

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Chief Administrative Judge:

E. Roy Hawkens

In the Matter of

SOUTHERN NUCLEAR OPERATING CO.

(Early Site Permit for Vogtle ESP Site)

Docket No. 52-011-ESP

ASLBP No. 07-850-01-ESP-BD01

December 15, 2006

MEMORANDUM AND ORDER

(Establishing Procedures for Submitting Documents Using
Agency Electronic Information Exchange/E-Submittal Process)

In July 2004, the Pre-License Application Presiding Officer (PAPO) Board was convened to consider challenges to the Department of Energy's attempted certification of its Licensing Support Network documentary collection associated with the potential Yucca Mountain high-level waste (HLW) repository construction authorization proceeding. Among other things, the PAPO Board established a set of procedures to govern the use of an Electronic Information Exchange or E-Submittal process in that proceeding. That E-Submittal system had been created by the agency pursuant to 10 C.F.R. Part 2, Subpart J, to permit the electronic filing of adjudicatory documents in the HLW repository proceeding. Since that time, the PAPO proceeding has been conducted with all party filings being submitted electronically through the E-Submittal system. More recently, in a proposed rule published for public comment, the agency indicated that it would like to apply this E-Submittal system to all agency adjudicatory proceedings. See 70 Fed. Reg. 74,950 (Dec. 16, 2006) (available at www.nrc.gov/site-help/e-submittals/frn-05-24081.pdf.) Now, as an adjunct to its consideration and potential acceptance of a final rule adopting the E-Submittal system as the mandated filing

process in all agency adjudicatory proceedings, the agency wishes to conduct a pilot to ensure that the E-Submittal process, as it is being updated to permit filings in licensing and enforcement cases other than the HLW PAPO proceeding, will operate as envisioned.

To that end, and in accordance with the Secretary's December 13, 2006 memorandum referring this proceeding to me for appropriate action, with this order I am establishing procedures that will require and govern the use of the E-Submittal process for all future participant filings in this proceeding.¹

I. DUAL ELECTRONIC SUBMISSION

Electronic submission of participant filings and Licensing Board issuances shall be accomplished by (1) service via e-mail; and (2) service via the NRC's adjudicatory E-Submittal system. The adjudicatory E-Submittal 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 E-Submittal system in accordance with the procedures outlined below. To be timely, filings must be received no later than midnight Eastern Time on the date due. So long as they submit their filings via the E-Submittal process, the participants need not submit hard/paper copies of those filings to the Office of the Secretary (SECY), the Licensing Board, or any other participant.

¹ If any of the current participants to this proceeding believe they are unable to participate in this proceeding utilizing the electronic document formatting and/or filing processes outlined in this issuance, they may file a request for an exemption from the Licensing Board within 10 days of the date of issuance of the Board establishment notice for this proceeding. Thereafter, any new participant should file such a request in conjunction with its first filing in this proceeding. The provisions of section 2.302(g)(2) of the Commission's pending proposed rule on electronic document filing and formatting shall govern such an exemption request. See 70 Fed. Reg. at 74,960.

II. ELECTRONIC SUBMISSION VIA E-MAIL

To complete e-mail service on the Licensing 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 the Board members (e-mail addresses: GPB@ nrc.gov; NGT@nrc.gov; jackson538@comcast.net). 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 E-SUBMITTAL SYSTEM

The NRC adjudicatory E-Submittal system is designed to allow the NRC and participants in its proceedings to submit and exchange material relating to agency adjudicatory proceedings across the Internet. The system uses a public key infrastructure and digital ID certificate signaturing technology to ensure that electronic documents can be transmitted via the Internet in a secure and unalterable manner. In this non-HLW proceeding, filings will be submitted via the adjudicatory E-Submittal system through the use of the Adjudicatory Docket Submission Form that is accessible from the "Electronic Submittals" link on the home page of the agency's

