

RAS 8120

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

July 9, 2004 (2:57PM)

Before Administrative Judges:

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Thomas S. Moore, Chairman
Alex S. Karlin
Alan S. Rosenthal

SERVED July 9, 2004

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository:
Pre-Application Matters)

Docket No. PAPO-00

ASLBP No. 04-829-01-PAPO

July 9, 2004

ORDER

(Initial Pre-License Application Phase Order)

Pursuant to 10 C.F.R. §§ 2.1010(d) and 2.1013(c)(1), all filings, pleadings, and requests (collectively "filings") in this high level waste (HLW) repository pre-license application proceeding shall be submitted electronically to the pre-license application presiding officer (PAPO) Board, the other participants, and the Secretary of the Commission (SECY). In accordance with the authority conferred upon the PAPO Board by 10 C.F.R. §§ 2.1010(e) and 2.319(g) and (q) to regulate the course of the proceeding and the conduct of the participants, this order sets forth general information concerning the agency's adjudicatory electronic information exchange system (EIE) as well as additional requirements and procedures that must be followed during this pre-license application phase.

I. DUAL ELECTRONIC SUBMISSION

Electronic submission of filings and PAPO Board issuances shall be accomplished by (1) service via e-mail; and (2) service via the NRC's adjudicatory EIE. The adjudicatory EIE, which is a new electronic document exchange system, will eventually become the sole means of submission of documents in this proceeding. Until otherwise instructed by the Board, however, all filings must be submitted both by e-mail and by the adjudicatory EIE in accordance with the procedures outlined below.¹ Filings must be received no later than midnight Eastern Time on the date due.

II. ELECTRONIC SUBMISSION VIA E-MAIL

To complete email service on the PAPO Board, a participant shall send the filing (which should include the certificate of service) as a file in Portable Document Format (PDF),² as an attachment to an e-mail message directed to papo@nrc.gov, the email address of the PAPO Board. The participant serving the filing should also serve all other participants and SECY (e-mail address: hearingdocket@nrc.gov) in the same manner.

III. ELECTRONIC SUBMISSION VIA THE ADJUDICATORY EIE

The NRC adjudicatory EIE was designed to allow the NRC and participants in its proceedings, to submit and exchange material related to official agency business with its

¹ The participants' experiences with the current EIE system may result in improvements and changes to the system as appropriate. Accordingly, the participants are encouraged to contact the EIE Administrator staff at www.nrc.gov/site-help/eie/feedback-eie.html with information regarding their experiences with the EIE system.

² Participants should consult pages 4-6 of the Guidance for Submission of Electronic Docket Materials under 10 C.F.R. Part 2, Subpart J, (EIE Guidance Document)(at www.nrc.gov/reading-rm/ehd/ml041560341.pdf) for more information on preferred PDF output file formats and their recommended uses.

customers and other federal agencies across the Internet. The system uses a public key infrastructure and digital signing technology to ensure that electronic documents can be transmitted via the Internet in a secure and unalterable manner. In this HLW pre-license application proceeding, filings are submitted via the adjudicatory EIE through the use of the HLW Submittal Form. A submitter must fill in the required fields of the form, electronically attach the filing to the form (much in the same way a document is attached to an e-mail message), and then submit the form and filing. Once a filing is submitted via the EIE, it will effect electronic service notice of the filing on the PAPO Board, SECY, and all other persons listed on the EIE official service list, which will be created and maintained by the Secretary. The service notice will be in the form of an e-mail advising the recipients that a document has been filed in the proceeding and providing them with an electronic link to the filing that will permit them to view and/or download the document. After the submitter receives confirmation from the EIE that the filing has been accepted, the submitter need not take any further action to serve the document via the EIE.

Appendix I to this order sets forth detailed instructions for obtaining a Digital ID, filing documents, and viewing filed documents. If participants encounter any problems while accessing the EIE, they should contact the EIE Administrator staff for technical assistance electronically (preferred method) by filling out a question/concern form at www.nrc.gov/site-help/eie/feedback-eie.html, or by telephone at 1-888-423-4082 between the hours of 7:15 a.m. and 4:30 p.m. ET.

IV. SIGNATURE REQUIREMENT

This formal adjudicatory proceeding is being conducted under 10 C.F.R. Subpart J and informal letter practice is highly disfavored and inappropriate. In this regard, pursuant to

10 C.F.R. § 2.1010(e), each filing submitted herein shall be signed and dated by 1) an attorney having authority to do so; 2) an individual participant acting pro se; or 3) an authorized representative of an organization participating without counsel. The signature of the pro se individual, authorized representative, or counsel is a representation that the filing has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information and belief the statements made in it are true, and that it is not interposed for delay. If a filing is not signed, or is signed with the intent to defeat the purpose of this section, it may be stricken.

