

# February 2010

## High-level Waste Hearings Summary Table

# High-Level Waste hearing

Request for Additional Information table (RAI's) [here](#)

## ORDERS Electronic Hearing Docket Board Orders for Feb - CAB 4

Date	January 26 & 27	Feb 11	Feb 2
	<p>CAB CASE MANAGEMENT ORDER #3 The Board's Case Management Order #2, dated September 30, 2009, provides that Phase I discovery shall end on November 30, 2010 or two months after the NRC Staff issues SER Volume 3, whichever is later. At a prehearing conference conducted at the Las Vegas Hearing Facility on January 27, 2010, the Staff represented that it presently expects SER Volume 3 to be issued during November 2010, rather than in September 2010 as previously estimated. Accordingly, with the consent of all parties represented at the prehearing conference, the Board hereby extends the period for Phase I discovery through January 31, 2011.</p>	<p><a href="#">Hearing Proceedings, Transcripts</a> January 26, 27, 2010 9:00 a.m. PST</p>	<p>ORDER (Granting Interim Suspension of Discovery) The Department of Energy (DOE) has requested an interim suspension of discovery, pending resolution of DOE's Motion to Stay the Proceeding filed February 1, 2010. No party having objected, DOE's request for an interim suspension of discovery is granted. It is so ORDERED.</p>
	Feb 5	Feb 16	Continued
	<p>NOTICE (Releasing February 23, 2010 Date) In light of the February 4, 2010 U.S. Department of Energy filing, the parties no longer need to reserve the Tuesday, February 23, 2010 date for a case management conference</p>	<p>ORDER (Granting Stay of Proceeding) On February 1, 2010, the Department of Energy (DOE) moved for an interim suspension of discovery as well as a stay of most aspects of this construction authorization proceeding through the disposition of a further motion (which DOE stated that it will file within the next 30 days) seeking to withdraw its license application. DOE clarified that it was not requesting to stay "DOE's submission addressing the Board's questions at the January 27, 2010 Case Management Conference, as well as the other parties' written responses to that filing."<sup>1</sup> On February 2, 2010, the Board granted DOE's unopposed request for an interim suspension of discovery, pending disposition of DOE's motion to stay.<sup>2</sup> DOE's motion to stay is supported by nearly all parties.<sup>3</sup> No party or interested governmental participant has filed a timely opposition. Therefore, to avoid potentially unnecessary expenditure of resources, but with the exception noted below, the Board grants DOE's motion to stay the proceeding until the Board resolves DOE's expected motion to withdraw its license application.</p>	<p>The grant of this stay shall not in any way affect the Board's future actions regarding the preservation and archiving of the Licensing Support Network document collections of the parties and interested governmental participants. The Board expects to set a schedule for further filings in that regard after DOE submits a status report on its archiving plan, as promised no later than February 19, 2010</p> <p>ORDER (Denying Staff February 4, 2010 Motion) The NRC Staff Motion of February 4, 2010 to set a schedule for corrections to the interim oral argument transcript is now moot and hence denied.<sup>1</sup> While the NRC headquarters was closed due to the recent snow emergency, the court reporter, on February, 10, 2010, filed a corrected final transcript. It is so ORDERED.</p>
	Feb 17		

	<p>ORDER (Denying Staff February 4, 2010 Motion) The NRC Staff Motion of February 4, 2010 to set a schedule for corrections to the interim oral argument transcript is now moot and hence denied.<sup>1</sup> While the NRC headquarters was closed due to the recent snow emergency, the court reporter, on February, 10, 2010, filed a corrected final transcript. It is so ORDERED.</p>		
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**MOTIONS AND PLEADINGS**

