

April 21, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
U. S. DEPARTMENT OF ENERGY	)	Docket No. 63-001-HLW
	)	
(High-Level Waste Repository)	)	ASLBP No. 09-892-HLW-CAB04
	)	

NRC STAFF REQUEST FOR LEAVE TO FILE MOTION FOR  
RECONSIDERATION AND MOTION FOR RECONSIDERATION OF THE  
BOARD'S APRIL 11, 2011 ORDER, OR PETITION FOR CERTIFICATION

INTRODUCTION

On April 11, 2011, the Construction Authorization Board (Board) issued an Order directing (1) parties to preserve and submit all Licensing Support Network (LSN) documents in portable document format (PDF) along with associated bibliographic files to the Nuclear Regulatory Commission (NRC) Office of the Secretary (SECY), and (2) SECY to “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).” Order (Concerning LSNA Memorandum and Parties’ LSN Document Collections), dated April 11, 2011, at 3 (Order) (unpublished). Pursuant to 10 C.F.R. § 2.323(e), the NRC staff (Staff) seeks leave to file this motion for reconsideration because compelling circumstances exist, and requests that the Board reconsider its Order or, in the alternative, petitions pursuant to 10 C.F.R. § 2.323(f)(2), that the Board certify its ruling to the Commission.<sup>1</sup>

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<sup>1</sup> The Staff is separately requesting a stay of the effectiveness of the Order or a housekeeping stay pending resolution of this motion. See NRC Staff Motion for Stay of April 11, 2011 Board Order, dated April 21, 2011. Pursuant to 10 C.F.R. § 2.323(b), Staff Counsel certifies that it made a sincere effort to contact other parties in the proceeding regarding the issues herein and efforts to resolve the issues have been unsuccessful. Counsel for the State of Nevada, California, Nuclear Energy Institute, (footnote continued. . .)

## BACKGROUND

The Licensing Support Network (LSN), the combined, web-based system that makes documentary material electronically available via the internet, was established under 10 C.F.R. Part 2, Subpart J, to assist the Commission in reaching a decision in a repository licensing proceeding consistent with timeframes in the Nuclear Waste Policy Act.<sup>2</sup> On December 17, 2009, the LSN Administrator (LSNA), the NRC official responsible for coordinating access to and maintaining integrity of data on the LSN, see 10 C.F.R. § 2.1001, filed a memorandum regarding potential LSN impacts if DOE were to withdraw its license application. Memorandum from Daniel J. Graser, LSNA, to Administrative Judges, dated December 17, 2009 (2009 Memorandum). As requested, the parties and LSN participants filed responsive comments.<sup>3</sup> In a January 27, 2010 case management conference convened to discuss LSN issues, the Board asked each LSN participant present, other than DOE and the Staff, to commit to preserve their LSN document collections and provide compact disc (CD) copies to the LSNA, if circumstances warranted.<sup>4</sup> On February 4, and 19, 2010, respectively, DOE answered Board questions posed

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(. . .footnote continued)

Inyo County, Clark County, Nye County, Aiken County, Eureka County, Prairie Island Indian Community, and Native Community Action Council took no position and each reserved the right to respond. Counsel for the National Association of Regulatory Utilities and South Carolina took no position. Counsel for Florida Public Service Commission, an *amicus curiae*, took no position. Counsel for the U.S. Department of Energy (DOE) does not oppose the motion. The Staff did not receive any other responses.

<sup>2</sup> See *U.S. Dep't of Energy* (High-Level Waste Repository), LBP-04-20, 60 NRC 300, 304 (2004); 10 C.F.R. § 2.1001 (defining LSN and "documentary material").

<sup>3</sup> See, e.g., Order (Concerning LSNA Memorandum), dated December 22, 2009 (unpublished) (December 2009 Order); NRC Staff Comments Concerning LSNA Memorandum, dated January 21, 2010; State of Nevada's Comments on LSNA Queries, dated January 21, 2010; Nye County, Nevada Response to LSNA Questions, dated January 25, 2010.