Compliance with the signature requirement shall be effectuated via the EIE submission of filing as specified herein, and not via email submission. In accordance with section 4.0 of the EIE Guidance Document each participant or its authorized representative or attorney shall digitally sign the HLW Submittal Form used to transmit the filing. Digital signature of the HLW Submittal Form by the authorized person shall be deemed equivalent to an original signature upon the transmitted filing.

V. NOTICE OF APPEARANCE

Pursuant to 10 C.F.R. §§ 2.1001 and 2.314(b), the first filing by any participant in this HLW pre-license application proceeding shall be accompanied by a notice of appearance from that participant's authorized representative or counsel containing all required information. The notice of appearance will provide the information necessary to establish and maintain a service list, so that participants can be accurately identified and duly notified during this phase of the proceeding.

VI. FORMAT FOR SUBMISSIONS

All filings in this proceeding by all participants -- whether by e-mail or by the EIE -- shall have the filing date printed on the top right-hand side of the first page of the submission. In addition, as outlined by the Commission in an addendum to CLI-04-20, 60 NRC ___ (July 7, 2004), the caption used on this order should be used for all filings before the PAPO Board. At the right side of the caption, the participant shall number each of its LSN-related pleadings. Thus, for example, a participant's first request should be numbered [name of participant]-01. Its second request, on a different issue or subject, will be numbered [name of participant]-02. For instance, if a participant were to file a motion, the caption of its first filing would read as follows:

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)	Name of Participant-01

The title of the filing then should be centered on the page and appear immediately below the caption. Thereafter, filings by that participant and any other participants regarding that motion should include that pleading number designation. For example, if the State of Nevada were to submit an initial motion in this proceeding, the caption would read as follows:

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)	NEV ³ -01

³ In connection with the development of the License Support Network (LSN) for use in this HLW proceeding, each LSN participant and potential participant was assigned a three-letter LSN participant code. For consistency, participants should use these LSN participant codes in their filings before the PAPO Board when referring to themselves or to other participants, after identifying the full name of the participant the first time it appears in the document. A list of these codes is appended to this order as Appendix II. For participants that have not yet been assigned a three-letter code, the PAPO Board will assign a code to those participants and so inform the other participants in a later issuance.

The caption for all subsequent filings relating to that motion (e.g., Department of Energy answer, requests for extensions of time to file responses) would likewise read:

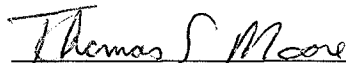
In the Matter of	Docket No. PAPO-00
U.S. DEPARTMENT OF ENERGY	ASLBP No. 04-829-01-PAPO
(High Level Waste Repository: Pre-Application Matters)	NEV-01

The caption for a subsequent filing by Nevada unrelated to that initial motion and, for example, seeking other relief would be NEV-02.

The Commission has also provided extensive guidance on the submission of materials in this HLW proceeding, including guidance on what types of documents may be submitted, parameters for electronic file submission, and optical storage media submissions, as well as sample transmittal letters and corresponding EIE forms. Participants are urged to consult and observe the guidance provided in "Guidance for Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart J."

It is so ORDERED.

FOR THE PRE-LICENSE APPLICATION
PRESIDING OFFICER BOARD⁴



Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 9, 2004

⁴ Copies of this order were sent by the Office of the Secretary this date by e-mail transmission to those served with the Commission Order in CLI-04-20. In addition, a copy of this order is being submitted for publication in the Federal Register.

APPENDIX I

Prior to filing and viewing documents via the EIE, each person must (1) obtain a digital signature certificate (Digital ID), and (2) be placed on the official service list for the proceeding.

A. Obtaining a Digital ID

Each person who wishes to use the EIE (including administrative or support personnel who will actually transmit the document to the EIE) must first obtain a Digital ID in order to digitally sign and submit the form used to transmit documents and to access the EIE external server to retrieve and view documents. Additionally, there is a software plug-in that must be downloaded and installed in order to view the EIE document submittal form. To avoid technical difficulties, it is highly recommended that participants use Internet Explorer, rather than Netscape, to access the EIE. Participants should also be aware that obtaining a Digital ID is not an automated, instantaneous process. Participants should begin the process for requesting a Digital ID well in advance of the date they wish to begin submitting documents via the EIE. Obtaining a Digital ID requires both SECY and EIE Administrator approval of an enrollment request, which could take up to several business days for a response. A Digital ID can be obtained by following these steps:

1. E-mail a request to SECY (e-mail address hearingdocket@nrc.gov), and include your name, participant affiliation, telephone number, and e-mail address. A request for a Digital ID will also serve as a request to be placed on the official service list for the proceeding. If the request is approved, SECY will so notify the EIE Administrator. You do not need to wait for a response from SECY to proceed to the next steps.

