

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

Before Administrative Judges:

ASLBP BOARD 09-892-HLW-CAB04 Thomas S. Moore, Chairman Paul S. Ryerson Richard E. Wardwell
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In the Matter of)	
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository))	June 1, 2010

**STATE OF NEVADA'S COMMENTS ON
DOE'S PRESERVATION PLANS FOR DOCUMENTARY MATERIAL**

In accordance with CAB's April 27, 2010 scheduling order, State of Nevada (Nevada) provides the following comments on DOE's plans for preserving its LSN collection:

At a CAB Case Management Conference on January 27, 2010, and in two written filings on February 4 and February 19, DOE discussed its evolving position with respect to its plans for archiving and preserving its vast (over 3.5 million documents) collection of Documentary Material (as defined in 10 C.F.R. 2.1001) in its LSN collection. For reasons more fully discussed in Nevada's Answer to DOE's Motion to Withdraw (filed May 17, 2010), which will not be repeated here, Nevada was concerned that **if** the Board were to allow DOE's LA to be withdrawn without prejudice, and **if** a subsequent LA were to be filed for a repository at or near Yucca Mountain in the future, DOE's plan risked the loss of valuable data now residing in its LSN. Under those circumstances, Nevada and other parties would be critically prejudiced in their participation in any such future proceeding.

It is likewise true that, even assuming the DOE Motion is granted with prejudice, it is conceivable that some subsequent Congress, under some set of circumstances, could revive the concept of a Yucca repository – e.g., for the residue of some reprocessing scenario adopted decades from now. Nevada and the other parties to such a proceeding would likewise need access to DOE's **current** YMP document collection.

The DOE positions stated on January 27, February 4, and February 19 declined to commit to store all LSN data in whole documents, in PDF files, and on CDs or DVDs to be delivered to the LSNA despite the agreement of all the other parties to do so. DOE's position instead focused on the transfer of its LSN Documentary Material to a **different** federal agency, NARA, which would exercise broad discretion as to how and how long to retain the information.

Dissatisfied with the adequacy of DOE's position, CAB entered an Order on April 21, 2010, which included (as Appendix C) well over 100 questions to DOE regarding its LSN collection and the preservation thereof in the event of the termination of this licensing proceeding. The Board required that all answers to its questions be filed by DOE by May 24. By a later Order (April 27), CAB reiterated DOE's May 24 deadline and added that the other parties would be given "an opportunity to comment on DOE's plans for preserving its LSN collection," such comments to be filed by June 1.

DOE timely filed its responses to CAB's questions on May 24. Nevada carefully reviewed those responses and conferred with DOE counsel in order to fully understand and confirm the import of those answers and DOE's position regarding the preservation of its LSN Documentary Material. Based upon that understanding, and the very substantial changes in DOE's position represented by its May 24 responses, Nevada concludes that – provided DOE adheres to all the specific and unconditional and unequivocal commitments made in its May 24

filing – Nevada and the other parties will be assured access to DOE's current LSN collection, both now and in the event of some future hearing proceeding involving Yucca Mountain.

Nevada understands that all of DOE's LSN Documentary Material will be preserved in the form of whole documents, stored in searchable PDF files, and will be accessible in a hypothetical future proceeding through a system (such as the LSN) which would be developed for such a proceeding through the cooperation of DOE with NRC. Should there be no future proceeding (or in the interim between proceedings, if there is a subsequent one), Nevada and all parties will be entitled to request and obtain DOE's LSN Documentary Material, by methods available to all members of the public requesting federal agency records (such as by Freedom of Information Act – FOIA – request).

No doubt DOE's position with respect to its preservation of its LSN Documentary Material will be articulated at the upcoming June 4 Case Management Conference and probed by at least the CAB, if not others, thus enabling Nevada to confirm its understanding of the DOE commitments on which Nevada relies in concluding that DOE's plan appears adequate, with one exception discussed below. For the sake of clarity, some of those specific DOE commitments relied upon are quoted:

- "DOE uses the phrase 'LSN collection' to mean the entire collection of documents (whether full text or header only) available on its LSN participant website." (Response to Question 1.2.)
- "The files that comprise the LSNdc are stored on hard drives on servers in the computer room of the DOE Hillshire facility in Las Vegas, Nevada. DOE maintains a copy of the LSNdc on hard drives on servers at a Continuity of Operations (COPS) site at a facility in Arlington, Virginia operated by DOE's Automated Litigation Support (ALS) Contractor, CACI, Inc. CACI also maintains back-up tapes that contain a complete copy of the LSNdc at an Iron Mountain off-site storage facility." (Response to Question 1.3.4.)
- "The text for each imageable document in the LSNdc is stored as a single HTML file and thus is stored as a complete document. DOE also provides image files for its LSNdc. These are provided as single page per file in either TIFF (for bi-tonal)

or JPEG (for color) formats. These image files are stored in directories (i.e., electronic folders) at the document level, one document per directory. The directory name is the same as the participant accession number of the document with the periods removed. Therefore, all of the images comprising a single document are stored as a complete document at the directory level even though each page is a separate image file." (Response to Question 2.2.)