<sup>4</sup> See Transcript (Tr.) at 353-54, 357-365 (Jan. 27, 2010); Order (Questions for Several Parties and LSNA), dated April 21, 2010, at Appendix A (unpublished) (April Order) (noting all parties, except the Staff and DOE, committed to put their LSN collections on a CD and provide a copy to the LSNA).

during the January conference, and filed a status report on its LSN archiving plan.<sup>5</sup> On March 3, 2010, DOE filed a motion to withdraw its license application. U.S. Department of Energy's Motion to Withdraw, dated March 3, 2010.

On April 21, 2010, the Board posed questions to Lincoln County, the Staff, DOE and the LSNA regarding possible LSN document preservation and LSN portal system termination. See April Order at Appendices A-D. Responses<sup>6</sup> were discussed during a June 4, 2010, case management conference. See, e.g., Tr. at 330-332, 336-357 (June 4, 2010). Consistent with Board direction, Nevada filed a joint report on proposed conditions regarding DOE's LSN document collection. See Order, dated June 7, 2010 (unpublished); Joint Report Concerning Conditions Regarding DOE LSN Document Collection, dated June 18, 2010 (Joint Report). On June 29, 2010, the Board denied DOE's motion to withdraw and identified proposed conditions for preservation of the DOE LSN collection if DOE's motion were later granted. *U.S. Dep't of Energy* (High-Level Waste Repository), LBP-10-11, 71 NRC \_\_\_ (June 29, 2010) (slip op.) (LBP-10-11). Petitions for review of LBP-10-11 are pending before the Commission.<sup>7</sup>

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<sup>5</sup> See The Department of Energy's Answers to the Board's Questions at the January 27, 2010 Case Management Conference, dated February 4, 2010 (DOE February 4 Answer); The Department of Energy's Status Report on its Archiving Plan, dated February 19, 2010. NEI and Nye County, Nevada filed responses to the DOE February 4 Answer. See, e.g., Nye County, Nevada Preliminary Response to DOE's February 4, 2010 Answers to CAB LSN Questions, dated February 16, 2010.

<sup>6</sup> See Lincoln County, Nevada's Response to ASLB's April 21, 2010 Order, dated May 13, 2010 (correction dated May 14, 2010); Licensing Support Network Administrator's Response to the Board's Questions Regarding the LSN, dated May 19, 2010; NRC Staff Answers to Board's Questions Regarding the Staff's LSN Collection, dated May 24, 2010; U.S. Department of Energy Answers to ASLB Questions from Order (Questions for Several Parties and LSNA) Dated April 21, 2010, dated May 24, 2010.

<sup>7</sup> See, e.g., Brief of the State of Nevada in Support of Review and Reversal of the Licensing Board's Decision Denying the Department of Energy's Motion to Withdraw its License Application with Prejudice, dated July 9, 2010; U.S. Department of Energy's Brief in Support of Review and Reversal of the Board's Ruling on the Motion to Withdraw, dated July 9, 2010; NRC Staff Brief in Response to the Secretary of the Commission's June 30, 2010 Order, dated July 9, 2010.

In a memorandum to the Board on February 18, 2011, the LSNA indicated that (1) the LSN would need to be shut down by October 1, 2011, if the Administration's budget proposal for FY 2012 is approved, and (2) the Board could no longer presume that the LSN website would be operational or that the LSNA could take custody of documents. Memorandum from Daniel J. Graser, LSNA, to Administrative Judges, at 1-2, dated February 18, 2011 (2011 Memorandum).<sup>8</sup> Pursuant to its authority under 10 C.F.R. § 2.319, and "to fulfill [its] responsibility to preserve the document discovery materials residing on the LSN," the Board issued the instant Order. See Order at 3.

