

GROUP: 1

RECORDS BEING RELEASED IN-PART

The following types of information are being withheld:

- Ex. 1: Records properly classified pursuant to Executive Order 13526
- Ex. 2: Records regarding personnel rules and/or human capital administration
- Ex. 3: Information about the design, manufacture, or utilization of nuclear weapons
 Information about the protection or security of reactors and nuclear materials
 Contractor proposals not incorporated into a final contract with the NRC
 Other _____
- Ex. 4: Proprietary information provided by a submitter to the NRC
 Other _____
- Ex. 5: Draft documents or other pre-decisional deliberative documents (D.P. Privilege)
 Records prepared by counsel in anticipation of litigation (A.W.P. Privilege)
 Privileged communications between counsel and a client (A.C. Privilege)
 Other _____
- Ex. 6: Agency employee PII, including SSN, contact information, birthdates, etc.
 Third party PII, including names, phone numbers, or other personal information
- Ex. 7(A): Copies of ongoing investigation case files, exhibits, notes, ROI's, etc.
 Records that reference or are related to a separate ongoing investigation(s)
- Ex. 7(C): Special Agent or other law enforcement PII
 PII of third parties referenced in records compiled for law enforcement purposes
- Ex. 7(D): Witnesses' and Allegers' PII in law enforcement records
 Confidential Informant or law enforcement information provided by other entity
- Ex. 7(E): Law Enforcement Technique/Procedure used for criminal investigations
 Technique or procedure used for security or prevention of criminal activity
- Ex. 7(F): Information that could aid a terrorist or compromise security

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ADJUDICATORY ISSUE

(Affirmation)

March 17, 2011

SECY-11-0037

FOR: The Commissioners
FROM: Brooke D. Poole, Director /RA/
Office of Commission Appellate Adjudication

SUBJECT: U.S. Department of Energy (High-Level Waste Repository),
Docket No. 63-001-HLW; U.S. Department of Energy's Motion to
Renew Temporary Suspension of Proceeding

PURPOSE:

To provide the Commission with (b)(5) addressing the request of the
Department of Energy (DOE) to temporarily suspend this proceeding.
(b)(5)

DISCUSSION:

In early 2010, the Construction Authorization Board briefly stayed this adjudicatory proceeding, at DOE's request, pending resolution of DOE's motion to withdraw its construction authorization application. By its terms, the stay expired when the Board issued its order denying DOE's motion to withdraw on June 29, 2010.¹ Since then, the proceeding has been largely inactive.² Early this year, DOE requested that the Board again temporarily suspend the construction authorization proceeding, citing legal, legislative, and budgetary uncertainties that may impact the proceeding.³ DOE requested a suspension through May 20, 2011, and proposed to confer with the other parties and provide a status report to the Board on May 13, 2011, transmitting views regarding the resumption of, and schedule for, the proceeding.

In fairly short order, the Board denied the motion in a brief decision, on the grounds that

