UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

NRC STAFF PETITION FOR THE COMMISSION TO EXERCISE ITS INHERENT SUPERVISORY AUTHORITY TO REVIEW APRIL 11 AND JUNE 9, 2011 BOARD ORDERS

Jessica A. Bielecki
Megan Wright
Counsel for NRC Staff

June 20, 2011
.

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF THE CASE 2

STATEMENT OF THE ISSUE 6

DISCUSSION 7

A. Legal Standards for Commission Review 7

B. Commission Review is Warranted 8

C. The Commission should reverse and remand the effectiveness of rulings requiring delivery to and processing of LSN document collections by SECY. 13

D. Alternatively, the Commission should suspend the effectiveness of rulings requiring delivery of LSN collections to SECY. 17

CONCLUSION 18

TABLE OF AUTHORITIES

Federal Cases

SL Commc'ns, Inc. v. FCC, 168 F.3d 1354 (D.C. Cir. 1999) 17

Commission Decisions

Amergen Energy Co., LLC, et al. (Oyster Creek Nuclear Generating Station), CLI-08-23, 68 NRC 461 (2008) 13

Consol. Edison Co. (Indian Point, Unit 2), CLI-82-15, 16 NRC 27 (1982) 8

Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62 (2004) 12

EnergySolutions (Radioactive Waste Import/Export Licenses), CLI-08-24, 68 NRC 491 (2008) 17

Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), CLI-07-01, 65 NRC 1 (2007) 8

Exelon Generation Co., LLC & Sys. Energy Res., Inc. (Early Site Permits for Clinton ESP Site and Grand Gulf ESP Site), CLI-06-20, 64 NRC 15 (2006) 7, 8, 11

Hydro Res., Inc. (292 Coors Rd., Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119 (1998) 8

Metro. Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-80-19, 11 NRC 700 (1980) 8, 11

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-10-27, 71 NRC __ (slip op.) (Sept. 30, 2010) 8

Safety Light Corp., et al. (Bloomsburg Site Decontamination and License Renewal Denials), CLI-92-13, 36 NRC 79 (1992) 7

Tenn. Valley Auth. (Watts Bar Nuclear Plant, Unit 2), CLI-10-29, 72 NRC __ (slip op.) (Nov. 30, 2010) 11

U.S. Dep't of Energy (High-Level Waste Repository), CLI-09-14, 69 NRC 580 (2009) 11

U.S. Dep't of Energy (High-Level Waste Repository), CLI-10-10, 71 NRC __ (slip op.) (Apr. 23, 2010) 7

U.S. Dep't of Energy (High-Level Waste Repository), CLI-10-13, 71 NRC at __ (slip op.) (Apr. 23, 2010) 7, 11

Atomic Licensing Appeal Board Decisions

Dep't of Energy Project Mgmt. Corp. Tenn. Valley Auth. (Clinch River Breeder Reactor Plant), ALAB-721, 17 NRC 539 (1983) 17

Kansas Gas & Electric Co. (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408 (1976) 12

Atomic Safety and Licensing Board Decisions

Dep't of Energy Project Mgmt. Corp. Tenn. Valley Auth. (Clinch River Breeder Reactor Plant), LBP-85-7, 21 NRC 507 (1985) 17

Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), LBP-82-81, 16 NRC 1128 (1982) 16

Memorandum and Order (Granting Motion for Protective Order), dated May 20, 2011 (unpublished) 6, 15

Order (Concerning LSNA Memorandum), dated December 22, 2009 (unpublished) 2, 10

Order (Granting DOE's Motion for Clarification), dated May 13, 2011 (unpublished) 6, 17

Order (Granting in Part and Denying in Part Reconsideration Motion), dated June 9, 2011 (unpublished) ..... passim

Order (Questions for Several Parties and LSNA), dated April 21, 2010 (unpublished) 3, 5, 10, 15

Order (Regarding Use of LSN), dated June 10, 2011 (unpublished) 15

Order, dated June 7, 2010 (unpublished) 4

U.S. Dep't of Energy (High-Level Waste Repository), LBP-04-20, 60 NRC 300 (2004) 2

U.S. Dep't of Energy (High-Level Waste Repository), LBP-10-11, 71 NRC __ (June 29, 2010) (slip op.) 4

Regulations

10 C.F.R. § 2.1001 2

10 C.F.R. § 2.1003(a) 8, 10

10 C.F.R. § 2.1003(e) 8, 10

10 C.F.R. § 2.1011 ..... 8, 10

10 C.F.R. § 2.319 10

Federal Register

53 Fed. Reg. 44,411 (Nov. 3, 1988) 12

54 Fed. Reg. 14,925 (Apr. 14, 1989) 14

63 Fed. Reg. 71, 729 (Dec. 30, 1998) 14

Statutes

44 U.S.C. § 3301(a) 12

Department of Defense and Full-Year Continuing Appropriations Act, Pub. L. 112-10, 116 Stat. 745 (2011) 4

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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 PETITION FOR THE COMMISSION TO EXERCISE ITS INHERENT SUPERVISORY AUTHORITY TO REVIEW APRIL 11 AND JUNE 9, 2011 BOARD ORDERS

INTRODUCTION

On June 9, 2011, the Construction Authorization Board (Board) issued an order granting in part and denying in part the NRC staff (Staff) request for reconsideration[1] of an April 11, 2011 Board order,[2] which directed (1) parties to submit their Licensing Support Network (LSN) document collections to the NRC Office of the Secretary (SECY) by August 31, 2011, and (2) SECY to install the documents in a separate LSN docket library in the Agencywide Documents Access and Management System (ADAMS) for public access via www.nrc.gov. *See* Order (Granting in Part and Denying in Part Reconsideration Motion), dated June 9, 2011, at 3-4 (unpublished) (June Order) (citing April Order at 3-4). The Staff requests that the Commission exercise its inherent supervisory authority to review the Board's rulings requiring delivery to and processing of LSN document collections by SECY because these rulings raise

[1] *See* 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, dated April 21, 2011 (Reconsideration Motion). The Staff separately requested a stay of the effectiveness of the April Order or a housekeeping stay, which the Board denied as moot. *See* June Order at 8; NRC Staff Motion for Stay of April 11, 2011 Board Order, dated April 21, 2011 (April Stay).