### DISCUSSION

#### A. Legal Standards for Reconsideration and Certification

A motion for reconsideration may not be filed except upon leave of the presiding officer and must show "compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid." 10 C.F.R. § 2.323(e). The standards for reconsideration are strictly applied and such motions should not be granted lightly. *Pac. Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 400-01 (2006); see also *Changes to Adjudicatory Process*, 69 Fed. Reg. 2,182, 2,207 (Jan. 14, 2004) (standards are "intended to permit reconsideration only where manifest injustice would occur in the absence of reconsideration"). To be successful, a motion for reconsideration must present "decisive new

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<sup>8</sup> The Staff noted in prior pleadings that the NRC was operating under a Continuing Resolution, and that the Staff commenced orderly closure of Yucca Mountain activities in accordance with Commission decisions on the FY 2011 budget. See, e.g., NRC Staff Response to December 8, 2010 Board Order and Notification Regarding SER Volume 4 Issuance, dated December 22, 2010, at 3, 5. On April 15, 2011, the FY2011 budget was approved. See Pub. L. 112-10.

information,”<sup>9</sup> point to “an overlooked controlling decision or principle of law, or a factual clarification.”<sup>10</sup> It may not present new facts or arguments, “except to the extent it attempts to address a presiding officer’s ruling that could not reasonably have been anticipated.”<sup>11</sup>

A presiding officer may also certify questions to the Commission in its discretion, upon motion, or Commission direction. 10 C.F.R. §§ 2.319(l), 2.323(f)(1). Under 10 C.F.R. § 2.323(f)(2), “[a] party may petition the presiding officer to certify an issue to the Commission for early review.” A petition for certification must raise “significant and novel legal or policy issues” and demonstrate that “resolution of the issues would materially advance the orderly disposition of the proceeding.” 10 C.F.R. § 2.341(f)(1); Memorandum and Order (Denying Petition to Certify Issue to the Commission and Motion for Leave to File Replies), dated December 22, 2008, at 2 (PAPO unpublished); see 10 C.F.R. § 2.323(f)(2).

#### B. Compelling Circumstances Warrant Granting Reconsideration

Compelling circumstances warrant reconsideration of the Order. As shown below, the Board committed a material error by acting contrary to Commission policy and decisions regarding the LSN. See 10 C.F.R. § 2.323(e) (“clear and material error” in a decision); *Diablo Canyon*, CLI-06-27, 64 NRC at 401 n.6 (a motion must establish an error based on “an overlooked controlling decision or principle of law”) (internal quotation omitted). The Staff could not have reasonably anticipated that the Board would act contrary to Commission policy and decisions. As the LSNA observed, assumptions underlying the Board’s earlier LSN

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<sup>9</sup> *La. Energy Servs., L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622 (2004).

<sup>10</sup> *Pacific Gas & Elec. Co.* (Diablo Canyon Power Plant Independent Spent Fuel Storage Installation), CLI-06-27, 64 NRC 399, 401 n.6 (quoting *Dominion Nuclear Conn., Inc.* (Millstone Nuclear Power Station, Unit 2), CLI-03-18, 58 NRC 433, 434 (2003)).

<sup>11</sup> *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-01-38, 54 NRC 490, 493 (2001).

preservation efforts changed due to a potential lack of NRC funding for LSN. See 2011 Memorandum at 1-2.<sup>12</sup> Further, previous Board questions and conditions proposed by the Board and parties did not address submission of participant collections to SECY for inclusion in an LSN Docket Library in ADAMS. See Order at 3; Joint Report at 7 (DOE will provide copies of its LSN collection to requesters, provided requests are in writing and the requester reimburses DOE for certain costs); LBP-10-11, Appendix at 5 (DOE shall provide an electronic copy of its LSN collection to LSNA). Further, the Board sought comments on the 2009 Memorandum, but did not seek comments on the 2011 Memorandum. Compare Order at 3 with December 2009 Order at 1. Accordingly, because compelling and unanticipated circumstances exist under 10 C.F.R. § 2.323(e), the Board should grant leave for reconsideration.

C. Reconsideration Should be Granted

While the Staff understands that the Board seeks to preserve the electronic accessibility of documentary material for the above-captioned proceeding, the Order is contrary to Commission policy and decisions regarding the LSN. The Order directs SECY to create and maintain a centralized repository or docket of LSN materials in ADAMS, but it does not address whether providing accessibility to all LSN participant collections via an ADAMS library is consistent with Commission policy and decisions regarding the LSN, and principles of appropriations law. See Order at 3.

