

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

February 25, 2011

ORDER  
(Directing NRC Staff's Show Cause)

On February 17, 2011, the NRC Staff filed a notification stating that, on that same date in response to a Freedom of Information Act request, it had "made available redacted copies of preliminary drafts of Volumes 2 and 3 of the SER."<sup>1</sup> Previously, the Staff notified the Board on the penultimate day of the Staff's schedule for issuing Volume 3 of the SER, that it would not meet its longstanding schedule and on December 8, 2010, the Board directed the Staff to provide an explanation of its last minute schedule change.<sup>2</sup>

Nothing in the Staff's December 22, 2010 purported explanation for its last minute schedule change, or in the various documents the Staff quotes and cites therein, sheds light on how SER Volume 3, on the day before it was long scheduled to be issued, comports with the Staff's characterization of SER Volume 3 being a preliminary draft. Accordingly, the Staff shall, by March 3, 2011, show cause why the Staff should not be ordered to place, in unredacted form

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<sup>1</sup> NRC Staff Notification of Disclosure Pursuant to Freedom of Information Act (Feb. 17, 2011).

<sup>2</sup> See CAB Order (Addressing Nevada's Motion and Discovery Status) (Dec. 8, 2010) at 2 (unpublished). In that order, the Board noted that

the Staff had informed the Board at the January 27, 2010 case management conference that the Staff's schedule for issuing SER Volume 3 had slipped from September 2010 to November 2010, a date the Staff confirmed at the June 4, 2010 case management conference. The Staff had initially established the September 2010 issuance date for SER Volume 3 in its July 10, 2009 filing answering Board questions. Id. at 1-2 (internal citations omitted).

except for classified and safeguards information, Volume 3 of the SER in its LSN document collection as circulated draft documentary material in accordance with 10 C.F.R. § 2.1001 and its continuing obligation to “make a diligent good faith effort to include all after-created . . . documents as promptly as possible in each monthly supplementation of documentary material.”<sup>3</sup>

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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Thomas S. Moore, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
February 25, 2011

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<sup>3</sup> Revised Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution) (July 6, 2007) at 21 (unpublished). See CAB Case Management Order #1 (Jan. 29, 2009) at 2 (unpublished).

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Docket No. 63-001-HLW  
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Board **ORDER (Directing NRC Staff's Show Cause)**, dated February 25, 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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U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW  
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[Original Signed by Linda D. Lewis]  
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Dated at Rockville, Maryland  
this 25<sup>th</sup> day of February 2011