[2] Order (Concerning LSNA Memorandum and Parties' LSN Document Collections), dated April 11, 2011 (unpublished) (April Order).

novel and significant policy questions that warrant Commission guidance.[3] The Staff is advised that the Department of Energy (DOE) will begin delivery of its LSN document collection to SECY by July 7, 2011, and hence, the matters raised herein cannot later be addressed.[4]

STATEMENT OF THE CASE

The Licensing Support Network (LSN), the combined, web-based system that makes documentary material electronically available, 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.[5] Pursuant to 10 C.F.R. § 2.1001, the LSN Administrator (LSNA) is the NRC official responsible for coordinating access to and maintaining integrity of data available on the LSN.

On December 17, 2009, the LSNA 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). Pursuant to a December 22, 2009, order, the parties filed comments regarding the 2009 Memorandum.[6] In a January 27, 2010, case management conference, the Board asked each LSN participant

---

[3] As a courtesy, Staff Counsel contacted other parties in the proceeding regarding this petition. Counsel for the State of Nevada, Nuclear Energy Institute, Eureka County, Clark County, California, Nye County, White Pine County, National Association of Regulatory Utilities, County of Inyo, Lincoln County, Native Community Action Council, and Joint Timbisha Shoshone Tribal Group stated they took no position and reserved the right to respond. Counsel for DOE stated that it did not oppose.

[4] The Staff is separately requesting a stay of the effectiveness of the April and June Orders pending resolution of this petition for review. *See* NRC Staff Request for Stay of the April 11 and June 9, 2011 Board Orders, dated June 20, 2011.

[5] *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 "Licensing Support Network" and "documentary material"), 2.1011(b) (providing design standards for participant computer systems and requiring that participants make information available on a web accessible server).

[6] *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.

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.[7] On February 4, and 19, 2010, respectively, DOE answered Board questions posed during the January conference, and filed a status report on its LSN archiving plan.[8] 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 2010 Order at Appendices A-D. Responses to those questions[9] were discussed during a June 4, 2010, case management conference. *See, e.g.,* Tr. at 329-32, 336-57 (June 4, 2010). At the conclusion of the case management conference, the Board instructed the parties and petitioners to confer and agree upon proposed conditions regarding DOE's LSN document collection. Tr. at 443 (June 4, 2010). Consistent with Board direction, Nevada filed a joint report addressing proposed conditions on June 18, 2010. *See* Order, dated June 7, 2010

---

[7] *See* Transcript (Tr.) at 348, 353-54, 357-65 (Jan. 27, 2010); Order (Questions for Several Parties and LSNA), dated April 21, 2010, at Appendix A (unpublished) (April 2010 Order) (noting all parties, except the Staff and DOE, committed to store their LSN collections on a CD and provide a copy to the LSNA if circumstances warranted).

[8] *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* Nye County, Nevada Preliminary Response to DOE's February 4, 2010 Answers to CAB LSN Questions, dated February 16, 2010; Reply of the Nuclear Energy Institute to the Department of Energy's Answers to Board Questions, dated February 16, 2010.

[9] *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 (DOE May 24 Answers).

(unpublished); Joint Report Concerning Conditions Regarding DOE LSN Document Collection, dated June 18, 2010.

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). The Board's proposed conditions did not include a provision requiring DOE to submit its LSN document collections to SECY during the ongoing proceeding. *See id.* at Appendix ¶13 (requiring DOE, should its motion to withdraw be granted and after final termination of the proceeding, to make and provide a copy of its LSN collection to the LSNA and/or Board, or other presiding officer designated by the Commission). Petitions for review of LBP-10-11 are pending before the Commission.[10]

In a memorandum to the Board dated 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, (2) the Board could no longer presume that the LSN website would be operational or that the LSNA could take custody of documents, and (3) that parties' LSN document collections will no longer be electronically accessible when the LSN website is shut down. Memorandum from Daniel J. Graser, LSNA, to Administrative Judges, dated February 18, 2011, at 1-2 (2011 Memorandum).[11] Pursuant to its authority under 10 C.F.R.

---

[10] *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.

[11] The Staff noted in prior pleadings that the NRC was operating under a Continuing Resolution, and that the Staff had commenced orderly closure of Yucca Mountain activities. Reconsideration Motion at 4 n.8 (citing 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* Department of Defense and Full-Year Continuing Appropriations Act, Pub. L. 112-10, 116 Stat. 745 (2011).

§ 2.319, "to fulfill [its] responsibility to preserve the document discovery materials residing on the LSN, a system mandated by 10 C.F.R. Part 2, Subpart J," the Board issued the April Order. *See* April Order at 3. The April Order directs parties to submit their LSN document collections to SECY in PDF format by August 31, 2011, and if the document collections are large, to start submitting documents sooner. *Id.*

On April 21, 2011, DOE filed a motion seeking clarification of the April Order. U.S. Department of Energy's Motion for Clarification and Status Report Regarding the Board's Order dated April 11, 2011, dated April 21, 2011 (Clarification Motion). Specifically, DOE requested whether (1) it could submit its LSN document collection on high capacity external hard drives; (2) SECY could reasonably accommodate documents that meet optical character recognition exceptions; and (3) DOE identified variations from the "Guidance for Electronic Submissions to the NRC," Rev. 6, dated May 17, 2010 (Guidance for Electronic Submissions) were acceptable. *See id.* at 2-4.