The Commission previously decided that the Licensing Support System (LSS), a

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<sup>12</sup> In previous discussions regarding conditions, the parties would no longer maintain active LSN document collections. See December 2009 Order (directing parties to discuss questions in 2009 Memorandum; question 3 in the 2009 Memorandum includes the “scenario in which parties *would no longer be required to maintain* an active LSN document collection,” (emphasis added)); LBP-10-11 at Appendix (proposing conditions *should* DOE’s motion to withdraw be granted).

centralized, stand-alone database administered by the NRC,<sup>13</sup> “ha[d] become obsolete” and the “enormous expense of designing and maintaining a stand-alone system” was unjustified. See Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository, Proposed Rule, 62 Fed. Reg. 60,789, 60,790 (Nov. 13, 1997). The Commission revised its discovery rules to create LSN, taking advantage of technological advances in document automation and retrieval. See 66 Fed. Reg. at 29,454 (the LSN was created “to link geographically dispersed sites rather than relying on a complex and expensive centralized system”). Unlike the LSS, the LSN “*places responsibility for document conversion, loading, and maintaining and operating a web server on each of the individual parties or potential parties.*” 63 Fed. Reg. at 71,732-33 (emphasis added). Contrary purpose and design of the LSN, the Order requires SECY to create and maintain a centralized document collection, resulting in the NRC assuming the litigation expenses previously borne by the parties in this proceeding. See Order at 3.<sup>14</sup>

In addition, the Order imposes significant financial burdens on the NRC without addressing budgetary and administrative issues. See 2011 Memorandum at 1 (noting Nuclear Waste Fund legal usage limitations). Financial impacts include design and maintenance costs that the Commission sought to avoid when it established the LSN, and costs that the Commission intended individual parties to incur to maintain their own document collections. See 62 Fed. Reg. at 60,790 (cost of a centralized system was “unjustified”); 66 Fed. Reg.

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<sup>13</sup> See Licensing Proceedings for Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Design Standards for Participating Websites, 66 Fed. Reg. 26,453, 29,453-454 (May 31, 2001).

<sup>14</sup> Participant LSN websites are created, populated, and maintained by each participant and then documents are made available for spidering by LSN software. See LSN Guidelines, Setting Up a Licensing Support Network Participant Repository at 22-4-5 (January 2004) (ML040290591).

at 29,465 (LSN design “represents the least cost to both NRC and the individual parties to the HLW proceeding, while at the same time providing high value to the users”); 2009 Memorandum at 1 (“each party operates and pays for the maintenance of its own document collection”).<sup>15</sup>

The NRC would have to spend up to \$4.0 million for the first year and up to \$2.0 million per year in subsequent years to operate and maintain the LSN docket required by the Order. Affidavit of Thomas M. Boyce Regarding the April 21, 2001 Board Order (Boyce Affidavit) at ¶ 5. Further, it will take approximately one year to implement the ADAMS system modifications and other actions necessary to comply with the Order, including the purchase of hardware and software; there are currently no funds allocated for these activities. *Id.* at ¶¶ 4, 6, 9. The Order does not address funding and timing limitations associated with implementation.

The Order also imposes administrative burdens by requiring the NRC to add party discovery documents to ADAMS,<sup>16</sup> the NRC’s centralized electronic repository for official agency records. See Order at 3; Management Directive 3.53, NRC Records and Document Management Program, at 1, 22 (March 15, 2007) (MD 3.53).<sup>17</sup> In effect, the Order converts over 3.6 million discovery documents into official agency records. This is inappropriate because the LSN is a discovery tool. See 63 Fed. Reg. at 71,729. The Commission previously rejected the premise that all discovery documents would be agency records, stating that “[d]ocuments in the

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<sup>15</sup> In addition, when considering the option to allow participants to provide documentary materials to NRC to allow NRC to maintain electronic availability of the participants’ documents, the Commission noted that this may not be permissible. See Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository, 63 Fed. Reg. 71,729, 71,732 (Dec. 30, 1998) (discussing prohibitions in 5 U.S.C. § 504 regarding participant funding).

<sup>16</sup> ADAMS was established shortly after the LSN. See 62 Fed. Reg. at 60,793 (acknowledging development of ADAMS, but declining to use ADAMS for high-level waste discovery).

