its motion, DOE asserts that, after an earlier stay expired on June 29, 2010,<sup>5</sup> the parties "have continued as though this proceeding were still suspended."<sup>6</sup> According

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<sup>1</sup> See U.S. Department of Energy's Motion to Renew Temporary Suspension of the Proceeding (Jan. 21, 2011) at 1 [hereinafter DOE Motion to Renew Stay].

<sup>2</sup> Id.

<sup>3</sup> See Aiken County Response to U.S. Department of Energy's Motion to Renew Temporary Suspension of the Proceeding (Jan. 28, 2011) at 3.

<sup>4</sup> DOE Motion to Renew Stay at 2.

<sup>5</sup> See CAB Order (Granting Stay of Proceeding) (Feb. 16, 2010) (unpublished). The previous stay, which was entered without opposition, was in effect during the pendency of the Board's

to DOE, “[n]o party has requested to take any depositions in the six months since the suspension expired.”<sup>7</sup> Rather, citing various uncertainties that might affect the future course of the proceeding, DOE asserts that “[a]ll parties appear to have implicitly understood that it makes little sense to devote scarce public and private resources to this proceeding until those uncertainties are resolved.”<sup>8</sup> Moreover, DOE points out, “there is no looming discovery deadline or practical need to conduct discovery in the next 120 days.”<sup>9</sup>

DOE fails to demonstrate the threat of irreparable harm or any other reason for granting a stay.<sup>10</sup> On the contrary, DOE’s request is not so much a motion to stay discovery—given that reportedly none is threatened or underway—as a request for the Board’s unqualified approval of the parties continued “collective inaction.”<sup>11</sup>

The Board appreciates that the parties confront conflicting realities. On the one hand, although the Board has denied DOE’s motion to withdraw, continuation of the Yucca Mountain project remains subject to congressional funding and the possibility that our ruling might be reversed on appeal. Likewise, for reasons beyond the control of the Board or of most of the parties, there is currently no fixed deadline for the close of discovery and thus no hearing date. That is because, under Case Management Order #2, the current phase of discovery ends two

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consideration of DOE’s motion to withdraw, and expired by its terms upon the Board’s June 29, 2010 order denying DOE’s motion. Id. at 1-2.

<sup>6</sup> DOE Motion to Renew Stay at 2.

<sup>7</sup> Id.

<sup>8</sup> Id. at 3.

<sup>9</sup> Id. at 6.

<sup>10</sup> See U.S. Dep’t of Energy (High-Level Waste Repository: Pre-Application Matters), CLI-05-27, 62 NRC 715, 718 (2005).

<sup>11</sup> DOE Motion to Renew Stay at 3.

months after the NRC Staff issues Volume 3 of its Safety Evaluation Report (SER),<sup>12</sup> and the Staff has notified us that its schedule for that volume is indeterminate.<sup>13</sup> On the other hand, when the Staff's SER becomes available, the Board intends to move this proceeding forward as expeditiously as circumstances permit.

Understandably, in the presently uncertain environment, the parties face difficult choices. Prudence and common sense may counsel careful allocation of resources. However, if the parties elect to abandon deposition discovery entirely, they should understand they do so at their own risk.

DOE's motion is therefore denied, without prejudice to the right of DOE or any other party to seek a stay or a protective order in the event that any party initiates discovery that it deems unduly burdensome.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 25, 2011

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<sup>12</sup> See CAB Case Management Order #2 (Sept. 30, 2009) at 3 (unpublished).

<sup>13</sup> See NRC Staff Notification Regarding SER Schedule (Nov. 29, 2010); NRC Staff Response to December 8, 2010 Board Order and Notification Regarding SER Volume 4 Issuance (Dec. 22, 2010).