On the same day DOE filed its Clarification Motion, the Staff filed a motion seeking reconsideration of the April Order, or in the alternative, certification to the Commission, since the April Order did not address (1) whether requiring parties to submit their LSN document collections to SECY and for SECY to make the collections accessible via ADAMS is consistent with Commission policy and decisions regarding the LSN and principles of appropriations law, and (2) whether submission of discovery document collections is needed given uncertainties surrounding this proceeding and lack of a showing that parties would fail to take good faith efforts to preserve their own collections. *See* Reconsideration Motion at 6, 9-10. The Staff also provided information on projected financial and administrative burdens associated with processing parties' LSN collections, establishing a separate LSN docket library in ADAMS (the NRC's centralized electronic repository for official agency records) and maintaining the collections. *Id.* at 8 (citing Management Directive 3.53, NRC Records and Document

Management Program (Mar. 15, 2007), at 1, 22 (MD 3.53); Affidavit of Thomas M. Boyce Regarding the April 11, 2011 Board Order, dated April 20, 2011 (Boyce Affidavit)).

On May 2, 2011, the Staff replied to DOE's Clarification Motion, stating that it did not object to DOE's technical requests but iterated its objection to parties delivering their LSN collections to SECY. NRC Staff Answer to U.S. Department of Energy's Motion for Clarification and Status Report Regarding the April 11, 2011 Order, dated May 2, 2011. On May 5, 2011, DOE filed a motion for a protective order quashing deposition notices served by the State of Nevada. U.S. Department of Energy's Motion for Protective Order, dated May 5, 2011 (Protective Order Motion). On May 13 and May 20, 2011, respectively, the Board issued orders granting the Clarification and Protective Order Motions. Order (Granting DOE's Motion for Clarification), dated May 13, 2011 (unpublished); Memorandum and Order (Granting Motion for Protective Order), dated May 20, 2011 (unpublished) (May Order).

On June 9, 2011, the Board issued the June Order granting reconsideration in part, by amending the April Order to exclude the Staff from the requirement to submit its LSN document collection to SECY for inclusion in ADAMS since the Staff collection already resides in ADAMS. June Order at 6. The Board, however, denied the Reconsideration Motion in all other respects, stating that the remainder of the Staff's arguments seemed to "emanate[] from a misapprehension of" the April Order. *Id.* The Board declined to refer its ruling to the Commission because of the number of pending motions before the Commission and saw "no utility" in adding the Staff's request to this list. *Id. a*t 7-8, n.30.

STATEMENT OF THE ISSUE

Whether the Board's order that parties provide their LSN document collections to SECY by August 31, 2011, for inclusion in a separate ADAMS LSN library docket that is publicly accessible via www.nrc.gov, is consistent with Commission policy decisions regarding promulgation of the LSN rule or necessary where (1) there is uncertainty surrounding the future

of this unique proceeding and (2) there is no showing that LSN collections will not be preserved by the parties themselves, particularly if ordered to do so.

DISCUSSION

A. Legal Standards for Commission Review

The procedural rules governing this proceeding in 10 C.F.R. Part 2, Subpart J, do not provide for interlocutory review of the April and June Orders.[12] The Commission may nonetheless review Board decisions by exercising its inherent "supervisory power over adjudications to step in at any stage of a proceeding and decide a matter itself." *Safety Light Corp., et al.* (Bloomsburg Site Decontamination and License Renewal Denials), CLI-92-13, 36 NRC 79, 85 (1992); *see also Exelon Generation Co., LLC & Sys. Energy Res., Inc.* (Early Site Permits for Clinton ESP Site and Grand Gulf ESP Site), CLI-06-20, 64 NRC 15, 21 (2006) (*Clinton ESP*) (exercising review under inherent supervisory power over adjudications). The Commission previously exercised this authority to review *sua sponte* a Board decision suspending the above-captioned proceeding pending a District of Columbia Circuit decision regarding DOE's Motion to Withdraw. *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-10-13, 71 NRC at __ (slip op. at 2-3) (Apr. 23, 2010) (noting that the Commission "generally do[es] not entertain" but deciding to grant review "given the unique circumstances of this case . . . as an exercise of our inherent supervisory authority").

---

[12] 10 C.F.R. § 2.1015(a) provides that no appeals may be taken from any Presiding Officer order or decision, except as otherwise permitted by 10 C.F.R. § 2.1015(b)-(d). *See U.S. Dep't of Energy* (High-Level Waste Repository), CLI-10-10, 71 NRC __ (slip op. at 3-4) (Apr. 23, 2010) (explaining that section 2.1015(b) provides for appeals from certain Pre-License Application Presiding Officer and the Presiding Officer decisions, section 2.1015(c) provides for appeals of a Presiding Officer initial decision or partial initial decision, and section 2.1015(d) permits the Board to refer certain rulings to the Commission, and permits certain participants in the proceeding to request that the Presiding Officer certify to the Commission rulings not otherwise immediately appealable pursuant to section 2.1015(b)). Inasmuch as the Staff's certification request was denied, *see* June Order at 7-8 n.30, the Staff requests that the Commission exercise its inherent supervisory authority to review the Board's rulings requiring delivery to and processing of LSN document collections by SECY.

The Commission may exercise its inherent supervisory authority to review, *sua sponte,* various adjudicatory actions, including those that may involve important legal and policy issues or warrant additional guidance. *See, e.g., Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 & 2), CLI-10-27, 71 NRC __ (slip op. at 4, 10) (Sept. 30, 2010) (overturning, *sua sponte*, a board order admitting a contention due to its potentially broad impact and significance; concurring opinion acknowledged that, consistent with the Policy Statement on the Conduct of Adjudicatory Proceedings, "the Commission is obliged to ensure that our licensing proceedings are conducted efficiently and fairly"); *Entergy Nuclear Vermont Yankee, LLC & Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), CLI-07-01, 65 NRC 1, 3-4 (2007) ("'*sua sponte* review' provides an avenue for us to take various kinds of adjudicatory action" to, for example, customize procedures, suspend a proceeding, address an issue of wide implication, and provide guidance to a board); *Clinton ESP*, CLI-06-20, 64 NRC at 21 (exercising inherent supervisory authority where additional "guidance [wa]s necessary to ensure that the proper balance is struck between the boards' need to obtain information for their review and the burden that production of such information could impose on the NRC staff."); *Hydro Res., Inc.* (292 Coors Rd., Suite 101, Albuquerque, NM 87120), CLI-98-16, 48 NRC 119, 119 (1998) (exercising inherent supervisory authority over the conduct of proceeding to reverse a Board ruling); *Consol. Edison Co.* (Indian Point, Unit 2), CLI-82-15, 16 NRC 27, 34 (1982) (exercising supervisory power over adjudicatory matters by providing guidance to the Board on contention admissibility); *Metro. Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-80-19, 11 NRC 700, 701 (1980) (exercising inherent supervisory authority over a matter involving a policy question regarding intervenor funding).