2. Access the NRC's home page (www.nrc.gov) and click on "EIE: e-submittals," which appears in the column on the far left-hand side of the screen.¹
3. Scroll down the page and click on the "First Time Users: Instructions" bullet point.
4. Under "Browser Set Up," click on the "Download" link and follow the prompts to download the UWI viewer, which will allow you to view documents that have been filed via the EIE.
5. Once the viewer download has completed, the viewer must now be installed. Find the UWI viewer on the computer's C drive (the application name is "icsv460kg.exe"). Open the application and follow the prompts to install the viewer onto the computer.
6. Close the installation wizard and return to the NRC webpage for "EIE Instructions for First-Time Users" (www.nrc.gov/site-help/eie/how-to.html).
7. Scroll down the page to "Step 3" and click on the text, "go to the Verisign/NRC Page."
8. Click on the first link, "Enroll for a Digital ID."
9. Complete the enrollment form as indicated. Under "Step 4: Select the Cryptographic Service," the form will default to the appropriate service provider name. Under "Step 5: Additional Security for Your Private Key," you may choose to check the "Protect Your Private Key" box, but it is not necessary to do so for enrollment.

¹The agency currently is considering changes to its EIE webpages that may affect the wording or location of the particular headings described in these instructions. When these changes are effectuated, the PAPO Board will endeavor to advise participants.

10. After completing the enrollment form, click on the “Accept” button, and the enrollment request will be sent to the Administrator. You should receive an e-mail from the Administrator confirming your Digital ID enrollment request.
11. Once the request has been approved by SECY and the Administrator has been so notified, a second e-mail will follow with detailed instructions for retrieving and installing your Digital ID. The process for requesting, retrieving, and installing the Digital ID is computer-specific; that is, the computer used to send the enrollment form must also be used to retrieve and install the Digital ID. Once the Digital ID certificate has been installed, the certificate may be exported or moved to additional computers (e.g., a laptop).² After installing the Digital ID, you will be able to submit documents using the EIE and view documents served by other participants using the EIE.

B. Submitting Documents Via the Electronic Information Exchange

Documents submitted via the EIE must be filed using the HLW Submittal Form. This form allows participants to sign, enclose (i.e., attach), submit, and verify documents over the Internet. A submitter must fill in the required fields of the form, attach the document to be filed, and then digitally sign the form by using the submitter’s unique Digital ID.³ Documents submitted via the EIE are limited in size to 50 MB or smaller. Documents larger than 50 MB must be broken up and submitted in segments of 50 MB or less (see section B.3 below). Additional instructions are provided below (see sections B.2 and 4) for filing documents that

² For further instructions on importing and exporting Digital ID certificates, access the NRC webpage for electronic submittals at www.nrc.gov/site-help/eie.html. On the far right-hand side of the screen, under the first bullet point (“If your PC is to be upgraded...”), click on the link to Internet Explorer, and follow the instructions provided.

³ It should be noted that although the submitter is digitally signing only the submittal form, this is deemed as the signature, by the participant, or its authorized representative or attorney, of the attached document actually being filed.

are, or could potentially be, subject to a protective order and documents that are required to be filed under oath or affirmation.

1. “Simple” Documents. To submit a “simple” filing (i.e., one that is 50 MB or less, not subject to protective order, and not required to be filed under oath or affirmation):
 - (1) Access the NRC’s EIE webpage (www.nrc.gov/site-help/eie.html), and scroll down the page to the first bullet point. Click on “Document Submittal Forms.”
 - (2) Click on third bullet point, “HLW Hearing Pilot.”
 - (3) You will be prompted to select the ASLBP number, which will depend on which Licensing Board you are appearing before, from the drop-down menu.
 - (4) Leave the “Check this box if ‘Protective Order’” box unchecked, and click on the “Go” button.
 - (5) Fill in the fields of the HLW Submittal Form:
 - (a) The “ASLBP #” and “Panel Judges” fields will be automatically populated.
 - (b) For the pre-license application phase of this proceeding, fill in the “LSN #” field as “None.”
 - (c) Fill in the “Author Name” and “Author Affiliation” fields with the submitter’s information (e.g., attorney’s name and law firm).
 - (d) The “Document Date” field must be submitted in MM/DD/YYYY format (e.g., 07/01/2004).

