

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

April 11, 2011

ORDER

(Concerning LSNA Memorandum and Parties' LSN Document Collections)

On February 18, 2011, the Licensing Support Network (LSN) Administrator (LSNA) submitted to CAB-04, and served on all parties, a memorandum addressing the likely end of funding for the LSN.<sup>1</sup> According to the LSNA's memorandum, "under the Administration's budget proposal for fiscal year (FY) 2012, 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."<sup>2</sup> Should Congress acquiesce in the Administration's proposal, the LSNA's memorandum states that LSN shutdown must be completed by September 30, 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."<sup>3</sup>

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<sup>1</sup> Memorandum from Daniel J. Graser, Licensing Support Network Administration, to Administrative Judges (Feb. 18, 2011) [hereinafter LSNA Memorandum].

<sup>2</sup> Id. at 1 (internal citation omitted).

<sup>3</sup> Id. (internal citation omitted). It should be noted that Congress appropriated substantial funding to both the NRC and DOE for Yucca Mountain in FY 2010 and, to date, each of the FY 2011 continuing resolutions have continued funding for Yucca Mountain.

At two case management conferences and in various orders and filings,<sup>4</sup> the Board and the parties previously addressed the subject of the preservation of the parties' LSN document collections should the Department of Energy's (DOE) motion to withdraw its application be granted. In an appendix to its June 29, 2010 decision, LBP-10-11, 71 NRC \_\_\_ (slip op.) (June 29, 2010), denying the motion to withdraw the construction authorization application of DOE, the Board also proposed to the Commission a set of conditions to be imposed on DOE should its motion to withdraw be granted.<sup>5</sup> As the LSNA's memorandum points out, however, the Board's earlier efforts aimed at preserving the LSN document collections of all parties presumed, inter alia, that the LSN website would be operational and that there would be an LSNA to accept custody of the parties' LSN document materials.<sup>6</sup>

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<sup>4</sup> See CAB Order (Concerning LSNA Memorandum) (Dec. 22, 2009) (unpublished); Case Management Conference, Jan. 27, 2010 (Tr. 354-383); NRC Staff Comments Concerning LSNA Memorandum (Jan. 21, 2010); Response of the Four Nevada Counties of Churchill, Esmeralda, Lander and Mineral to the December 22, 2009 Board Order (Jan. 21, 2010); State of Nevada's Comments on LSNA Queries (Jan. 21, 2010); White Pine County's Comments on Archival of LSN Documents (Jan. 21, 2010); County of Inyo's Response to December 22, 2009 ASLB Order Regarding Disposition of LSN Documents (Jan. 22, 2010); Lincoln County's Response to December 22, 2009 ASLB Order Regarding Disposition of LSN Documents (Jan. 22, 2010); Nye County, Nevada Response to LSNA Questions (Jan. 25, 2010); The Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference (Feb. 4, 2010); Nye County, Nevada Preliminary Response to DOE's February 4, 2010 Answers to CAB LSN Questions (Feb. 16, 2010); Reply of the Nuclear Energy Institute to the Department of Energy's Answers to Board Questions (Feb. 16, 2010); The Department of Energy's Status Report on Its Archiving Plan (Feb. 19, 2010); CAB Order (Questions for Several Parties and LSNA) (Apr. 21, 2010) (unpublished); Lincoln County, Nevada's Response to ASLB's April 21, 2010 Order (May 14, 2010); NRC Staff Answers to Board's Questions Regarding the Staff's LSN Collection (May 24, 2010); U.S. Department of Energy Answers to ASLB Questions from Order (Questions for Several Parties and LSNA) Dated April 21, 2010 (May, 24, 2010); Nye County Comments Regarding DOE's LSN Preservation Plan (June 1, 2010); State of Nevada's Comments on DOE's Preservation Plans for Documentary Material (June 1, 2010); Case Management Conference, June 4, 2010 (Tr. 324-446); CAB Order (June 7, 2010) (unpublished); Joint Report Concerning Conditions Regarding DOE LSN Document Collection (June 18, 2010).

<sup>5</sup> LBP-10-11, 71 NRC \_\_\_ (slip op.) (June 29, 2010), Appendix, Proposed License Conditions Should DOE's Motion to Withdraw be Granted.

<sup>6</sup> LSNA Memorandum at 1-2.

Those underlying assumptions may no longer be valid. Accordingly, in order to fulfill our responsibility to preserve the document discovery materials residing on the LSN, a system mandated by 10 C.F.R. Part 2, Subpart J, and over which CAB-04 was established to preside,<sup>7</sup> the Board directs, pursuant to its authority under 10 C.F.R. § 2.319, that each party shall take the following actions:

- preserve all LSN documents in “PDF” format;
- submit its LSN document collection together with the associated bibliographic files to the NRC Office of the Secretary (SECY) on optical storage media as specified in Guidance for Electronic Submissions to the Commission<sup>8</sup> for inclusion into the docket, notifying all other parties when the submission has been completed;
- for large collections taking more than a month to complete the PDF conversion, submit the documents that have been converted no later than the seventh day of the month for those documents converted the previous month.

Once received, SECY shall install the documents and associated bibliographic information into a separate LSN docket library of ADAMS for public access via [www.nrc.gov](http://www.nrc.gov) taking care to: (1) utilize all existing LSN bibliographic header information; and (2) maintain the integrity and availability of the existing LSN Accession Number and Participant Accession Number identifications.<sup>9</sup>

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<sup>7</sup> Establishment of Atomic Safety and Licensing Board; Department of Energy, 74 Fed. Reg. 30,644, 30,644 (June 26, 2009).

<sup>8</sup> Guidance for Electronic Submissions to the NRC, Revision 6 (May 17, 2010), [available at http://www.nrc.gov/site-help/e-submittals/guide-electronic-sub-r6.pdf](http://www.nrc.gov/site-help/e-submittals/guide-electronic-sub-r6.pdf). In the event any party has questions concerning the Guidance on the appropriate storage media, it should contact the LSNA.

<sup>9</sup> The Board suggests that SECY consult with the LSNA for any surplus equipment that may be available to assist with accommodating this installation.

Each party shall certify at the time of submission to SECY the accuracy and completeness of its submission stating that it is a true and accurate representation of the materials available on the LSN at the time of submission. Delivery to SECY shall be completed by August 31, 2011.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Rockville, Maryland  
April 11, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Docket No. 63-001-HLW  
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board “**ORDER (Concerning LSNA Memorandum and Parties’ LSN Document Collections)**”, dated April 11, 2011, have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland  
this 11<sup>th</sup> day of April 2011