B. <u>Commission Review is Warranted</u>

Under 10 C.F.R Part 2, Subpart J, parties are required to maintain and supplement their LSN document collections. 10 C.F.R. §§ 2.1003(a), (e), 2.1011. The parties' LSN documents

(*i.e.*, discoverable documents) are not currently part of the record of this proceeding, and only become agency records (other than the Staff LSN collection) if submitted as exhibits to filings or as exhibits during the (yet to commence) evidentiary stage of this proceeding. In an effort to preserve this discovery material, in part, due to the "uncertain fiscal environment surrounding this unique proceeding" and importance of preserving history and research related to DOE's application, the Board issued its April and June Orders directing all parties, except the Staff, to submit their LSN document collections to SECY by August 31, 2011, or earlier for large collections taking more than one month to convert to PDF. June Order at 2, 6 (explaining reasons for preserving "document discovery database residing on the LSN" and amending the April Order). While the Board's goal of preserving documents in this proceeding is understandable, the Board's novel direction that SECY receive and maintain all party discovery collections is beyond the current requirements of Subpart J, and to the Staff's knowledge, is without precedent in NRC jurisprudence. Further, the Board's direction is inconsistent with important LSN policy decisions made by the Commission and could impose significant financial and administrative burdens on the agency. *See* Reconsideration Motion at 6, 7-9.[13] Accordingly, the Staff sought reconsideration, or in the alternative, certification to the Commission so that such matters would be addressed or the Board would seek Commission guidance. *Id.* at 1, 10.

The Board denied the Staff's Reconsideration Motion, reasoning that no harm would occur in the absence of reconsideration because (1) there is no deadline for SECY to initiate or

---

[13] The Staff previously projected that ADAMS system modifications, hardware and software would be needed to install the parties' LSN document collections and make them accessible via www.nrc.gov. Reconsideration Motion at 8 (citing Boyce Affidavit at ¶¶ 4, 6, 9). In addition, implementation is expected to cost the agency up to $4.0 million in the first year and up to $2.0 million per year in subsequent years to operate and maintain a separate LSN docket library in ADAMS. *Id.* (citing Boyce Affidavit at ¶ 5). Because these activities are not currently planned for, installation of the documents in ADAMS for public access may adversely impact current and planned Office of Information Services activities and work schedules. Boyce Affidavit at ¶ 6. These estimates have not changed.

complete any action, and (2) SECY is to commence installing the documents for public access in ADAMS by beginning the administrative, budgetary and financial processes and only comply to the extent that it can successfully complete "the necessary procedures and to the extent funding is available." *See* June Order at 6-7 (citing April Order at 3).[14]

Although the Board acknowledged funding limitations and that administrative, budgetary, and financial processes could affect SECY's ability to implement the Board's directive, June Order at 7, the Board did not address the Staff's principal argument that the prescribed preservation effort is inconsistent with Commission policy and decisions regarding the LSN. *See* Reconsideration Motion at 6-7. The Board also did not address Staff concerns that it was unnecessary for the NRC to take custody of and make electronically accessible parties' LSN discovery collections given the uncertain future of this proceeding and lack of showing that the collections would not otherwise be preserved by the parties,[15] particularly DOE, a government agency with independent records management responsibilities. *See id*. at 9-10. The Board's election not to address the novel and significant issues raised by the Staff is inconsistent with the Commission's expectation that Boards presiding over this proceeding "will issue decisions

---

[14] The Board also clarified that initially SECY is to treat the optical storage media or external hard drives as "physical objects" and include them in the docket as is done for physical objects received in other proceedings in the ordinary course of business. June Order at 6. The Staff has not been able to identify where this has been done, but assumes the Board is referring to filings, exhibits or non-discovery material.

[15] Subpart J of 10 C.F.R. Part 2 provides requirements regarding maintenance, supplementation, and accessibility of parties' LSN document collections. *See* 10 C.F.R. §§ 2.1003(a), (e), 2.1011. To the extent that the Board Orders were motivated by concern as to whether parties would comply with LSN requirements, the Board could specifically order the parties to preserve their own LSN collections without requiring delivery of optical storage media or external hard drives to SECY. *See* 10 C.F.R. § 2.319. Previously, the Board directed parties not to take actions that could hinder their ability to archive their LSN collections and, in response to Board questions, the parties committed to preserve their collections. *See, e.g.,* December 2009 Order at 2 (directing "parties not to take any actions at this time that would prevent or hinder their ability to archive LSN documentary material in a readily accessible format, such as PDF"); April 2010 Order at Appendix A (noting all parties, except the Staff and DOE, committed to store LSN collections on a CD); DOE May 24 Answers at 28-35 (explaining preservation plans for DOE's LSN collection and committing to keep its LSN collection "compliant and accessible").

that clearly, and with specificity, address the issues before them." *U.S. Dep't of Energy* (High-Level Waste Repository), CLI-09-14, 69 NRC 580, 610 (2009).

