

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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George Apostolakis  
William D. Magwood, IV  
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In the Matter of

U.S. DEPARTMENT OF ENERGY

(High-Level Waste Repository)

Docket No. 63-001-HLW

**CLI-11-07**

**MEMORANDUM AND ORDER**

On June 30, 2010, the participants were invited to submit briefs as to whether the Commission should review, and reverse or uphold, the Board's decision denying the Department of Energy's motion to withdraw its construction authorization application with prejudice.<sup>1</sup> Upon consideration of all filings in this matter, the Commission finds itself evenly divided on whether to take the affirmative action of overturning or upholding the Board's decision.

Consistent with budgetary limitations, the Board has taken action to preserve information associated with this adjudication.<sup>2</sup> In furtherance of this, we hereby exercise our inherent supervisory authority to direct the Board to, by the close of the current fiscal year, complete all

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<sup>1</sup> See LBP-10-11, 71 NRC \_\_\_\_ (June 29, 2010) (slip op.); Order (June 30, 2010) (unpublished).

<sup>2</sup> See *generally* Memorandum of Daniel J. Graser, Licensing Support Network Administrator (LSNA), to the Administrative Judges, "Shutdown of the Licensing Support Network" (July 26, 2011); Order (Concerning LSNA July 26, 2011 Memorandum) (July 28, 2011) (unpublished).

necessary and appropriate case management activities, including disposal of all matters currently pending before it and comprehensively documenting the full history of the adjudicatory proceeding.

IT IS SO ORDERED.<sup>3</sup>

For the Commission

**[NRC SEAL]**

**/RA/**

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Annette L. Vietti-Cook  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 9<sup>th</sup> day of September, 2011.

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<sup>3</sup> Commissioner Apostolakis has recused himself from this adjudication and, therefore, did not participate in this matter. See Notice of Recusal (July 15, 2010).

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NUCLEAR REGULATORY COMMISSION

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U.S. DEPARTMENT OF ENERGY )  
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Docket No. 63-001-HLW  
ASLBP No. 09-892-HLW-CAB04

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER (DOE HLW Repository, Review of LBP-10-11) (CLI-11-07)**, dated September 9, 2011, have been served upon the following persons by Electronic Information Exchange.

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Dated at Rockville, Maryland  
this 9<sup>th</sup> day of September 2011