<sup>17</sup> The NRC must maintain agency records in accordance with the Federal Records Act (FRA) and National Archives and Records Administration regulations. See MD at 1, 11-12, 63. “Official agency record” means a “record” as defined in 44 U.S.C. § 3301. See MD 3.53 at 22.

LSS *w[ould] not be considered NRC agency records* solely by virtue of the NRC being the LSS Administrator.” 54 Fed. Reg. at 14,936 (emphasis added). The Order does not explain why preservation as agency records in an ADAMS library is necessary when there is no evidence that the parties would not preserve their LSN collections. Further, over 98 percent of LSN documents reside at DOE, an agency that has independent records retention obligations under the FRA.<sup>18</sup> This raises significant legal and policy questions given the uncertainty surrounding Nuclear Waste Funds in FY 2012 and the potential that insufficient funding could result in a suspension of the proceeding (including LSN update obligations). Accordingly, because the Order is contrary to Commission policy and decisions regarding the LSN and fails to address significant records issues and resource burdens, reconsideration is appropriate.

D. Alternatively, Certification to the Commission is Warranted

If the Board rejects the Staff’s request for reconsideration, the Staff alternatively petitions that the Board certify its ruling to the Commission because it raises significant and novel legal and policy issues, the resolution of which would materially advance the orderly disposition of the proceeding. 10 C.F.R. §§ 2.323(f)(2), 2.341(f)(1). As discussed above, the Board’s Order is contrary to Commission policy and decisions regarding LSN and imposes substantial records, financial and administrative burdens on the NRC. The Order does not address these issues or whether there are legal sources of funding to implement the Order.<sup>19</sup> The Administration’s FY 2012 budget does not allocate any Nuclear Waste Funds to the NRC and it is the NRC’s

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<sup>18</sup> See, e.g., DOE February 4 Answer (committing to preserve and archive records “in compliance with federal requirements”). Other governmental entities have independent records retention obligations. See, e.g., County of Inyo’s Response to December 22, 2009 ASLB Order Regarding Disposition of LSN Documents, dated January 22, 2010 (stating it would retain LSN documents in accordance with California law).

<sup>19</sup> After Congress declined to appropriate funds for the Clinch River project, the project was terminated and the application was withdrawn without prejudice. *Dep’t of Energy Project Mgmt. Corp. Tennessee Valley Auth.* (Clinch River Breeder Reactor Plant), LBP-85-7, 21 NRC 509-10, 514 (1985).

“longstanding position that the agency’s fee-based funding cannot be used for activities that relate purely to HLW matters.” See 2011 Memorandum at 1 (citing The Appendix, Budget of the United States Government, Fiscal Year 2012, at 1275). The Board should receive Commission guidance as to whether the NRC must maintain electronic accessibility of discovery documents in circumstances where uncertainty exists regarding funding and future appropriations. Because the proceeding is ongoing and participants have an ongoing obligation to supplement their LSN collections, resolution of these significant policy issues would advance the orderly disposition of the proceeding. See 10 C.F.R. § 2.341(f)(1). Accordingly, certification is appropriate.

**CONCLUSION**

For the reasons set forth above, the Staff respectfully requests that the Board grant the request to file this motion and to reconsider its Order because compelling circumstances exist. In the alternative, the Board should certify its ruling to the Commission.

Respectfully submitted,

**/Signed (electronically) by/**

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Dated at Rockville, Maryland  
this 21st day of April, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
U.S. DEPARTMENT OF ENERGY	)	Docket No. 63-001-HLW
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(High-Level Waste Repository)	)	ASLBP No. 09-892-HLW-CAB04
	)	

AFFIDAVIT OF THOMAS M. BOYCE  
REGARDING THE APRIL 21, 2011 BOARD ORDER

I, Thomas M. Boyce, do hereby state as follows:

1. I am employed as the Office Director, Office of Information Services (OIS), United States Nuclear Regulatory Commission (NRC). As part of my duties, I am responsible for providing information technology for the NRC.

