



**Department of Energy**  
Washington, DC 20585

February 28, 2014

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Re: Response to the NRC's November 18, 2013 Request Concerning the Supplemental Environmental Impact Statement

On November 18, 2013, the Nuclear Regulatory Commission (NRC) issued a Memorandum and Order setting forth a course of action for this proceeding in light of the United States Court of Appeals for the District of Columbia Circuit's August 13, 2013 decision granting a writ of mandamus and directing the NRC to resume the licensing process. The NRC's November 18, 2013 order "direct[ed] the NRC Staff to complete and issue the Safety Evaluation Report (SER) associated with the [Department of Energy's] construction authorization application."<sup>1</sup> It further directed "the Secretary of the Commission and other appropriate staff [to] enter the Licensing Support Network (LSN) documents in the possession of the Secretary into the NRC's official recordkeeping system."<sup>2</sup> Finally, the order included a "request that the U.S. Department of Energy prepare the supplemental environmental impact statement (EIS) that the [NRC] Staff has determined is needed for purposes of the review of this application under the National Environmental Policy Act (NEPA)."<sup>3</sup> This letter describes the actions the Department will take in response to that request.

The Department agrees with the NRC that either the NRC staff "could publish the final supplement,"<sup>4</sup> or, "[a]lternately, the supplement could be prepared and issued by DOE and

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<sup>1</sup> NRC Memorandum and Order, CLI-13-08 (November 18, 2013), at 1.

<sup>2</sup> Id. at 2.

<sup>3</sup> Id.

<sup>4</sup> U.S. Nuclear Regulatory Commission Staff's Adoption Determination Report for the U.S. Department of Energy's Environmental Impact Statements for the Proposed Geologic Repository at Yucca Mountain (September 5, 2008), at 3-12.



adopted by the NRC (if sufficient).”<sup>5</sup> Moreover, the Department recognizes the NRC’s view, expressed in the November 18, 2013 order, that “in promulgating the NWPA, Congress intended that the primary responsibility for evaluating environmental impacts rests with DOE.”<sup>6</sup> Consistent with this responsibility, the Department previously completed a final EIS for the Yucca Mountain Project in 2002 and a supplemental EIS in 2008. The Department respectfully notes, however, that the NRC is the ultimate adjudicator in this proceeding, and that the NRC, rather than the Department, must eventually determine whether any groundwater analysis is “sufficient,”<sup>7</sup> and whether adoption of the Department’s environmental review, as supplemented, is “practicable.”<sup>8</sup>

Accordingly, the Department respectfully submits that it will provide to the NRC an updated version of the report it provided to the NRC on July 30, 2009, entitled, *Analysis of Postclosure Groundwater Impacts for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*. This updated analysis will, in the view of Department staff, provide the NRC with substantially all of the technical information necessary to inform a draft EIS. Given the NRC’s ultimate adjudicatory role in this proceeding, the Department respectfully defers to the NRC the preparation, to the extent necessary in the judgment of the NRC, of a supplemental EIS.

If you have questions regarding any of the above, please feel free to contact me at 702-295-2436, or [william.boyle@doe.gov](mailto:william.boyle@doe.gov).

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<sup>5</sup> *Id.* at 15. The Department recognizes that the Nuclear Waste Policy Act (NWPA) required the Department to prepare an EIS in conjunction with its recommendation to the President to approve the Yucca Mountain site. See NWPA § 114(a)(1)(D). Moreover, the Department respectfully notes that while NRC regulations provide that “the Department . . . may be required to supplement its final [EIS],” as it did in 2008, “if it makes a substantial change in its proposed action that is relevant to environmental concerns or determines that there are significant new circumstances or information relevant to environmental concerns,” 10 C.F.R. 51.67(b), the regulations further provide that “[i]f the position of the [NRC] staff is that supplementation of the [EIS] by NRC is required, it shall file its final supplemental EIS . . . before presenting its position, or as soon thereafter as may be practicable,” 10 C.F.R. 51.109.

<sup>6</sup> NRC Memorandum and Order at 16.

<sup>7</sup> *Id.* at 15.

<sup>8</sup> NWPA § 114(f)(4).

*William Boyle*

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Yucca Mountain License Proceeding Participants

**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**

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<b>In the Matter of</b> )	<b>Docket No. 63-001-HLW</b>
)	)
<b>U.S. DEPARTMENT OF ENERGY</b> )	<b>ASLBP NO. 09-892-HLW-CAB04</b>
)	)
<b>(High Level Waste Repository)</b> )	<b>February 28, 2014</b>
_____ )	

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **U.S. Department of Energy's Response To The NRC's November 18, 2013 Request Concerning the Supplemental Environmental Impact Statement** has been served on the following persons on this 28th day of February, 2014 through the Nuclear Regulatory Commission's Electronic Information Exchange.

**CAB 04**

**Atomic Safety and Licensing Board Panel**

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