

# June 2011 High-level Waste Hearings Summary Table

Of interest: July 1<sup>st</sup>, 2011, [Court of Appeals decision](#)

# High-Level Waste hearing

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

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

Date	June 9	June 10	
	<p>Board Order - (<a href="#">Granting in Part and Denying in Part Reconsideration Motion</a>)</p> <p>....The Staff's motion for reconsideration of the Board's April 11 order clearly fails to satisfy the standard for granting such a motion under 10 C.F.R. § 2.323(e). As the Commission stated in the 2004 Statement of Considerations, this standard "is a higher standard than the existing case law, [and] is intended to permit reconsideration only where manifest injustice would occur in the absence of reconsideration." No injustice of any kind will result from our April 11 order, which was designed to preserve the LSN electronic discovery database representing decades of research and history. The April 11 order imposes no deadline on the Secretary and requires no actions for which funding is not available.</p> <p>The Board's April 11 order, as amended, causes no harm, much less irreparable harm, to the Staff because it does not require the Staff to take any action regarding its LSN collection. With respect to the Secretary, the Board's order initially only instructs the Secretary to receive the parties' LSN collections on storage media and treat those physical objects in the same manner it handles physical objects in any other proceedings. With respect to ADAMS, the Board's order, without any deadline, only directs the Secretary to begin the administrative, budgetary and financial procedures for placing the parties' LSN collections on ADAMS, as funding allows. Thus, any conjectured harm is not irreparable and cannot possibly be imminent.</p> <p>Accordingly, the Staff's motion for reconsideration of that portion of the order concerning ADAMS is denied.</p>	<p><a href="#">ORDER (Regarding Use of LSN)</a></p> <p>For the reasons explained in the Board's order of June 9, 2011,<sup>1</sup> the LSN may cease being operational sometime before September 30, 2011 because of fiscal year (FY) 2011 fiscal constraints. After any shutdown of the LSN, it could be some time before documents would again be fully accessible electronically, assuming that the current controversial FY 2012 budget is resolved in a manner directing continuation of the licensing proceeding. Nonetheless, while the Board has issued a protective order to prevent potentially unnecessary depositions from going forward at this time, the Board believes that—if and when discovery actively resumes—Phase I depositions should then commence without undue delay.</p> <p>Accordingly, to the extent they have not already done so, the parties are directed to make good faith efforts, in the ensuing weeks before the LSN is shut down, to take advantage of their existing opportunity to access documents relevant to the depositions of previously- identified Phase I Nevada safety contention witnesses (whether proffered by Nevada or DOE).</p> <p>In short, if and when the adjudicatory process actively resumes, the Board does not expect that potential limitations on the initial performance of the LSN should constitute a blanket excuse for deferring these depositions. There may, of course, be reasons why certain of these depositions cannot proceed fairly and efficiently without the LSN, and—if and when necessary—the Board will address such exceptions at the appropriate time.</p>	

## MOTIONS AND PLEADINGS

June 20	June 20	June 20
<p><a href="#">U.S. DEPARTMENT OF ENERGY'S MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF JUNE 10, 2011 CAB ORDER</a></p> <p>DOE moves the Board pursuant to 10 C.F.R. § 2.323 for leave to seek reconsideration and rescission of the <i>sua sponte</i> Order (Regarding Use of LSN) (June 10, 2011) to the extent that it requires circulation of document indices "as soon as practicable, so there can be an opportunity to confer and consult . . . as to their adequacy while the [Licensing Support Network (LSN)] remains operational."</p> <p>DOE argues that until a witness is disposed knowing which documents may be used would require extensive research perhaps even traveling to the witness location to interview and determine the viability of any documents that may be used in the hearing that are not on the LSN. DOE also argues that guideline 10 C.F.R. § 2.1019(i) already sets the standard for obtaining witness documentation.</p> <p>DOE is also noting that they will provide the entire DOE collection of LSN documentation to the NRC as required in the previous order and will have available for purchase the entire collection of their LSN documentation for a small fee to any other party requesting a copy. Therefore, additional costs to indices the witness list of documents would add additional financial burden to the parties.</p>	<p><a href="#">NRC STAFF PETITION FOR THE COMMISSION TO EXERCISE ITS INHERENT SUPERVISORY AUTHORITY TO REVIEW APRIL 11 AND JUNE 9, 2011 BOARD ORDERS</a></p> <p>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.</p>	<p><a href="#">NRC STAFF REQUEST FOR STAY OF THE APRIL 11 AND JUNE 9, 2011 BOARD ORDERS</a></p> <p>NRC staff requests the NRC Commissioners to intervene on the April 11 Board order regarding the preservation of the LSN electronic discovery database.</p>
June 30:	June 30:	
<p><a href="#">NYE COUNTY, NEVADA'S ANSWER TO NRC STAFF'S REQUEST FOR STAY AND TO THE DEPARTMENT OF ENERGY' MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION</a></p> <p>CONCLUSION</p> <p>Congress has not amended the NWPA to eliminate Yucca Mountain as the sole site for the nuclear repository, nor has it altered NRC's statutory duty to reach a decision on the merits of the license application within a prescribed period of time. More importantly, the CAB04 ruling that the license application may not be unilaterally withdrawn by DOE is the law of this case. Therefore, CAB04's efforts to maintain the LSN, or a functional alternative, in a manner that allows ease of access to vital documents by the parties are not only legal, reasonable, and within the Board's authority, the efforts are also essential under the circumstances. For all of the above stated reasons, DOE's Motion for Leave to File Motion for Reconsideration of this Atomic Safety and Licensing Board's June 10, 2011 Order and NRC Staff's Request for Stay of CAB04's April 11, 2011, and June 9, 2011, should be denied.</p>	<p><a href="#">NYE COUNTY, NEVADA'S RESPONSE IN OPPOSITION TO NRC STAFF'S JUNE 20, 2011 PETITION FOR REVIEW OF BOARD ORDERS</a></p> <p>CONCLUSION</p> <p>Congress has not amended the NWPA to eliminate Yucca Mountain as the sole site for the nuclear repository, nor has it altered NRC's statutory duty to reach a decision on the merits of the license application within a prescribed period of time, or seek an extension from Congress. Just as importantly, the CAB04 ruling that DOE may not unilaterally withdraw the license application is the law of the case. NRC staff does not assert that the licensing proceeding has been lawfully terminated or that sufficient funds are unavailable to continue the LSN's operation. Therefore, CAB04 should reject NRC staff's petition for review. In the alternative, it should commit to continuing the LSN's operational until a final unappealable order terminating the licensing proceeding is issued by a Court or until Congress has amended the NWPA to eliminate Yucca Mountain as the sole site for the Nation's nuclear repository.</p>	