² Participant pleadings that are prepared using word processing programs should be converted from the native word processing format into a PDF file. In those instances when a native word processing file does not exist for a document, such as an attachment included with a pleading, a scanned PDF file should be created. Participants should consult the agency's website at www.nrc.gov/site-help/e-submittals.html for more information on creating NRC guidance-compliant PDF output file formats, as well as downloadable files that contain profiles that allow (1) the Adobe Distiller program to create PDF files that meet NRC formatting guidance; and (2) the "preflight" of rendered documents using the Adobe Professional program to ensure they meet NRC formatting guidance. At this webpage, participants also can access instructional videos that explain how to download and install files containing the NRC guidance-compliant Adobe Distiller PDF profile and the Adobe Professional "preflight" profile; how to convert Word and WordPerfect documents into PDF files; and how to "preflight" a rendered document with the Adobe Professional program to ensure it has the appropriate NRC guidance-compliant profile.

website, www.nrc.gov. Once having obtained a digital ID certificate from the agency, a submitter must access and fill in the required fields on the form, electronically attach a filing to the form (in much 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 E-Submittal system, the system will effect electronic service of a notice of the filing on the Licensing Board, SECY, and all other persons listed on the E-Submittal official service list for this proceeding, which will be created and maintained by SECY. The service notice will be in the form of an e-mail that advises the recipients that a document has been filed in the proceeding and provides them with an electronic link to the filing that will permit them to view and/or download the document for fourteen days.³ Once the submitter receives confirmation from the E-Submittal system that the filing has been accepted, the submitter need not take any further action to serve the document via the E-Submittal system.

The appendix to this order outlines and provides links to sources on the NRC website that describe fully the processes for (1) obtaining a digital ID certificate (App. § A); (2) downloading the viewer software plug-in needed to file documents and view documents submitted by other parties (App. § B); (3) submitting documents (App. § C); and (4) viewing filed documents (App. § D). In accordance with those instructions, as the first step toward obtaining access to the agency's adjudicatory E-Submittal system, participants should contact SECY immediately to begin the process of obtaining a digital ID certificate. Thereafter, if participants encounter any problems while accessing the E-Submittal system that they cannot address using the extensive explanation that is provided on the agency's homepage beginning

³ Also, within three days the document will be electronically accessible for the balance of the proceeding through the agency's non-HLW electronic hearing docket at ehd.nrc.gov/EHD_Proceeding/home.asp.

at www.nrc.gov/site-help/e-submittals.html, they should contact the agency's Public Document Room (PDR) staff (800-397-4209; 301-415-4737, or pdr@nrc.gov) for assistance associated with the e-filing business processes.⁴ Hours of operation are 8:30 a.m. to 4:15 PM, Eastern time, Monday through Friday.

IV. SIGNATURE REQUIREMENT

Each filing submitted in this proceeding shall be electronically signed using a digital ID certificate 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 (1) the filing has been subscribed in the capacity specified with full authority; (2) he/she has read it and knows the contents, that to the best of his/her knowledge, information, and belief the statements made in it are true; and (3) 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. Additionally, the individual who serves the document electronically using the E-Submittal system (and who need not be the individual who signs the document) must use a digital ID certificate to complete that service process.

Compliance with the signature requirement for each filing should be effectuated via an E-Submittal filing as specified herein, not via e-mail submission. From the adjudicatory E-Submittal form that is accessed from the NRC website using a digital ID certificate, valid

⁴ In addition to providing information regarding any problems they may encounter, the participants are encouraged to contact the PDR staff regarding their experiences with the E-Submittal system generally, which may provide valuable insights that will result in improvements and changes to the system.

electronic signatures for a filing and its accompanying certificate of service can be executed as specified below:

1. Using his/her digital ID certificate, the signer of a document that is the subject of an adjudicatory E-Submittal filing electronically signs the document by clicking on the "Signed By (Click to Sign)" button on the adjudicatory E-Submittal form. Additionally, this individual can serve the document by clicking on the "Served By (Click to Sign)" button and the "Submit" button on the adjudicatory E-Submittal form. These actions would be reflected in the pleading by the phrase "Signed (electronically) by" being typed on a signature line bearing the signer's name both on the document and the associated certificate of service before rendering them as PDF file.