Date	Feb 1	Feb 2	
	<p><a href="#"><u>U.S. DEPARTMENT OF ENERGY'S MOTION TO STAY THE PROCEEDING</u></a> Today, the President announced the Administration's budget for fiscal year 2011. In that budget, the President directed that the DOE "discontinue its application to the NRC for a license to construct a high-level waste geologic repository at Yucca Mountain in 2010. Moreover, the budget specifies that "all funding for development of the Yucca Mountain facility will be eliminated" for fiscal year 2011. <i>Id.</i> In accord with these determinations, DOE has advised the undersigned counsel that DOE intends to withdraw the pending application with prejudice and to submit a separate Motion, pursuant to 10 C.F.R. § 2.107(a), within the next 30 days, to determine the terms and conditions, if any, of that withdrawal.</p>	<p><b>NRC STAFF RESPONSE TO U.S. DEPARTMENT OF ENERGY MOTION TO STAY THE PROCEEDING</b> On February 1, 2010, the U.S. Department of Energy (DOE) filed a motion to stay the above-captioned proceeding.<sup>1</sup> In its Motion, DOE indicated that (1) it intends to file within 30 days a motion to withdraw the pending license application seeking an authorization to construct a high-level waste geologic repository at Yucca Mountain, Nevada, and (2) it requests a stay of the proceeding (with the exception of filing on questions posed at the January 27, 2010, Case Management Conference) through the disposition of any motion to withdraw by Construction Authorization Board-04 ("the Board"). Motion at 1-2. DOE requested that the Board promptly issue an interim order suspending discovery activities pending its resolution of the Motion in light of the upcoming derivative discovery deadlines associated with depositions scheduled to begin this month. <i>Id.</i> at 2. The Board granted DOE's request for an interim suspension of discovery on February 2, 2010.<sup>2</sup> The Motion indicates the NRC staff ("Staff") took no position on the motion.</p>	
Date	Feb 4	Continued	Continued

	<p><b>THE DEPARTMENT OF ENERGY'S ANSWERS TO THE BOARD'S QUESTIONS AT THE JANUARY 27, 2010 CASE MANAGEMENT CONFERENCE</b></p> <p>The U.S. Department of Energy (DOE) provides the following information in response to the Board's questions at the January 27, 2010 Case Management Conference. The recitation of the questions reflects DOE's understanding of what the Board requested. <b>1. Provide the content of the President's Fiscal Year 2011 budget as it relates to the Yucca Mountain licensing proceeding and the planning assumptions regarding the operation of DOE's LSN collection for the remainder of Fiscal Year 2010 and Fiscal Year 2011.</b></p> <p>The Administration's budget request, released February 1, 2010, states that DOE "will discontinue its application to the U.S. Nuclear Regulatory Commission for a license to construct a high-level waste geologic repository at Yucca Mountain" in 2010 and that "[a]ll funding for development of the Yucca Mountain facility and the Office of Civilian Radioactive Waste Management will be eliminated by the end of FY 2010."</p> <p><b>Does DOE have any plans to request OMB to reprogram Fiscal Year 2010 funds away from any activity needed to support licensing?</b></p> <p>As stated in the Administration's Fiscal Year 2011 President's Budget, DOE intends to discontinue its Yucca Mountain license application in Fiscal Year 2010. DOE will use remaining funding in FY 2010 to bring the Yucca Mountain Project and the Office of Civilian Radioactive Waste Management to an orderly close. DOE will take the budgetary steps necessary to effectuate those directions.</p> <p><b>3. Does DOE have any plans to alter the organizational structure for OCRWM insofar as it concerns responsibilities for DOE's LSN collection?</b></p> <p>DOE will merge into the Office of Nuclear Energy the "core functions and staff [of the Office of Civilian Radioactive Waste Management (OCRWM)] to support efforts under the Nuclear Waste Policy Act to meet the obligations of the Government ...." Budget Request at 194. The budget request does not specifically address responsibilities for DOE's LSN collection, but any such responsibilities would continue under the Office of Nuclear Energy.</p>	<p><b>4. For each of the four components of DOE's LSN collection (Record Information System Records Processing Center, E-mail, E-File, and Paper), answer the following questions.</b></p> <p>a. Number of documents and pages in DOE's LSN col.  b. Percentage of DOE's LSN collection.  c. Format in DOE's LSN Collection.  d. Native format.  e. Percentage of native format that is in PDF.  f. Retention schedule of native format.  g. Whether the native format is suitable for Federal Record Material.</p> <p>The answers to these questions for each of the four components of DOE's LSN collection are in the chart provided as Attachment A. Altogether, DOE's LSN collection currently contains approximately 3.65 million documents. Those documents comprise approximately 34 million electronic image files (one page per file). Most of the images (87.4%) are in black &amp; white and are TIFF files. The balance (12.6%) are in color or grey scale and are IPEG files. In addition to the image files, the text of each document is represented by an HTML file, and for all documents, associated meta-data (i.e., title, authors, etc.) are represented by an XML file. There is one HTML and one XML file for each document.</p> <p><b>Is the RIS collection in any way linked to the LSN accession number?</b></p> <p>There is not an electronic link between the RIS and DOE's LSN collection. However the header information for a document in the RIS identifies its LSN accession number if a copy of that document is part of DOE's LSN collection.</p> <p><b>6. Does DOE currently have any plans to archive its LSN document collection?</b></p> <p>DOE will archive its LSN collection in a manner that complies with the Federal Records Act and with National Archives and Records Administration (NARA) guidance, and that is consistent with budget authorization.</p> <p><b>a. Does DOE intend to archive its LSN collection in a readily retrievable format?</b></p> <p>DOE will work with NARA to ensure that the format of its archived LSN records comply with retrievability requirements of the Federal Records Act and NARA regulations.</p> <p><b>b. What are the principal components or features of that archiving plan?</b></p> <p>DOE has not yet decided on the specific components or features of its archiving plan but is working expeditiously to do so</p>	<p><b>c. What format will DOE use to archive documents in its LSN collection that are not currently in PDF format?</b> DOE understands, based on its reading of NARA guidance, that the file format of its current LSN collection would be acceptable to NARA. DOE further understands that NARA would not require the conversion of those files to PDF and that the files would remain accessible in their current format. DOE, however, is conferring with NARA and will address this further in its next report. <b>In addition,</b> DOE understands that NARA would permit archiving of DOE's LSN collection in essentially its present structure. Regardless, DOE is investigating the feasibility of restructuring the directory structure of its LSN collection to allow each document in that collection to be archived as single file, rather than being stored page by page in separate files and being assembled "on the fly," as the LSN currently operates, or in PDF format. This too is the subject of DOE's consultation with NARA.</p> <p><b>d. Will DOE share its archiving plan with the LSNA and the Licensing Support Network Advisory Review Committee?</b></p> <p>DOE will consult with the LSNA regarding its plan for archiving its LSN collection and will share its plan with the LSNA as well. DOE is not certain that consultation with the LSN Advisory Review Committee would be effective. The LSN Advisory Review Committee was constituted to provide advice on the functioning of the LSN in the context of the licensing proceeding. See 10 CFR 2.1011(e). The archiving of DOE's LSN collection following termination of the licensing proceeding would seem to be outside the Committee's scope of responsibility and expertise. Also, the Committee has not met for some years, and it may not be in a position to provide advice as expeditiously as DOE would like for the development of its archiving plan.</p> <p><b>e. What are the "when", "how", "where" and cost of DOE's archiving plan?</b> DOE will provide these specifics when it reports to the Board on its archiving plan.</p> <p>f. How long it would take to complete.</p> <p>The time needed to archive DOE's LSN collection depends on the specifics of its archiving plan. When DOE has finalized those plans, it will provide the Board with a time estimate.</p>
Date	Feb 16	Feb16	Feb21