- "100% of the text, or HTML, files in the LSNdc are stored as single documents. 100% of the images files are stored as complete documents at the directory level. In approximate terms, one-half of the documents are single-page documents." (Response to Question 2.2.1.)
- "DOE is committed to maintaining its LSNdc until there is a non-appealable final order and the proceeding is terminated. DOE's Automated Litigation Support contractor (currently, CACI) will continue to support that function as well." (Response to Question 2.8.)
- "By 'DOE data,' DOE understands the Board to mean the files that constitute the LSNdc. DOE further understands that the question refers to the period after the exhaustion of all appeals in the licensing proceeding and the proceeding is terminated. At that time, the files that comprise the LSNdc will be on magnetic tapes that will be maintained by DOE's LM. The tapes will be stored in a facility in Morgantown, West Virginia, and the data, including a PDF image of each document, will be loaded onto a storage area network which can be electronically searched and retrieved. The public can make requests for documents on these tapes and servers through LM." (Response to Question 2.9.)
- "The individual pages that make up the documents in the LSNdc are not 'unnumbered, loose pages...with no way to easily sort them into useable...documents.' Rather, the individual pages are stored in directories at the document level. Each directory contains all the component pieces of an individual document. A better analogy is boxes filled with 3-ring binders each containing numerous individual sheets. Each binder would have a cover sheet affixed to the front with detailed bibliographic data containing a description of the binder's contents. To continue the analogy, the NRC portal site (via the NRC index) currently acts as an automated card catalog that directs a user to the correct box, binder, and sheet based on the search criteria. That identification functionality will be preserved under DOE's archiving plan." (Response to Question 4.1.)
- "The files that comprise the LSNdc will be put on magnetic tapes and transferred to LM. The tapes will be stored in an LM facility in Morgantown, West Virginia, and the data will be loaded onto a storage area network which can be electronically searched and retrieved in a manner that allows identification and retrieval of full documents. LM will include on that network a separate compiled PDF image of each imageable document." (Response to Question 4.2.1.)

- "When LM loads the LSNdc onto its storage area network, it plans on using FetchDoc to create a compiled PDF image of each imageable document in the LSNdc and thereafter will preserve those PDF image files." (Response to Question 4.4.2.)
- "LM will create PDF image files of complete documents after it receives the magnetic tapes containing the LSNdc." (Response to Question 4.10.1.)
- "DOE would not destroy or disassemble the documentary material in its LSNdc. Nor would the directory functionality as described in response to Question 2.2. be destroyed or disassembled." (Response to Question 4.10.4.)
- "DOE proposes to preserve the LSNdc for 100 years after there is a non-appealable final order and the proceeding is terminated. The public will be able to make requests for access to those documents through DOE's LM for that entire period.

OCRWM personnel and contractor staff, as well as those other agencies that support the OCRWM program, have also been directed that they must continue to preserve documents that relate to Yucca Mountain, including documents concerning the science of storage or disposal of high-level waste and spent nuclear fuel, even if they are permitted to dispose of such documents under applicable retention schedules." (Response to Question 4.15.)

- "DOE will archive the LSNdc in its current format, and LM will additionally create PDF image files of complete documents that will be preserved. To clarify, DOE does not view its LSNdc as 'primarily a string of single sheet image files.' See, for example, the answer to Question 2.2." (Response to Question 5.1.)
- "DOE does not consider its LSNdc to be 'primarily a string of single sheet image files,' and DOE's LSNdc does not need to be 'restructured into a document collection.' Moreover, as described in DOE's response to 4.4.2, LM will compile a PDF image of each document in the LSNdc and preserve those images." (Response to Question 5.5.)
- "[T]he DOE LSNdc is compiled into documents at the directory level. Each directory contains the bibliographic header file, the text file, and all of the image files comprising a document. The directory name corresponds to the participant accession number of the document. Thus, even without a document management software system, the directory structure defines where one document ends and another begins. Moreover, as described in DOE's response to Question 4.4.2, LM will compile a PDF image of each imageable document in the LSNdc and preserve those images." (Response to Question 5.7.)
- "LM will preserve the LSNdc intact along with compiled PDF images. LM will be able to identify and access complete documents." (Response to Question 5.9.)

- "As described in response to questions 2.4.1 and 4.4.2 above, DOE's custom code (FetchDoc) is not required to search for or retrieve text and images of documents in the LSNdc. The documents would be retrieved in the same fashion they are now using the directory system and a search index or system. Compiled PDF images also would be created and stored, thus avoiding the need to use FetchDoc." (Response to Question 5.10.1.)
- Question 5.10.4. What steps would need to take place to retrieve and re-establish the LSN should the project be revived within 3 to 5 years after it was archived?