2. The purpose of this affidavit is to respond to the Board's Order (Concerning LSNA Memorandum and Parties' LSN Document Collections), dated April 11, 2011 (unpublished) (Order). I have made a reasonable investigation in good faith into the issues discussed below, and, to the best of my knowledge, the statements made herein are true.

3. The Board directed each party to "preserve all LSN documents in 'PDF' format" and "submit its LSN document collection together with associated bibliographic files to the NRC Office of the Secretary (SECY) on optical storage media...." Order at 3. Additionally, the Order directed SECY to "install the documents and associated bibliographic information into a separate LSN document 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." *Id.*

4. To comply with the Order, the NRC will need to:

a) Establish a computing environment to install and store more than 3.6 million documents. Required hardware and software will need to be purchased to support the development of a separate LSN library. The NRC will have to develop and test this hardware and software prior to its being placed in the NRC's production environment. This may necessitate competitive bidding of the contracts for these purchases.

b) Provide public access to the LSN library, including search and retrieval functions.

c) Upgrade the computing infrastructure to accommodate these changes. This will include increasing the NRC's Internet bandwidth and implementing appropriate security requirements.

d) Transfer the NRC Staff's LSN collection to an appropriate Optical Storage Media, certify this collection, and submit the collection to the Secretary of the Commission.

e) Perform document intake processing and document quality assurance of the LSN documentary material submitted by other parties in response to the Order. Once the separate LSN docket library is established, there will be an ongoing need for operational support, records management and customer assistance.

5. The estimated costs to comply with the Order range from \$3.2 to \$4.0 million for the first year and \$1.0 to \$2.0 million per year to operate and maintain the separate LSN docket library in subsequent years. The estimated costs for the first year include \$1.8 to \$2.3 million for hardware and software, \$1.3 to \$1.9 million for operational support (including the activities identified in paragraph 4.e above), and \$.07 to \$.1 million for transferring the NRC Staff's LSN document collection to Optical Storage Media. The estimated costs for each subsequent year include \$.9 to \$1.8 million for operational support and \$.1 to \$.2 million for refreshing hardware

and software. The actual costs will depend upon requirements for availability, usage, level of support, response time, and redundancy.

6. OIS will require additional staff to carry out the activities needed in the first year to implement the Order. OIS will also require additional staff to provide operational support for the separate LSN document library in subsequent years to implement the Order. OIS does not currently have the additional staff to carry out the activities necessary to implement the Order. Unless OIS is provided with additional staff, implementing the Order will have an adverse impact on current and planned OIS activities and work schedules.

7. The estimates set forth in paragraphs 5 and 6 above assume that:

a) The LSN docket library infrastructure will need to be maintained for five years. If the infrastructure needs to be maintained for a longer period of time, the estimates will have to be adjusted;

b) The collection is static after loading is complete and is not being updated. Updates to LSN collections will result in additional costs dependent upon the frequency and volume of the documentary material; and

c) Customer assistance will be accomplished using email with the goal of achieving a 24 hour response time.

8. OIS currently has no funds budgeted or available to carry out the identified activities required to implement the Order.

9. OIS estimates that it will take one year to implement the necessary changes to the NRC's information technology infrastructure to enable the NRC to implement the Order. This estimate assumes that the LSN document collections submitted to the NRC by other parties will comply with the appropriate NRC document format standards and that no problems with loading the documents or indexing the documents for searching will be encountered. If problems are encountered, implementation may take longer than one year.

10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information and belief.

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Thomas M. Boyce  
Director  
Office of Information Services  
U.S. Nuclear Regulatory Commission

Executed in Rockville, Maryland  
this 20th day of April, 2011

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

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U. S. DEPARTMENT OF ENERGY ) Docket No. 63-001-HLW  
 )  
(High-Level Waste Repository) ) ASLBP No. 09-892-HLW-CAB04  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of the "NRC STAFF REQUEST FOR LEAVE TO FILE MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION OF THE BOARD'S APRIL 11, 2011 ORDER, OR PETITION FOR CERTIFICATION" in the above-captioned proceeding have been served on the following persons this 21st day of April, 2011, by Electronic Information Exchange.

CAB 04

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