

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:**

**09-892-HLW-CAB04
Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell**

_____)	
In the Matter of)	February 19, 2010
)	
U.S. DEPARTMENT OF ENERGY)	Docket No. 63-001-HLW
)	
(High Level Waste Repository)	
Construction Authorization Application))	
_____)	

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”).

1. **LSN Participant Website.** DOE reaffirms that it will keep its LSN participant website compliant and accessible via the NRC's LSN portal until there is a final non-appealable order dismissing the license application for a repository at Yucca Mountain and terminating these proceedings. That includes maintaining the existing functionalities of its LSN website during the pendency of this proceeding, including any appeals, as long as the NRC maintains its LSN portal. Further, DOE will add to its LSN collection any existing documentary material that is currently in process for production onto the LSN notwithstanding the suspension order. Also, DOE expects to transition responsibility for keeping its LSN participant website operational, and for any archiving of DOE's LSN collection, to DOE's Office of Nuclear Energy from DOE's Office of Civilian Radioactive Waste Management ("OCRWM"), though DOE reserves the right to assign implementation of these responsibilities to another DOE office to maximize efficiency. Such transition will not affect the functionality of DOE's LSN collection.

2. **Request for Records Disposition Authority.** Since its February 4, 2010 filing, DOE has undertaken further discussions with representatives of the National Archives and Records Administration ("NARA") regarding the maintenance and disposition of its LSN documents after the conclusion of this proceeding. Based on those discussions, and in order to comply with the Federal Records Act and the requirements of NARA, DOE plans to file with NARA a "Request for Records Disposition Authority" (Standard Form 115 or SF-115) for DOE's LSN collection. In a SF-115, an agency recommends final action or "disposition" for its records. Following receipt of a SF-115, NARA staff reviews the recommended disposition set forth on the SF-115, solicits public comments through a Federal Register notice, and determines if the recommended disposition is appropriate. Although NARA will consider DOE's disposition recommendation, NARA is the agency authorized to decide how long records will be

retained and whether any portion of the DOE LSN collection should be deemed permanent (i.e., never destroyed). Legal title to any records deemed permanent will transfer to NARA in accordance with the instructions contained in the SF-115. DOE will work with NARA to determine an appropriate retention schedule to recommend for its LSN collection that is consistent with DOE's objective of preserving the scientific knowledge from the Yucca Mountain project.

Barring unforeseen circumstances, DOE intends to file its SF-115 for its LSN collection as soon as possible and, in any event, within sixty days of this status report. NARA has advised DOE that the SF-115 review process and approval usually takes approximately one year to complete but could take longer. When the SF-115 is approved by NARA, adherence to the disposition instructions contained in the SF-115 is mandatory.

NARA record formatting requirements may vary depending on NARA's characterization of DOE's records as temporary (which could be for a hundred years or longer) or permanent. NARA staff have indicated that, if the records are deemed temporary, the electronic records that comprise DOE's LSN collection are acceptable in their current format. If NARA categorizes the records as permanent, DOE likely would need to seek exemptions from NARA for those records in compressed TIFF or JPEG format. If such exemptions were not granted, DOE would work with NARA to transfer the records to NARA in a manner acceptable to NARA. However, regardless of the categorization NARA gives DOE's LSN collection, NARA staff has confirmed with DOE that (1) NARA would not require the DOE LSN collection to be converted to PDF format, and (2) NARA would not require DOE to restructure its LSN collection to archive each document in that collection as a single file, rather than being stored page by page in separate

files.¹ Nevertheless, DOE is considering whether there are cost-effective ways to maintain these materials in a readily searchable alternative format.

3. **Consultations with the LSN Administrator.** DOE has consulted with Daniel J. Graser, the LSN Administrator, regarding this update and has informed him of DOE's plans as stated in this report. DOE plans to continue to consult with the LSN Administrator as DOE finalizes its archiving plan, including cost-effective ways to maintain these materials in a readily searchable alternative format.

4. **Next Steps.** 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. DOE will continue to keep the Board timely and fully apprised of its progress in finalizing an archiving plan for its LSN collection and will provide the Board with a copy of the final archiving plan promptly upon its completion. If this proceeding has been terminated prior to NARA's final determination, DOE will provide that information to the Secretary of the Commission.

¹ Telephone conversation on February 9, 2010, between H. Leake, Supervisor – OCRWM's Information Technology Division, and K. Smith, Digital Imaging Supervisor, NARA Federal Records Center Program, Southwest Region.

Respectfully submitted,

U.S. DEPARTMENT OF ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that copies of the **THE DEPARTMENT OF ENERGY'S STATUS REPORT ON ITS ARCHIVING PLAN** have been served on the following persons on this 19th day of February 2010 through the Nuclear Regulatory Commission's Electronic Information Exchange.

CAB 04

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