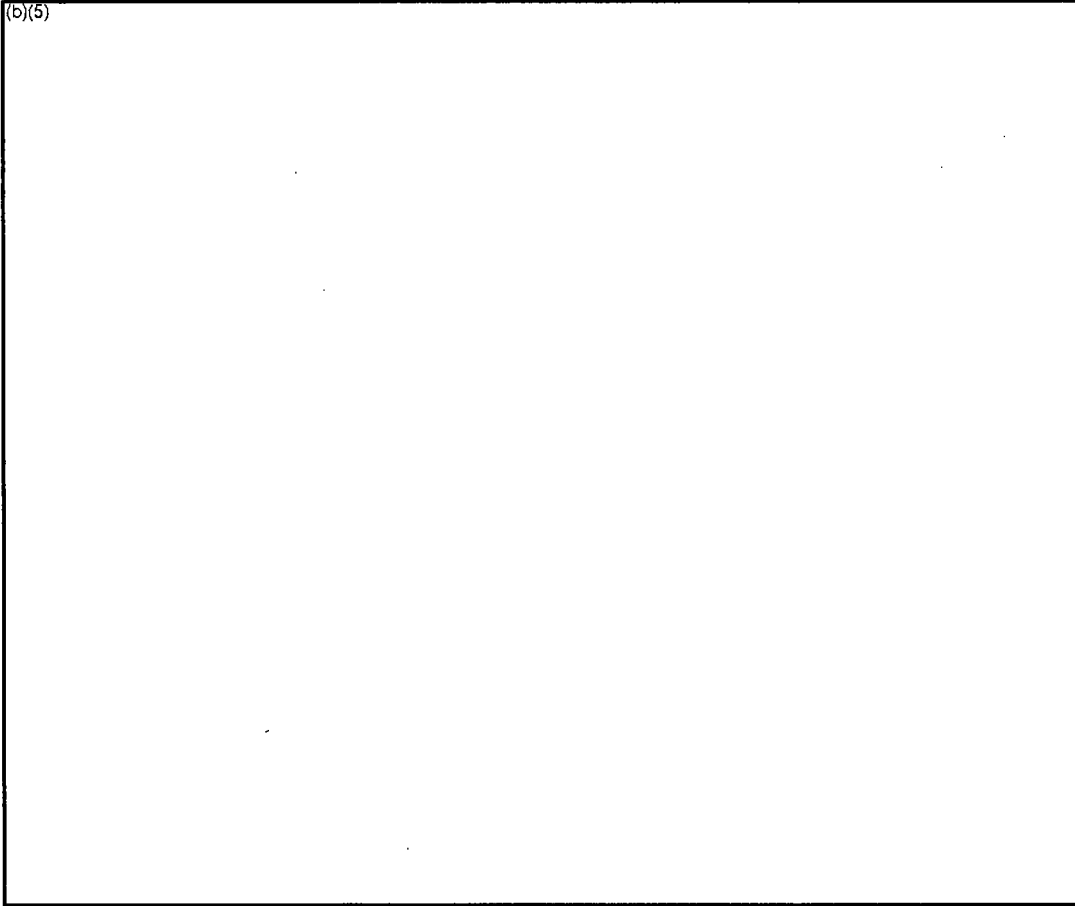
¹ Order (Granting Stay of Proceeding) (Feb. 16, 2010), at 2 (unpublished).
² Since July 1, 2010, the Board has issued six orders, and the parties have responded to those as directed, and have continued to update their witness lists and Licensing Support Network certifications. However, active Phase I discovery has not commenced.
³ U.S. Department of Energy's Motion to Renew Temporary Suspension of the Proceeding (Jan. 21, 2011), at 3.

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the DOE failed to demonstrate irreparable injury, or any other reason justifying a stay.⁴ DOE has now filed essentially the same motion before the Commission, requesting that the Commission hold the proceeding in abeyance through May 20, 2011, for the reasons articulated before the Board.⁵

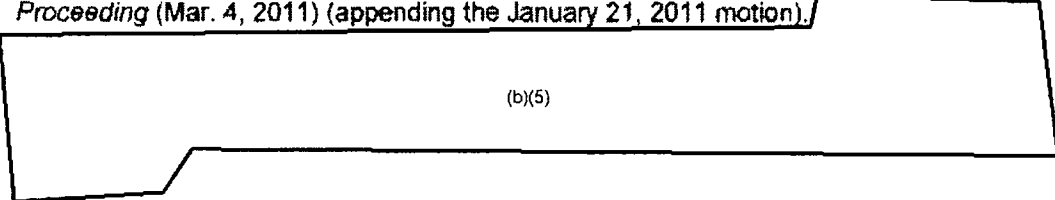
(b)(5)



⁴ Memorandum and Order (Denying Motion to Renew Temporary Suspension of the Proceeding) (Feb. 25, 2011), at 2-3 (unpublished).

⁵ See generally *U.S. Department of Energy's Motion to Renew Temporary Suspension of Proceeding* (Mar. 4, 2011) (appending the January 21, 2011 motion).

(b)(5)



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(b)(5)

RECOMMENDATION:

(b)(5)

(b)(5)

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(b)(5)

Attachment:

(b)(5)

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The attachment, consisting of 12 pages, is being withheld in its entirety under Exemption 5.