June 30:	June 30:	June 30:
<p><a href="#">STATE OF NEVADA ANSWER TO DOE MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION OF JUNE 10, 2011 CAB ORDER</a></p> <p>No one knows if <b>any</b> deposition will ever occur in this proceeding.</p> <p>No one knows <b>who</b> will be deposed, or on what subjects, in this proceeding.</p> <p>No depositions are scheduled or noticed in this proceeding and may never be.</p> <p>Accordingly, the creation of an expanded and accelerated scenario of index creation (a) is unnecessary; and (b) creates the <b>certainty</b> of an excessive, unnecessary waste of the parties' resources.</p> <p><b>IV. CONCLUSION</b></p> <p>For the reasons set out above, and the additional reasons stated by DOE (Motion, generally), Nevada requests that the CAB reconsider and rescind its May 10, 2011 Order.</p>	<p><a href="#">STATE OF NEVADA ANSWER TO NRC STAFF PETITION FOR THE COMMISSION TO EXERCISE ITS INHERENT SUPERVISORY AUTHORITY TO REVIEW APRIL 11 AND JUNE 9, 2011 BOARD ORDERS</a></p> <p>The State of Nevada (Nevada) does not object to NRC Staff (Staff) filing a Petition for the Commission to Exercise Its Inherent Supervisory Authority, but takes no position on the relief sought by Staff (although Nevada is opposed to Staff's concurrent request of the Commission for a partial stay of this proceeding as addressed in Nevada's separately filed Answer to NRC Staff's Request for Stay). On June 20, 2011, Staff filed the above-captioned Petition, asking the Commission to review certain Orders of the Yucca Mountain Construction Authorization Board (CAB), particularly those aspects requiring the NRC Office of the Secretary (SECY) to receive and accept and process the LSN documents of all the parties to the Yucca Mountain licensing proceeding and to begin the administrative, budgetary, and financial processes prerequisite to establishing a SECY-operated Yucca Mountain document library on ADAMS. Staff questions the propriety of assigning to SECY what were document preservation requirements heretofore the responsibility of the parties, under longstanding LSN regulations. Staff also questions the conversion of the document collections of the parties into NRC agency records, thus requiring their long-term management by NRC in accordance with federal records management regulations.</p> <p>Nevada understands the concerns raised by Staff regarding the use of ADAMS for a purpose not contemplated by existing LSN regulations and does not object to Staff's filing a Petition to the Commission to review these issues. However, Nevada takes no position on how these issues should be resolved, should the Commission decide to review Staff's Petition.</p>	<p><a href="#">STATE OF NEVADA ANSWER TO NRC STAFF REQUEST FOR STAY OF THE APRIL 11 AND JUNE 9, 2011 BOARD ORDERS</a></p> <p>While Nevada would support a <b>temporary</b> stay of the entire proceeding until the uncertainties surrounding its continuation are resolved, it cannot support a partial stay such as that requested by Staff— one which could serve to destroy public access to the LSN document collections comprising some four million documents. For these reasons, Nevada is opposed to the limited stay requested by Staff. Nevada is also opposed to the "housekeeping" stay proposed by Staff, to give time to the Commission to decide its associated Petition. Given the Commission's recent record in deciding issues presented to it from this proceeding (e.g., its one full year <b>not</b> deciding the issue of DOE's withdrawal), there is no reason to believe a "housekeeping" stay would turn out to be short term in nature. Moreover, since Nevada is opposed to the requested partial stay, it stands to reason that a housekeeping stay would effectively achieve the same result, particularly if the Commission is unable or unwilling to decide the Staff's Petition in a timely manner.</p>