

March 30, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRE-LICENSE APPLICATION PRESIDING OFFICER BOARD

In the Matter of	)	
	)	Docket No. PAPO-00
U.S. DEPARTMENT OF ENERGY	)	
	)	ASLBP No. 04-829-01-PAPO
(High-Level Waste Repository:	)	
Pre-Application Matters)	)	NRC-05

MOTION TO RECLAIM PRIVILEGED DOCUMENTS

INTRODUCTION

The NRC Staff moves to reclaim 15 documents inadvertently published on the Licensing Support Network (LSN) that are subject to the secondary, privacy privilege. See Second Case Management Order (Pre-License Application Phase Document Discovery and Dispute Resolution), July 8, 2005, at 4. The grounds for this motion are set forth below.

DISCUSSION

Part II.H of the Second Case Management Order states, "Upon timely motion, a potential party that inadvertently produces a privileged document may be permitted, in appropriate circumstances and upon a showing of good faith inadvertence, to re-claim the document from other potential parties."<sup>1</sup> Second Case Management Order, at 8. NRC Staff counsel was advised by Staff information technology personnel on March 29, 2006, that 15 documents, containing personal privacy information were published on the LSN. These documents were discovered as part of a review of the Agencywide Documents Access and Management System for personal information that may have been inadvertently made public. NRC Staff counsel has

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<sup>1</sup> In its order of February 16, 2006, the Pre-License Application Presiding Officer (PAPO) stated that the post-certification procedure for re-claiming a privileged document that is inadvertently produced is set forth in Part II.H of the Second Case Management Order. PAPO Board Memorandum and Order (Deletions of Documents From the LSN), Feb. 16, 2006, note 9.

reviewed the documents to confirm that they contain personal identifying information that is subject to a claim of privilege. See Second Case Management Order, Appendix D-1.

The 15 documents were among the approximately 25,000 documents published on the LSN coincident with the Staff's certification of its collection in July 2004. The privacy-related information was not identified during the processing of documents prior to the Staff's certification. This is because the documents were already public and presumed not to contain privacy information. Accordingly, the Staff contends that there was good faith inadvertence in the publication of these documents on the LSN.

In order to expeditiously remove the documents from the LSN, the NRC Staff proposes to provide a list of accession numbers of the 15 documents to the LSN Administrator (LSNA), who, upon the PAPO Board's approval, will remove the documents from the LSN. In accordance with the Second Case Management Order, the Staff will provide redacted versions of the 15 documents to the LSNA along with bibliographic headers for the redacted and unredacted versions. See Second Case Management Order, at 15. The bibliographic headers will be cross-referenced. See *id.* The Staff will provide the redacted documents and bibliographic headers within five business days to the LSNA.

#### CONCLUSION

In light of the foregoing, NRC Staff counsel submits that good cause exists to grant the NRC Staff's request to reclaim the 15 documents on the LSN that are subject to privilege. Therefore, the Staff's motion to remove the 15 documents from the LSN and to substitute redacted versions with the appropriate bibliographic headers should be granted. Pursuant to 10 C.F.R. § 2.323(b), NRC Staff counsel has contacted counsel for the State of Nevada,

Department of Energy and Nuclear Energy Institute, and the LSN Administrator for Mineral County, Nevada who do not object to this motion.

Respectfully submitted,

**/RA/**

Harry E. Wedewer  
Counsel for the NRC Staff

Dated at Rockville, Maryland  
this 30th day of March, 2006

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "MOTION TO RECLAIM PRIVILEGED DOCUMENTS" in the above captioned proceeding have been served on the following persons this 30th day of March, 2006 by Electronic Information Exchange.

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