As the Staff previously outlined, if LSN document collections are received by SECY and made publicly available via ADAMS, the NRC will incur significant financial and administrative burdens to preserve discovery documents of other parties. *See* Reconsideration Motion at 7-9. Because the requirement that parties provide their LSN collections to SECY is a shift in Commission policy regarding the LSN that uniquely transforms discovery documents into NRC records, and would involve significant agency resources, the Commission should exercise its inherent supervisory authority and provide guidance as to whether requiring parties to provide millions of documents to the NRC is necessary at this juncture or needed to fulfill discovery document preservation goals, and whether requiring NRC officials to accept, manage and maintain the collection of these documents would be a prudent use of limited agency resources. *See, e.g., High-Level Waste,* CLI-10-13, 71 NRC __ (slip op. at 3) (exercising inherent supervisory authority "[g]iven unique circumstances of this case"); *Clinton ESP*, CLI-06-20, 64 NRC at 21 (exercising inherent supervisory authority where additional guidance was needed to ensure a proper balance between the Boards and Staff needs in a unique proceeding);*Three Mile Island*, CLI-80-19, 11 NRC at 701 (exercising authority over matter involving a policy question).

Finally, Commission review is warranted because the Orders "must be reviewed now, or not at all." *Tenn. Valley Auth.* (Watts Bar Nuclear Plant, Unit 2), CLI-10-29, 72 NRC __ (slip op. at 8) (Nov. 30, 2010). The Commission has found the imminent mootness of an issue to be grounds for granting interlocutory review. *Id.* at 7 & n.32. Notably, the Commission granted interlocutory review where disclosure of documents would have an immediate and irreparable

impact.[16] Interlocutory review is necessary in such a case because disclosure of the documents would be "effectively irreversible later," "'the adverse impact of that release would occur *now*, [and] the alleged harm is immediate.'" *Catawba*, CLI-04-6, 59 NRC at 71 (quoting *Vogtle*, CLI-94-5, 39 NRC at 193) (emphasis in original). Similarly, to the extent DOE begins delivery of its LSN document collection to SECY by July 7, 2011, review at a later date would be meaningless. *See* April Order at 3 (requiring delivery to SECY "no later than the seventh day of the month for those documents converted the previous month"). Once the NRC receives the parties' LSN document collections, the documents would become agency records and would be managed in accordance with Federal records management regulations. *See* Reconsideration Motion at 8 & n.17; MD 3.53 at 1 (it is the Commission's policy "that all official records made or received by NRC in the course of its official business comply with the regulations governing Federal records management issued by the National Archives and Records Administration and the General Services Administration").[17] Although the Board asserts that SECY is under no

---

[16] *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62, 71 (2004) (citing *Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 193) (1994)); *Kansas Gas & Electric Co.* (Wolf Creek Nuclear Generating Station, Unit 1), ALAB-327, 3 NRC 408, 413 (1976).

[17] The Board's clarification that initially SECY treat party LSN document collections as physical objects does not squarely address the Staff argument that making discovery documents agency records is contrary to the Commission's LSN policy. *Compare* June Order at 6 *with* Reconsideration Motion at 8-9 (citing Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste, 54 Fed. Reg. 14,925, 14,936 (Apr. 14, 1989) (recognizing intent not to make LSS discovery documents "agency records solely by virtue of the NRC being the LSS Administrator" and stating that a purpose of the LSS was to avoid burdensome FOIA requests)); Rule on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste 53 Fed. Reg. 44,411, 44,417 (Nov. 3, 1988) ("documents considered agency records may be requested under a FOIA request to the NRC"). The Federal Records Act (FRA) defines "record" as "all books, papers, maps, photographs, machine readable materials, or other documentary materials, *regardless of physical form or characteristics,* made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business . . . ." 44 U.S.C. § 3301(a) (emphasis added). MD 3.53, which provides information about centralized records management and document processing activities, explains that the phrase "regardless of physical form or characteristics" means that the medium of the documentary material "may be paper, film, disk, or other physical type or form." MD 3.53 at 12. *See also Amergen Energy Co., LLC, et al.* (Oyster Creek Nuclear Generating Station), CLI-08-23, (footnote continued. . .)

deadline to comply with the Board's instruction (*see* June Order at 6-7), the Board directed SECY to start, in good faith, the "administrative, budgetary, and financial processes and procedures necessary [to comply with the Order]." *See* June Order at 7 & 8 n.31 (directing SECY to begin the administrative processes). Thus, Commission review is necessary at this juncture of the proceeding and before the NRC receives the parties' LSN document collections and the millions of discovery documents become NRC records.

C. The Commission should reverse and remand the effectiveness of rulings requiring delivery to and processing of LSN document collections by SECY.

Because the Board did not (1) address the significant and novel questions regarding Commission policy and decisions on the LSN and (2) explain why such measures are needed at this juncture given uncertainties in this unique proceeding, the Commission should reverse and remand rulings requiring delivery of LSN document collections to SECY, providing guidance to the Board, or, in the alternative, suspend the effectiveness of these rulings.

First, requiring the NRC to take custody of non-Staff LSN document collections and make them publicly accessible in ADAMS raises significant and novel questions regarding Commission LSN policy and decisions. *See* Reconsideration Motion at 6-9. Simply stated, the creation of an NRC central repository of high-level waste discovery documents is contrary to decisions made by the Commission when its discovery rules were revised to create the LSN. *See id.* at 7. The Board ordered LSN facsimile (in ADAMS) is similar to the predecessor to the LSN, the Licensing Support System (LSS). The LSS was designed as a centralized, stand-alone database administered by the NRC, and is the system the Commission specifically rejected for expediting exchange of discovery documents in this proceeding. *Id.* at 7 (citing

---

(. . .footnote continued)

68 NRC 461, 482 (2008) (MD 3.53 "provides the Commission's interpretation of its obligations under the FRA, as well as the Commission's expectations for the Staff in fulfilling those obligations."). Accordingly, once received, the documents on the CDs and external hard drives would become agency records.

