

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

09-892-HLW-CAB04  
Thomas S. Moore, Chairman  
Paul S. Ryerson  
Richard E. Wardwell

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In the Matter of:	)	August 17, 2009
	)	
U.S. Department of Energy	)	
	)	Docket No. 63-001
(High Level Waste Repository	)	
Construction Authorization Application)	)	

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**U.S. DEPARTMENT OF ENERGY'S ANSWER TO  
THE BOARD'S REQUEST CONCERNING CONSTRAINTS ON DOE'S ABILITY TO  
CONTINUE TO PARTICIPATE IN THE LICENSING PROCEEDING**

On July 2, 2009, Construction Authorization Board 04 (Board) issued an Order Concerning Scheduling in which it specifically requested that U.S. Department of Energy (DOE) counsel "undertake or cause to be undertaken a reasonable investigation in good faith whether there may be constraints upon DOE's ability to proceed in this matter" and to prepare to discuss any such constraints during a teleconference. Because the Board, in its July 21, 2009 Order Concerning Serial Case Management, indicated that it no longer intends to convene a teleconference, the Board requested that DOE "submit a written report concerning these matters on or before August 17, 2009."

Counsel has undertaken such an investigation and is aware of no constraints that would inhibit DOE's ability to participate through Fiscal Year (FY) 2010, the last year for which the Administration has submitted a budget request to Congress. DOE currently has the funds for FY 2009 to proceed on the existing Appendix D schedule. The President's budget for FY 2010

likewise requests sufficient funds to continue participation. Assuming Congress appropriates the amount requested in the budget, DOE is aware of no constraints on its ability to participate in this matter during FY 2010. In this regard, the House and Senate Appropriations Committees have approved FY 2010 appropriation bills that include funding amounts for Yucca that are approximately the same as the amount requested and that would be sufficient for DOE to proceed in this matter through FY 2010.

Respectfully submitted,

*Signed (electronically) by Donald J. Silverman*

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Dated in Washington, DC  
this 17th day of August 2009

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD**

**Before Administrative Judges:**

**09-892-HLW-CAB04  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of **“U.S. Department of Energy’s Answer to the Board’s Request Concerning Constraints On DOE’s Ability To Continue To Participate In The Licensing Proceeding”** have been served on the following persons this day through the Nuclear Regulatory Commission’s Electronic Information Exchange.

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