Response to Question 5.10.4.: "In such an event, DOE would retrieve the archived magnetic tapes from NARA and work with the NRC to make the documents electronically available."
- "The archiving of DOE's LSNdc to Morgantown will not occur until after the appeal process is exhausted and this proceeding is terminated. The proceeding will thus be over, and the commitment to maintain the functionality of the LSNdc during the course of the proceeding will have been fulfilled." (Response to Question 6.4.)

DOE's apparent commitment to preserve its LSN collection intact for possible future use leaves unaddressed one important component of the CAB's request to all parties (and agreed to by all but DOE). The other parties agreed to preserve their LSN collections to PDF, put them on CDs or DVDs, and deliver them to the LSNA on electronic media. Delivery to the LSNA must include DOE, so that the protocol for LSN preservation is universal. In addition, Nevada requests that CAB require DOE (and every other party) to likewise provide a copy of its complete LSN collection to any other party who: (1) requests it in writing; and (2) agrees to compensate the requester for materials and labor expended in complying with the request.

Obviously, such request (and such required delivery to the LSNA and requesting party) will be made **after** each party has placed its LSN collection in PDF files and on CDs or DVDs; or in the case of DOE, when it has placed the files that comprise its LSN collection on magnetic tapes and transferred them to Legacy Management, and when the data has been loaded onto a storage area network (including a separate compiled PDF image of each imageable document)

which "can be electronically searched and retrieved in a manner that allows identification and retrieval of full documents" (per DOE Response to Question 4.2.1.).

Nevada has been involved in the science of Yucca Mountain for over 20 years – monitoring the analysis prepared by DOE and conducting its own. The Yucca Mountain project is and has been an event of historically epic proportions in the lives of a generation of Nevadans – and is one of the largest scientific projects ever undertaken in the state. The Yucca Mountain project related document collections of DOE and the State should be made publicly available through the Nevada State Library and Archives and its State University system, both for scientific research and for educational purposes. (This is in addition to their being available in the event of any future project – federal, state, or private – which calls into play the vast body of scientific knowledge which has been accumulated with respect to Yucca Mountain and surrounding areas.) Nevada will commit to facilitating such public availability of its and DOE's LSN document collections, which are presently available to every member of the public through the worldwide web, but may not be in the future.

The Board has already planned to ensure that all parties record their LSN collections on electronic media and deliver them to the LSNA. This already **currently public information** should likewise be made available to the parties to this proceeding, subject only to their willingness to request it and reimburse the requested party for costs.

For the many reasons explained in Nevada's May 17 Answer, DOE's Motion should be granted – as DOE requests – **with** prejudice. Whether it is granted with or without prejudice, congressional action or other circumstances could conceivably, at some future date, result in the filing of a different license application for a repository at or near Yucca Mountain. The Board should act **now** to protect the parties to such a hypothetical proceeding. Protect them from what?

From the possibility that DOE will **not** have adhered to the promises and commitments it made in its May 24, 2010 filing; that DOE's Yucca Mountain project LSN Documentary Material will **not** be preserved and be available to the parties to such a proceeding; and that those parties will be substantially prejudiced in their effort to meaningfully participate in such a proceeding due to DOE's failure to keep the promises it is making now.

Nevada does not ask for LSN document-related "conditions" to be attached to any withdrawal granted. Indeed, Nevada questions whether after the pending proceeding is terminated, the Board or the Commission would even have jurisdiction to enforce such conditions. But, if the application is withdrawn without prejudice to a possible re-filing, the Commission has the power to issue a declaratory order prescribing the terms under which a **future** application for a geologic repository at Yucca Mountain could be accepted for docketing. If the application is withdrawn with prejudice, Congress would have the power to order DOE to re-file it and to order the Commission to consider it, notwithstanding any conditions the Commission may have imposed. However, a declaratory order regarding LSN matters would still serve the salutary purpose of focusing Congress' attention to the matter so that any future Yucca Mountain legislation would take into account the legitimate discovery needs of project opponents. Accordingly, Nevada requests that CAB include in its upcoming Order on DOE's Motion to Withdraw a provision stating, in substance:

No new license application for a geologic repository at Yucca Mountain, Nevada, will be accepted for docketing unless DOE has complied fully with its May 24, 2010 commitments with respect to the preservation and accessibility of its documentary material as defined in 10 C.F.R. § 2.1001 (including its retention of every bit of its LSN Documentary Material in full text, retrievable form).

Respectfully submitted,

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Atomic Safety and Licensing Board

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U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing State of Nevada's Comments on DOE's Preservation Plans for Documentary Material has been served upon the following persons by the Electronic Information Exchange:

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