Licensing Proceedings for the Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network Design Standards for Participating Websites, 66 Fed. Reg. 29,453, 29,453-54 (May 31, 2001)). The LSS was created to provide timely review of the DOE license application by eliminating time-consuming aspects of exchanging discovery documents by mail, eliminating burdensome and numerous Freedom of Information Act (FOIA) requests, enabling a comprehensive and early review by DOE, the Staff, and potential parties, and providing for electronic submission of all filings during the licensing proceeding. *See* 54 Fed. Reg. at 14,926.

The Commission later determined that these goals could be achieved without the need for a standalone database because a stand-alone database "ha[d] become obsolete" and the "enormous expense of designing and maintaining a stand-alone system required by the current rules appears to be an unjustified expense." Reconsideration Motion at 7 (quoting Procedures Applicable to Proceeding for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository, 62 Fed. Reg. 60, 789, 60,790 (Nov. 13, 1997)). Accordingly, the Commission made a policy decision to revise its discovery rules to create the LSN, which was the least costly option and provided the most value to users. *See id.* at 7-8 (citing 66 Fed. Reg. at 29,465); Procedures Applicable to Proceeding for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository, 63 Fed. Reg. 71, 729, 71,735 (Dec. 30, 1998) (removing requirement for a central LSS system and explaining that the LSN was created to maintain the basic functionality of the LSS conceptual design and accommodate technological advances)).

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*." *Id.* at 7 (quoting 63 Fed. Reg. at 71,732-33 (emphasis added)). The LSN system is designed so that each party maintains its own document collection and the LSN uses the "internet to link the

geographically dispersed sites rather than relying on a complex and expensive centralized system." *Id.* at 7 (quoting 66 Fed. Reg. at 29,454); 2009 Memorandum at 1 (each party pays for the maintenance of its own collection "with no single organization being the custodian of the entire corpus").[18] Therefore, the creation of a centralized discovery repository to be administered and maintained by the NRC is a reversal of prior Commission LSN decisions.[19]

Second, the Board did not explain why parties are required to submit their LSN document collections to SECY by August 31, 2011, and for SECY to thereafter maintain these collections in order to achieve the Board's preservation goal given uncertainties regarding the future of this unique proceeding, *e.g.*, FY 2012 funding decisions by Congress could result in a suspension of the proceeding (including LSN update obligations). *See id.* at 2; Reconsideration Motion at 9-10.[20] The Staff previously noted that there is no evidence that any party will fail to preserve its own LSN collection particularly since the proceeding is ongoing and all parties, including DOE, previously committed to preserve their LSN document collections.[21]

---

[18] Often, in the context of discussing the LSN, some mistakenly assume that documents actually reside on the LSN website. That is not the case. The LSN website does not include a compilation of documents. The LSN website provides a search engine that uses "baseline concepts of a web crawler" to search for files stored on participant websites. *See* LSN Guidelines, Setting Up a Licensing Support Network Participant Repository at 22-1-2 (May 2004) (emphasis added) (ADAMS Accession No. ML041530249) (*"The LSN Repository does not contain physical copies of the documents*. It merely stores the search terms and bibliographic header information required to support the search mechanisms.").

[19] Arguably, the practical effect of the Board's Orders is that the NRC would also be responsible for receipt and processing of any supplementations of LSN collections pursuant to 10 C.F.R. § 2.1003(e).

[20] *See also* May Order at 3 (recognizing "uncertain course of this unique proceeding"); Order (Regarding Use of LSN), dated June 10, 2011 (unpublished) (LSN Order) (recognizing "the current controversial FY 2012 budget").

[21] *See* Reconsideration Motion at 9. *See also* April 2010 Order at Appendix A (noting all parties, except the Staff and DOE, committed to store their LSN collections on a CD and provide a copy to the LSNA); DOE May 24 Answers at 28-35 (explaining preservation plans for DOE's LSN collection); DOE February 4 Answer at 2 ("DOE will continue to comply with LSN requirements").

Further, DOE's LSN collection, approximately 3.65 million documents, constitutes over 98 percent of all LSN documents and DOE has independent records retention obligations as a government agency under the FRA.[22] *See* Reconsideration Motion at 9-10; April Stay at 5 (citing DOE February 4 Answer at 3 (as of February 2010, DOE had 3.65 million documents in its LSN collection)). Requiring the NRC to maintain DOE's documents in order to preserve the "history and extensive research underlying DOE's application" is unnecessary given the fact that DOE is a government agency with independent records obligations. *See* June Order at 2 (explaining Board's preservation efforts). Also, the requirement that SECY take custody of and maintain a centralized docket for the parties' LSN collections, including DOE's, results in the NRC assuming the expenses previously borne by the parties. *See* Reconsideration Motion at 7; *Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 & 3), LBP-82-81, 16 NRC 1128, 1139 (1982) ("ordinarily parties are to bear their own litigation expense").[23] Accordingly, because there is no information that suggests LSN documents cannot be preserved by the parties after August 31, 2011, the Commission should reverse and remand the novel rulings requiring the parties to submit their LSN document collections to SECY and for SECY to process those collections.

---

[22] *See, e.g.,* DOE February 4 Answer at 2 (committing to preserve records "in compliance with federal requirements"). Other governmental entities have independent records retention obligations. *See* Reconsideration Motion at 9 n.18 (citing County of Inyo's Response to December 22, 2009 ASLB Order Regarding Disposition of LSN Documents, dated January 22, 2010 (County of Inyo would retain LSN documents in accordance with California law)).

[23] The Statements of Consideration reflect the concern that it may not be permissible for the NRC to maintain electronic availability of participants' documents because the NRC is prohibited from paying intervenors' expenses in licensing proceedings. *See* Reconsideration Motion at 8 n.15 (citing 63 Fed. Reg. at 71,732) (discussing prohibitions in 5 U.S.C. § 504 on intervenor funding). The Staff also notes that in other NRC proceedings, the Commission's regulations do not require SECY to place all applicant and intervenor discovery documents identified in accordance with 10 C.F.R. § 2.336 in ADAMS for public access.

D. Alternatively, the Commission should suspend the effectiveness of rulings requiring delivery of LSN collections to SECY.