2. Using his/her digital ID certificate, the signer of a document that is the subject of an adjudicatory E-Submittal filing electronically signs the document by clicking on the "Signed By (Click to Sign)" button on the adjudicatory E-Submittal form and then transmits the form (with the attached document) to a secretary/administrative assistant by e-mail.⁵ Using his/her own digital ID certificate, the secretary/administrative assistant then serves the document by clicking on the "Served By (Click to Sign)" button and the "Submit" button on E-Submittal form. These actions would be reflected by the phrase "Signed (electronically) by" being typed both on a signature line bearing the signer's name in the pleading and a signature line on the associated certificate of service bearing the secretary's/administrative assistant's name before rendering them as a PDF file.

3. As an adjunct to the two scenarios above, additional individuals wishing to sign the pleading could do so by signing a paper original of the pleading's signature page and adding the same signature lines to the electronic document's signature page with the phrase "Original signed by" typed onto each signature line. In this instance, however, the original signature page must be retained by the participant filing the pleading through the end of the proceeding before the agency.

As the discussion above makes clear, an authorized person's digital signature on the E-Submittal form shall be deemed equivalent to an original signature upon the transmitted filing.

⁵ Per the instructions at www.nrc.gov/site-help/e-submittals/submit-documents.html, the "envelope" button at the top of the form permits the form and any attached document to be e-mailed to another recipient. Note, however, that e-mailing the signed form to the Board, SECY, and the other participants is not the equivalent of filing and serving it via the E-Submittal system. Filing and service using the NRC E-Submittal system can only be done by digitally signing the "Signed By" and "Served By" buttons and then clicking the "Submit Document" button on the form, which transmits the form and the attached document to the E-Submittal system via the internet.

V. SUBMISSION FORMATTING

In connection with the development of the E-Submittal system, and associated information technology systems for use in the HLW proceeding, it was determined that it would be useful if each participant and potential participant was assigned a three-letter participant code for use in identifying that participant's submissions in a particular proceeding. In this instance, the following codes have been assigned to the current participants in this proceeding:

Southern Nuclear Operating Company	SNC
NRC Staff	NRC
Joint Petitioners ⁶	JNT

When submitting their filings via the E-Submittal process, participants should use these participant codes on the E-Submittal form in the data entry box entitled "Party Identifier." If others later seek to participate in this proceeding as parties or interested governmental entities, the Board will obtain a code for them and inform them and the other participants of that code in a subsequent issuance.

In addition to the information provided in the appendix to this issuance, the Commission has also provided extensive guidance on the submission of materials in adjudicatory proceedings, including guidance on what types of documents may be submitted, the size parameters for electronic file submission, and optical storage media submissions, as well as sample transmittal letters and corresponding E-Submittal forms. Participants are urged to consult and observe the proposed guidance provided in "Proposed Guidance for Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart C, 10 CFR Part 13, 10 CFR Part 110," 70 Fed.

⁶ The December 11, 2006 intervention petition was submitted by petitioners Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy, Atlanta Women's Action for New Directions, and Blue Ridge Environmental Defense League.

Reg. at 74,965-986, which can also be found at
www.nrc.gov/site-help/e-submittals/proposed-e-filing-guidance.pdf.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD PANEL⁷

/RA/

E. Roy Hawkens
CHIEF ADMINISTRATIVE JUDGE

Rockville, Maryland

December 15, 2006

⁷ Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant SNC; (2) Joint Petitioners; and (3) the NRC staff.