- (e) Fill in the “Document Title” field as appropriate, and select the appropriate “Document Type” from the drop-down menu.
 - (f) Fill in the “Party Identifier” field as appropriate (e.g., Department of Energy)
 - (g) Leave the “multi-part submission” box unchecked.
- (6) The default setting on the HLW Submittal Form is to notify all persons on the service list of the document’s filing. To view the service list, click on the “Click for Service List” button. The “Notify” boxes to the far right of the screen have been automatically checked so that each recipient on the service list will be notified of the document’s filing. You may choose to not serve certain individuals by unchecking the boxes next to their names. To return to the HLW Submittal Form, click on the “Back to Main Form” button.
- (7) To attach the document being filed, click on the “Attach File” button near the bottom of the screen.
- (8) When the “Attachments” dialog box appears, click on the “Attach” button to browse through the computer’s folders and files for the document to be filed.
- (9) More than one file may be attached to the HLW Submittal Form, so long as the total size of the submittal does not exceed 50 MB (e.g., a transmittal letter, pleading, and several exhibits may be attached to and submitted under the same form).
- (10) To attach additional files, click on the “Attach” button again to browse through the computer’s folders and files.

- (11) When all of the appropriate files have been attached, click on the “Done” button to return to the HLW Submittal Form. To verify which documents have been attached to the Submittal Form, you may click on the “Attach File” button to view the attached documents.
- (12) To remove an attached file from the Submittal Form, click on the “Remove File” button. Highlight the file you wish to remove, and click on the “Remove” button. Click “Done” to return to the HLW Submittal Form.
- (13) When you are finished attaching the appropriate files, click on the “Click to Authorize Transmission” button.
- (14) When the Digital Signature viewer appears, click on the “Sign” button to digitally sign the submittal form.
- (15) When the digital signature has been confirmed as valid, click on the “OK” button to return to the HLW Submittal Form. The submitter’s name and e-mail address should now appear in place of the “Click to Authorize Transmission” button.
 - (a) Once the submittal form has been digitally signed, the form cannot be altered. If changes need to be made to the form or to the attachments prior to submitting the filing, click on the button where the submitter’s name and e-mail address appear.
 - (b) When the Digital Signature viewer appears, click on the “Delete” button to remove the digital signature. Click on the “OK” button to return to the submittal form. Changes may now be made to the form and attachments. After the necessary modifications have been made, repeat Steps (13) through (15) above to digitally sign the submittal form.

(16) Click on the "Submit Document" button to transmit the document to the EIE. Shortly after the document has been submitted, the submitter should receive confirmation that the document has been submitted and that an e-mail has been sent to each person on the service list notifying the recipient that the filing is available for viewing.

2. Sensitive Documents. Documents that are, or could potentially be, subject to a protective order are submitted in much the same way as "simple" documents are. (Please note: Whether particular classes of sensitive documents (e.g., proprietary, privacy, etc.) should be submitted through the EIE generally is a matter to be determined by the PAPO Board, in consultation with the participants, and memorialized in an appropriate protective order. Participants are urged to contact the PAPO Board to request entry of an appropriate protective order prior to submitting any documents that may have a sensitive status.)

- (1) Access the HLW Submittal Form by going to the following webpage: www.nrc.gov/site-help/eie/document-submittal-forms.html, and clicking on the "HLW Hearing Pilot" bullet point.
- (2) After selecting the appropriate ASLBP number from the drop-down menu, check box labeled "Check this box if 'Protective Order,'" and click on the "Go" button.
- (3) Fill in the fields of the HLW Submittal Form as indicated in Step (5) above in section B.1.
- (4) For documents that are subject to a protective order, the default setting for the service list is to not notify any of the recipients. To notify the

recipients who are authorized to see the protected information, you must manually check the “Notify” boxes next to their names.

- (5) The procedures for attaching documents, digitally signing the form, and submitting the form are the same as those set forth in Steps (7) through (16) above in section B.1.

3. Large Documents. Documents larger than 50 MB must be broken up into smaller segments, which must be saved as separate documents. The EIE’s multi-part submission function will then “bundle” these smaller documents together so that recipients will know that the separate documents are part of a larger submission. To file a large document in multiple parts:

- (1) Access the HLW Submittal Form by going to the following webpage: www.nrc.gov/site-help/eie/document-submittal-forms.html, and clicking on the “HLW Hearing Pilot” bullet point.
- (2) After selecting the appropriate ASLBP number from the drop-down menu, click on the “Go” button.
- (3) Fill in the fields of the HLW Submittal Form as indicated in Step (5) above in section B.1.
- (4) In the yellow box to the right of the screen, check the box labeled “Check if this is part of a multi-part submission.”
- (5) From the “Select a Bundle” drop-down menu, choose “New Bundle.”
- (6) Attach the first segment of the document by clicking on the “Attach File” button and then clicking on the “Attach” button when the “Attachments” dialog box appears to browse through the computer’s folders and files for the document to be filed. Click on the “Done” button to return to the HLW Submittal Form.