If the Commission declines to reverse and remand the Board rulings requiring delivery of LSN collections to SECY, the Staff requests that the Commission conserve limited government resources by suspending the effectiveness of these rulings until the Commission is able to determine whether the directed actions are warranted. A suspension would relieve (1) parties from the requirement to deliver their LSN document collections to SECY by August 31, 2011, and (2) the agency from the obligation to expend limited resources to process the parties' LSN document collections and make them accessible. *See EnergySolutions* (Radioactive Waste Import/Export Licenses), CLI-08-24, 68 NRC 491, 495 (2008) (holding proceeding in abeyance due to a pending jurisdictional issue because "it would be inefficient to devote further adjudicatory (and NRC Staff) resources to this proceeding now."); *SL Commc'ns, Inc. v. FCC*, 168 F.3d 1354, 1359 (D.C. Cir. 1999) (referencing the public interest in conserving agency resources). The Board itself has recognized the need to avoid unnecessary expenditure of funds in light of the uncertainty (pending appeals and congressional funding) surrounding this proceeding when it granted DOE's motion to quash Nevada's deposition notices. May Order at 3 (granting DOE's motion "[i]n light of the uncertain course of this unique proceeding" and its "responsibility to control discovery and avoid undue and potentially unnecessary expense").[24] These considerations equally apply to activities to be undertaken by SECY and agency information technology staff. Accordingly, because the LSN document collections would otherwise be preserved by the parties and the future of this proceeding is uncertain, the

[24] Previous uncertainty regarding the future of an application pending before the agency has resulted in a proceeding being suspended. *Dep't of Energy Project Mgmt. Corp. Tenn. Valley Auth.* (Clinch River Breeder Reactor Plant), ALAB-721, 17 NRC 539, 542 (1983) (suspending proceeding at the applicant's request after the Carter Administration announced its opposition to the Clinch River Breeder Reactor Project). The suspension was later lifted and the proceeding continued, but was ultimately terminated after Congress declined to appropriate funds. *Id.; Dep't of Energy Project Mgmt. Corp. Tenn. Valley Auth.* (Clinch River Breeder Reactor Plant), LBP-85-7, 21 NRC 507, 508 (1985).

Commission should suspend the effectiveness of rulings requiring delivery of LSN collections to SECY.

CONCLUSION

For the reasons set forth above, the Staff requests that the Commission exercise its inherent supervisory authority to review and remand the rulings requiring delivery to and processing of LSN document collections by SECY. If the Commission declines to grant review, the Staff alternatively requests that the Commission suspend the effectiveness of these rulings until the Commission is able to determine whether the directed actions are warranted.

Respectfully submitted,

/Signed (electronically) by/

Jessica A. Bielecki
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
(301) 415-1391
Jessica.Bielecki@nrc.gov

/Executed in accord with 10 C.F.R. §2.304(d)/

Megan Wright
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
(301) 415-2314
Megan.Wright@nrc.gov

Dated at Rockville, Maryland
this 20th day of June, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	
	)	
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 PETITION FOR THE COMMISSION TO EXERCISE ITS INHERENT SUPERVISORY AUTHORITY TO REVIEW APRIL 11 AND JUNE 9, 2011 BOARD ORDERS" in the above-captioned proceeding have been served on the following persons this 20th day of June, 2011, by Electronic Information Exchange.

CAB 04
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: tsm2@nrc.gov
psr1@nrc.gov
rew@nrc.gov

Office of the Secretary
ATTN: Docketing and Service
Mail Stop: O-16C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555
E-mail: HEARINGDOCKET@nrc.gov

Office of Commission Appellate
Adjudication
ocaamail@nrc.gov

Charles J. Fitzpatrick, Esq.
John W. Lawrence, Esq.
Egan, Fitzpatrick, Malsch & Lawrence PLLC
1777 N.E. Loop 410, Suite 600
San Antonio, TX 78217
E-mail: cfitzpatrick@nuclearlawyer.com
jlawrence@nuclearlawyer.com

Martin G. Malsch, Esq.
Egan, Fitzpatrick & Malsch, PLLC
1750 K Street, N.W. Suite 350
Washington, DC 20006
E-mail: mmalsch@nuclearlawyer.com

Brian W. Hembacher, Esq.
Deputy Attorney General
California Attorney General's Office
300 South Spring Street
Los Angeles, CA 90013
E-mail: brian.hembacher@doj.ca.gov

Timothy E. Sullivan, Esq.
Deputy Attorney General
California Department of Justice
1515 Clay Street. 20th Flr.
P.O. Box 70550
Oakland, CA 94612-0550
E-mail: timothy.sullivan@doj.ca.gov

Kevin W. Bell, Esq.
Senior Staff Counsel
California Energy Commission
1516 9th Street
Sacramento, CA 95814
E-mail: kwbell@energy.state.ca.us

Alan I. Robbins, Esq.
Debra D. Roby, Esq.
Jennings Strouss & Salmon, PLC
1350 I Street, NW Suite 810
Washington, DC 20005-3305
E-mail: arobbins@jsslaw.com
droby@jsslaw.com

Donald J. Silverman, Esq.
Thomas A. Schmutz, Esq.
Thomas C. Poindexter, Esq.
Paul J. Zaffuts, Esq.
Alex S. Polonsky, Esq.
Lewis Csedrik, Esq.
Raphael P. Kuyler, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
E-mail: dsilverman@morganlewis.com
tschmutz@morganlewis.com
tpoindexter@morganlewis.com
pzaffuts@morganlewis.com
apolonsky@morganlewis.com
lcsedrik@morganlewis.com
rkuyler@morganlewis.com

Malachy R. Murphy, Esq.
18160 Cottonwood Rd. #265
Sunriver, OR 97707
E-mail: mrmurphy@chamberscable.com

Susan L. Durbin, Esq.
Deputy Attorney General
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
E-mail: susan.durbin@doj.ca.gov