APPENDIX

Each person who wishes to use the NRC's adjudicatory Electronic Information Exchange/E-Submittal system (including administrative or support personnel who will actually serve/transmit the document via the E-Submittal process) must first obtain a digital ID certificate (Digital ID) that permits the user to sign a document digitally, submit the form used to transmit documents, and access the E-Submittal external server to retrieve and view documents filed by other participants. Additionally, there is a software plug-in that must be downloaded and installed to view the E-Submittal form. To avoid technical difficulties in using the E-Submittal system, it is strongly recommended that participants use Internet Explorer, rather than Netscape or some other internet browser program, to access the E-Submittal system.

More detailed instructions regarding the processes for obtaining a digital ID and downloading the viewer plug-in, as well as for submitting and viewing documents, are set forth below.

A. Obtaining a Digital ID

Participants should be aware that obtaining a Digital ID is not an automated, instantaneous process. Participants should begin the process for requesting a Digital ID as soon as they receive the issuance to which this appendix is attached to ensure they are able to submit documents via the E-Submittal process on a timely basis. Obtaining a Digital ID requires both SECY and Administrator approval of an enrollment request, which could take several business days for a response.

The three steps for obtaining a Digital ID, and the location on the NRC website where detailed directions are provided for successfully completing these steps, are as follows:

1. Request an NRC approval code. A participant should request an NRC approval code by e-mailing or calling the Office of the Secretary (SECY) and providing the appropriate

identifying information. For SECY contact information and a list of the necessary identifying information, see the adjudicatory proceedings program contact listing at www.nrc.gov/site-help/e-submittals/certificate/req-approval-code.html. Please note that an approval code request will also serve as a request to be placed on the official service list of the proceeding for those who identify themselves as participants or participant representatives in this proceeding.

2. Enroll for a Digital ID. Once you have obtained the NRC approval code, you can enroll for a Digital ID. For the steps involved in enrolling, see www.nrc.gov/site-help/e-submittals/certificate/enroll-certificate.html. Please note that the process for requesting, retrieving, and installing a Digital ID is computer-specific, so that the computer used to send the enrollment form must also be the computer used to retrieve and install the Digital ID in step 3. (Note also, however, that once the digital ID is installed on an individual's computer (e.g., an office desktop unit) it subsequently can be exported to another computer used by the same individual (e.g., a laptop). For instructions on exporting/importing a certificate, see www.nrc.gov/site-help/e-submittals/certificate/backup-certificate.html.)

3. Installing a Digital ID. Following completion of the enrollment process, you will receive a "Your Digital ID is ready" email if your digital ID certificate request is approved. This email will contain both a VeriSign provided Personal ID Number (PIN) and a link to NRC's Digital ID Center. For the steps to install the Digital ID on your computer once you receive the "Your Digital ID is ready" e-mail, see www.nrc.gov/site-help/e-submittals/certificate/install-certificate.html. The NRC website also provides instructions with screenshots of what the installation process should look like, see www.nrc.gov/site-help/e-submittals/certificate/nrc-digital-ids-guide.pdf.

B. Downloading the Digital Viewer Plug-In

In addition to step-by-step instructions for the viewer download process,¹ see www.nrc.gov/site-help/e-submittals/install-viewer.html, the NRC website also provides instructions with screenshots of what the download process should look like, see www.nrc.gov/site-help/e-submittals/install-workplace-forms.pdf.

C. Submitting Documents Via the E-Submittal Process

Documents for this proceeding submitted via the E-Submittal process must be filed using the Adjudicatory Docket Submission Form. This form allows participants to attach, sign, 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. Service of the document can be performed by the signer or by another individual (such as an administrative assistant or secretary) who has a Digital ID. Instructions for submitting/serving documents are found at www.nrc.gov/site-help/e-submittals/submit-documents.html.

Documents submitted via a single E-Submittal system transmission are limited in size to 50 megabytes (MB) or smaller. Documents larger than 50 MB must be broken up and submitted in segments of 50 MB or less and transmitted separately in parts as a bundled document, as well as being provided by CD-ROM. Instructions regarding the submission of documents larger than 50 MB is found at www.nrc.gov/site-help/e-submittals/file-requirements.html#segmentation-of-large-documents.

