

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

July 18, 2011

ORDER

(Granting DOE's Partial Reconsideration Motion)

The Department of Energy (DOE) moves for partial reconsideration of the Board's June 10, 2011 order,¹ to the extent it directs defending parties to circulate deposition document indices while time still remains to confer and consult as to their adequacy before the Licensing Support Network (LSN) stops operating.² The State of Nevada (Nevada) supports DOE's motion,³ and Nye County, Nevada opposes it.⁴ No other party has expressed a position.

DOE claims the requirement to circulate document indices is not necessary to allow discovery to resume without undue delay, when and if circumstances warrant. To address this concern, DOE says, "[t]he Board's actions to date to preserve the LSN and ensure that parties

¹ CAB Order (Regarding Use of LSN) (June 10, 2011) (unpublished).

² U.S. Department of Energy's Motion for Leave to File Motion for Reconsideration of June 10, 2011 CAB Order (June 20, 2011) at 1 [hereinafter DOE Motion].

³ State of Nevada Answer to DOE Motion for Leave to File Motion for Reconsideration of June 10, 2011 CAB Order (June 30, 2011) at 1.

⁴ Nye County, Nevada's Answer to NRC Staff's Request for Stay and to the Department of Energy's Motion for Leave to File Motion for Reconsideration (June 30, 2011) at 7.

take possession of LSN documents relevant to Phase 1 Nevada safety contentions witnesses are sufficient.”⁵

The Board is less optimistic. As explained in our June 9, 2011 order,⁶ the Board has merely ordered the parties (with the exception of the NRC Staff) to submit their LSN document collections to the NRC Office of the Secretary on optical storage media or external hard drives.⁷ Initially, the Secretary need only place those physical objects in the docket just as physical objects are placed in the docket of any proceeding.⁸ Unfortunately, without a functioning search engine, a large number of documents on optical storage media or external hard drives are virtually useless. That is why the Board further instructed the Secretary to install the documents in a separate LSN library docket of ADAMS for public access via the agency’s website.⁹ The Board’s instructions in this regard, however, established no deadline and recognized that the Secretary’s compliance would necessarily depend upon the availability of funding.¹⁰ Thus, the Board’s orders do not ensure timely access to searchable LSN document collections through the NRC.

DOE asserts that, nonetheless, the Board’s imposition of an accelerated deposition document index requirement is not necessary to expedite discovery. Pointing out that NRC regulations require such indices only ten days in advance of scheduled depositions,¹¹ DOE

⁵ DOE Motion at 2.

⁶ See CAB Order (Granting in Part and Denying in Part Reconsideration Motion) (June 9, 2011) (unpublished) [hereinafter Board June 9, 2011 Order]; see also CAB Order (Concerning LSNA Memorandum and Parties’ LSN Document Collections) (Apr. 11, 2011) (unpublished).

⁷ Board June 9, 2011 Order at 6.

⁸ Id.

⁹ Id.

¹⁰ Id. at 6-7.

¹¹ 10 C.F.R. § 2.1019(i).

states that “[t]here is no reason to believe that meeting this ten-day time frame will be problematic if discovery resumes, or that lack of access to documents previously on the LSN will be an issue for deposition scheduling.”¹²

DOE represents that it “has a copy in a searchable database of all documents on the LSN.”¹³ DOE further represents that it “has cooperated with Nevada to ensure it receives a copy of DOE’s public LSN document collection.”¹⁴ DOE and Nevada subsequently executed a written agreement to this effect.¹⁵ Likewise, DOE represents that it “will cooperate in making available copies of its public LSN collection to other parties for a reasonable cost should they so request,”¹⁶ as its agreement with Nevada appears to require.¹⁷

DOE expressly assures the Board that “[t]his will allow parties to engage in deposition preparation notwithstanding any LSN unavailability.”¹⁸ It therefore concludes that “there is no need to require parties at this time to incur the undue and potentially unnecessary expense associated with identifying and preparing an index of documents in the possession of potential deponents.”¹⁹

Accordingly, based solely upon DOE’s representations, the State of Nevada’s concurrence in the motion containing those representations, and the absence of objection by all

¹² DOE Motion at 6.

¹³ Id. at 2.

¹⁴ Id.

¹⁵ See U.S. Department of Energy’s and State of Nevada’s Joint Response to July 7, 2011 CAB Order (July 12, 2011) [hereinafter Joint Response].

¹⁶ DOE Motion at 2.

¹⁷ Joint Response, Attachment, Agreement to Provide Licensing Support Network Document Collection (July 12, 2011) at 5.

¹⁸ DOE Motion at 6.

¹⁹ Id.

but one of the other parties, pursuant to 10 C.F.R. § 2.323, DOE's motion for reconsideration and rescission of the indexing requirement in the Board's June 10, 2011 order is granted.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

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Paul S. Ryerson
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Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 18, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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U.S. DEPARTMENT OF ENERGY)
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Docket No. 63-001-HLW
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Licensing Board **ORDER (Granting DOE's Partial Reconsideration Motion)**, dated July 18, 2011, have been served upon the following persons by Electronic Information Exchange.

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