Martha S. Crosland, Esq.
Angela M. Kordyak, Esq.
Nicholas P. DiNunzio
James Bennett McRae, Esq.
Sean A. Lev
U.S. Department of Energy
Office of the General Counsel
1000 Independence Avenue, S.W.
Washington, DC 20585
E-mail: martha.crosland@hq.doe.gov
angela.kordyak@hq.doe.gov
nick.dinunzio@rw.doe.gov
ben.mcrae@hq.doe.gov
Sean.Lev@hq.doe.gov

George W. Hellstrom
U.S. Department of Energy
Office of General Counsel
1551 Hillshire Drive
Las Vegas, NV 89134-6321
E-Mail: george.hellstrom@ymp.gov

Robert M. Andersen
Akerman Senterfitt LLP
750 9th N.W., Suite 750
Washington, DC 20001
E-mail: robert.andersen@akerman.com

Frank A. Putzu
Naval Sea Systems Command Nuclear
Propulsion Program
1333 Isaac Hull Avenue, S.E.
Washington Navy Yard, Building 197
Washington, DC 20376
E-mail: frank.putzu@navy.mil

John M. Peebles
Darcie L. Houck
Fredericks Peebles & Morgan LLP
1001 Second Street
Sacramento, CA 95814
E-mail: jpeebles@ndnlaw.com
dhouck@ndnlaw.com

Ross D. Colburn
2020 L Street, Suite 250
Sacramento, CA 95811
E-mail: rcolburn@ndnlaw.com

Shane Thin Elk
Fredericks Peebles & Morgan, LLP
3610 North 163rd Plaza
Omaha, Nebraska 68116
E-mail: sthinelk@ndnlaw.com

Ellen C. Ginsberg
Anne W. Cottingham
Jerry Bonanno
Nuclear Energy Institute, Inc.
1776 I Street, N.W., Suite 400
Washington, DC 20006
E-mail: ecg@nei.org
awc@nei.org
jxb@nei.org

David A. Repka
William A. Horin
Rachel Miras-Wilson
Winston & Strawn LLP
1700 K Street N.W.
Washington, DC 20006
E-mail: drepka@winston.com
whorin@winston.com
rwilson@winston.com

Jay E. Silberg
Timothy J.V. Walsh
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
E-mail: jay.silberg@pillsburylaw.com
timothy.walsh@pillsburylaw.com

Gregory L. James
712 Owens Gorge Road
HC 79, Box 1I
Mammoth Lakes, California 93546
Email: gljames@earthlink.net

Arthur J. Harrington
Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
E-mail: aharring@gklaw.com

Steven A. Heinzen
Douglas M. Poland
Hannah L. Renfro
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
E-mail: sheinzen@gklaw.com
dpoland@gklaw.com
hrenfro@gklaw.com

Robert F. List, Esq.
Jennifer A. Gores, Esq.
Armstrong Teasdale LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
E-mail: rlist@armstrongteasdale.com
jgores@armstrongteasdale.com

Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

Ian Zabarte, Board Member
Native Community Action Council
P.O. Box 140
Baker, NV 89311
E-mail: mrizabarte@gmail.com

Kelly Brown
District Attorney
White Pine County District Attorney's Office
801 Clark Street
Ely, NV 89301
E-mail:kbrown@mwpower.net

Donald P. Irwin
Michael R. Shebelskie
Kelly L. Faglioni
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
E-mail: dirwin@hunton.com
mshebelskie@hunton.com
kfaglioni@hunton.com

Curtis G. Berkey
Scott W. Williams
Rovianne A. Leigh
Alexander, Berkey, Williams, & Weathers LLP
2030 Addison Street, Suite 410
Berkley, CA 94704
E-mail: cberkey@abwwlaw.com
swilliams@abwwlaw.com
rleigh@abwwlaw.com

Bret O. Whipple
1100 South Tenth Street
Las Vegas, Nevada 89104
E-mail: bretwhipple@nomademail.com

Gregory Barlow
P.O. Box 60
Pioche, Nevada 89043
E-mail: lcda@lcturbonet.com

Michael L. Dunning
Andrew A. Fitz
H. Lee Overton
Jonathan C. Thompson
Todd R. Bowers
State of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
E-mail: MichaelD@atg.wa.gov
AndyF@atg.wa.gov
LeeO1@atg.wa.gov
JonaT@atg.wa.gov
toddb@atg.wa.gov

Connie Simkins
P.O. Box 1068
Caliente, Nevada 89008
E-mail: jcciac@co.lincoln.nv.us

Kenneth P. Woodington
Davidson & Lindemann, P.A.
1611 Devonshire Drive
P.O. Box 8568
Columbia, SC 29202
E-mail: kwoodington@dml-law.com

Thomas R. Gottshall
S. Ross Shealy
Haynesworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
Post Office Box 11889
Columbia, SC 29211-1889
E-mail: tgottshall@hsblawfirm.com
rshealy@hsblawfirm.com

Dr. Mike Baughman
Intertech Services Corporation
P.O. Box 2008
Carson City, Nevada 89702
E-mail: bigboff@aol.com

Michael Berger
Robert S. Hanna
Attorney for the County of Inyo
233 East Carrillo Street Suite B
Santa Barbara, California 93101
E-mail: mberger@bsglaw.net
rshanna@bsglaw.net

Philip R. Mahowald
Prairie Island Indian Community
5636 Sturgeon Lake Road
Welch, MN 55089
E-mail: pmahowald@piic.org

James Bradford Ramsay
National Association of Regulatory Utility Commissioners
1101 Vermont Avenue NW, Suite 200
Washington, DC 20005
E-mail: jramsay@naruc.org

Don L. Keskey
Public Law Resource Center PLLC
505 N. Capitol Avenue
Lansing, MI 48933
E-mail:
donkeskey@publiclawresourcecenter.com

/Signed (electronically) by/

Jessica A. Bielecki
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
(301) 415-1391
E-mail: Jessica.Bielecki@nrc.gov