	<p><b>REPLY OF THE NUCLEAR ENERGY INSTITUTE TO THE DEPARTMENT OF ENERGY'S ANSWERS TO BOARD QUESTIONS</b></p> <p>.....DOE has now separately indicated its intent to withdraw the pending application for construction authorization for the Yucca Mountain repository, and moved for a stay of this proceeding pending its withdrawal motion.</p> <p>NEI is not in a position to comment on the technical details of the DOE filing of February 4, 2010, addressing the LSN and DOE's archiving plans. NEI's position is that Yucca Mountain technical information, records, documents, and the LSN constitute an important and irreplaceable resource and, potentially, an important project legacy — funded by electric ratepayers through Nuclear Waste Fund fees. NEI will address appropriate terms and conditions on any license withdrawal in connection with the forthcoming DOE motion. In the meantime, in response to the vague nature of DOE's present plans as submitted on February 4, 2010, the Board should act immediately to assure that DOE and all parties continue to maintain and preserve all Yucca Mountain technical information, records, documents, and the LSN in <i>status quo</i>, until a final NRC decision on the DOE motion to withdraw the license application is issued.</p>	<p><b>NYE COUNTY, NEVADA PRELIMINARY RESPONSE TO DOE'S FEBRUARY 4, 2010 ANSWERS TO CAB LSN QUESTIONS</b></p> <p>Nye County believes that DOE's Yucca Mountain technical information, records, documents, physical samples and scientific data, as well as the materials in the LSN collection constitute a critical national resource and source of information. All of that information should be protected and preserved for possible future use. Additionally, DOE should be required to put its LSN information in a format that will permit the other participants and future interested parties to readily search that information and retrieve the documents and information.</p>	<p><b><u>PETITION OF THE STATE OF SOUTH CAROLINA TO INTERVENE</u></b></p> <p>South Carolina hereby petitions to intervene as a full party to this proceeding. The purpose of the requested intervention is to oppose, as a matter of law, the anticipated motion of the Department of Energy to withdraw, with prejudice, the application in this case. Because this Petition is being filed after the normal deadline for such petitions, although not untimely under the circumstances set forth herein, South Carolina also requests that this Petition be granted as timely for the reasons set forth herein, or if it is deemed untimely, that it be permitted to be filed untimely, also for the reasons set forth herein. Those reasons, in summary, are that only within the past thirty days or less has the Department of Energy made it clear that it would seek to withdraw the application in this matter with prejudice.</p>
<b>Date</b>	<b>Feb19</b>	<b>Feb 19</b>	