- (7) Follow the procedures for digitally signing and submitting the form set forth in Steps (7) through (16) above in section B.1.
 - (8) To send the second segment of the document, access the HLW Submittal Form and fill in all fields as appropriate.
 - (9) Check the appropriate box to indicate that the document is part of a multi-part submission.
 - (10) From the "Select a Bundle" drop-down menu, select the bundle name, which will be labeled by ASLBP number, date, and the first 64 characters of the document title. If this segment is the final part of the submission (i.e., part 2 of 2), check the box labeled "Check if this is the final part of your multi-part submission."
 - (11) Attach the segment and digitally sign and submit the submittal form as indicated above in Steps (6) and (7) of this section. The notification e-mail sent to the recipients will indicate that the filed document is part of a larger submission. In addition, when the recipients visit the link provided in the e-mail, the submittal form will also indicate that the document is part of a multi-part submission.
4. Oath or Affirmation. For documents that are required to be filed under oath or affirmation, refer to page 16 of the Commission's guidance document, "Guidance for Submission of Electronic Docket Materials under 10 CFR Part 2, Subpart J" (found at: www.nrc.gov/reading-rm/ehd/ml041560341.pdf).

C. Viewing Documents Filed Via the Electronic Information Exchange

Once a document has been filed via the EIE, within a short time, service list recipients will receive an e-mail notifying them that a filing has been made in the proceeding. Recipients can then access the filing by clicking on the URL provided in the e-mail. The form used by the submitter to file the document via the EIE is the same form that will appear after clicking on the link and can be used by recipients to access and view the filing. Documents may be viewed and saved in this manner:

1. Click on the URL provided in the notification e-mail to retrieve the filing.
2. The HLW submittal form will appear as it was filled out and filed by the submitter. Recipients will not be able to alter any part of the submittal form. Recipients will, however, be able to view the service list, extract (i.e., save) the file, and view the file.
3. To save the filing to the recipient's hard drive or network drive, click on the "Extract File" button and save the file to the desired location.
4. To view the document, click on the "View" button. When the "File Download" dialog box appears, click on the "Open" button. Although "Save" appears as an option in the "File Download" dialog box, the EIE will not permit recipients to save the document in this manner; to save the document, use either the "Extract File" button or the "save" function in the Adobe Acrobat viewer after viewing the document.

As indicated in the order, technical questions concerning access to the EIE should be directed to the EIE Administrator via the Internet (www.nrc.gov/site-help/eie/feedback-eie.html) or via telephone at 1-888-423-4082.

APPENDIX II

<u>PARTICIPANT</u>	<u>PARTICIPANT CODE</u>
<u>Churchill County, Nevada</u>	<u>CHU</u>
<u>Clark County, Nevada</u>	<u>CLK</u>
<u>Department of Energy</u>	<u>DEN</u>
<u>Esmeralda County, Nevada</u>	<u>ESM</u>
<u>Eureka County, Nevada</u>	<u>EUR</u>
<u>Inyo County, California</u>	<u>NYA</u>
<u>Lander County, Nevada</u>	<u>LND</u>
<u>Las Vegas, Nevada</u>	<u>LAS</u>
<u>Lincoln County, Nevada</u>	<u>LNC</u>
<u>Mineral County, Nevada</u>	<u>MNE</u>
<u>National Congress of American Indians</u>	<u>NCA</u>
<u>Nevada</u>	<u>NEV</u>
<u>Nuclear Energy Institute</u>	<u>NEN</u>
<u>Nuclear Regulatory Commission</u>	<u>NRC</u>
<u>Nye County, Nevada</u>	<u>NYE</u>
<u>White Pine County, Nevada</u>	<u>WHP</u>

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (INITIAL PRE-LICENSE APPLICATION PHASE ORDER) have been served upon the following persons by electronic mail.

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Docket No. PAPO-00
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 APPLICATION PHASE ORDER)

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LB ORDER (INITIAL PRE-LICENSE
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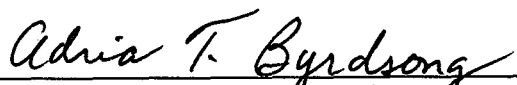
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Dated at Rockville, Maryland,
this 9th day of July 2004