**THE DEPARTMENT OF ENERGY'S STATUS REPORT ON ITS ARCHIVING PLAN**

In its "Answer to the Board's Questions at the January 27, 2010 Case Management Conference," filed by the U.S. Department of Energy ("DOE") on February 4, 2010, with the Atomic Safety and Licensing Board Construction Authorization Board 04 ("Board") ("DOE's February 4, 2010 Answer"), DOE stated that it "will continue to comply with LSN requirements during the remainder of the licensing proceeding and will preserve and archive its project records thereafter in compliance with federal requirements and consistent with DOE's objective of preserving the core scientific knowledge from the Yucca Mountain project." DOE's February 4, 2010 Answer, at 2. DOE further stated that it would "provide the Board a status report on its archiving plan by no later than February 19, 2010." *Id.* at 4. Accordingly, DOE provides the following status report regarding the archiving plan for its document collection on the Licensing Support Network ("LSN").

DOE plans to archive their Yucca Mountain Once NARA makes a final determination regarding the disposition of DOE's LSN collection and the retention periods and formatting requirements for those documents, DOE will inform the Board of NARA's decisions and DOE's plans to comply with them. DOE also will work with NARA to ensure that the disposition of DOE's LSN collection complies with any applicable NARA requirements regarding retrievability of documents.

**NARA Records Management Guidance and Regulations**

- NARA regulations affecting Federal agencies and their records management programs are found in Subchapter B of 36 Code of Federal Regulations Chapter XII.
  - [NARA Regulations](#)

**[Letter](#) to NRC's Judge Moore from K&L Gates LLP**

**Who** represents three individuals, Bob Ferguson, Bill Lampson and Gary Petersen, who live and work in eastern Washington, very near the Hanford Site.

Yesterday, February 18, 2010, on their behalf we sent the enclosed letter to President Obama and Energy Secretary Chu, notifying them of our clients intent to sue each of them for violating the Nuclear Waste Policy Act ( NWPA ) by abandoning the development of the repository at Yucca Mountain.

We understand that the Atomic Safety Licensing Board (ASLB or Board) Construction Authorization Board that you chair is conducting proceedings regarding the application for construction authorization that the Department of Energy submitted to the Nuclear Regulatory Commission on June 3, 2008. We further understand that on February 1, 2010 the Department of Energy filed a motion to stay the proceedings and has announced an intent to file a further motion to withdraw the application with prejudice in the very near future. Because the enclosed letter has direct bearing on the matter presently before the Board, we ask that you take official notice of it pursuant to the Commissions rules at 10 CFR §§ 2.711 and 2.1000. We have copied the individuals on the Board's service list. Pursuant to the NWPA, the Commission is required to decide the application. The Secretary's plan to withdraw the application is inconsistent with his obligation to file it. Furthermore, in light of the Commission's statutory obligation to decide the license within 3 years (with provisions for one 12 month extension), granting a withdrawal of the application and not deciding it on its merits would be *ultra vires*. Accordingly, if the Commission permits withdrawal of the application, it too will be in violation of the NWPA, which may result in further legal action. These violations would be substantively different from those which the President and Secretary have already committed.

Thank you for your consideration. If you have any questions, please contact us.

Very truly yours,  
Barry M. Hartman  
John P. Englert  
Christopher R. Tate