Although filings containing Safeguards or Classified Information cannot be submitted to the agency using the adjudicatory E-Submittal system, documents that are, or potentially could

¹ In instances when the viewer download is being performed on a computer that is part of a network, it may be necessary to seek the assistance/authorization of the network administrator to execute the download.

be, subject to a protective order because they contain other types of sensitive information (e.g., proprietary or Official Use Only information) can be submitted by the E-Submittal process so long as the filer uses the appropriate submission process. The first screen of the adjudicatory E-Submittal form, in addition to asking the submitter to choose the appropriate case from a drop down list of active cases in the system (i.e., Vogtle 52-011-ESP), requires a choice as to whether the submission is a non-public protective order filing (POF). If the submitter chooses a POF filing, from the hearing form the submitter then must click on the designated link to access the service list and (using the checkboxes) designate those participants, in addition to SECY and the Licensing Board, that should be served with the document. Once this service list is completed, selecting the "Back to Main Form" button will take the submitter to the adjudicatory E-Submittal form (which notes that the filing is a protective order filing for limited distribution) so that the required data fields can be completed and the document attached for filing and appropriate service.²

D. Viewing Documents Filed Via the E-Submittal System

Once a document has been filed via the adjudicatory E-Submittal system, 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 E-Submittal system 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:

² In contrast, in those instances in which the document can be made part of the public docket of the proceeding, when the submitter chooses to have the document submitted into the public record as a non-protective order filing, the form containing the various fields that must be completed to submit the document using the E-Submittal system indicates the submission will be treated as a public filing that will be made available to all participants on the service list and the service list will have all the participants selected. Generally, no changes to the E-Submittal service list are necessary when submitting a non-POF filing.

1. Click on the URL provided in the notification e-mail to retrieve the filing.
2. The adjudicatory document 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 "Save 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. "Save" also appears as an option in the "File Download" dialog box, allowing the document to be saved to a designated file folder on the viewer's computer for later review.

As indicated in the order, technical questions concerning access to the E-Submittal system should be directed to the agency's Public Document Room (PDR) staff (800-397-4209; 301-415-4737; or pdf@nrc.gov) for assistance associated with the e-filing and HLW business processes. Hours of operation are 8:30 a.m. to 4:15 PM, Eastern time, Monday through Friday.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
SOUTHERN NUCLEAR OPERATING)	Docket No. 52-011-ESP
COMPANY)	
)	
(Early Site Permit for the Vogtle ESP Site))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (ESTABLISHING PROCEDURES FOR SUBMITTING DOCUMENTS USING ELECTRONIC INFORMATION EXCHANGE/E-SUBMITTAL PROCESS) have been served upon the following persons by Electronic Information Exchange and electronic mail.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

Administrative Judge
G. Paul Bollwerk, III
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: gpb@nrc.gov

Administrative Judge
Dr. Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Dr. James Jackson
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Ann P. Hodgdon, Esq.
Tison A. Campbell, Esq.
Patrick A. Moulding, Esq.
Brooke D. Poole, Esq.
Jonathan M. Rund, Esq.
Robert M. Weisman, Esq.
Kathryn L. Winsberg, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: aph@nrc.gov; tac2@nrc.gov;
pam3@nrc.gov; bdp@nrc.gov;
jmr3@nrc.gov; rmw@nrc.gov; klw@nrc.gov

Kenneth C. Hairston, Esq.
M. Stanford Blanton, Esq.
Peter D. LeJeune, Esq.
Balch & Bingham LLP
1710 Sixth Avenue North
Birmingham, Alabama 35203-2014
E-mail: kchairston@balch.com;
sblanton@balch.com; plejeune@balch.com

Docket No. 52-011-ESP
LB MEMORANDUM AND ORDER (ESTABLISHING PROCEDURES FOR SUBMITTING
DOCUMENTS USING ELECTRONIC INFORMATION EXCHANGE/E-SUBMITTAL PROCESS)

Bentina C. Terry, Esq.
Southern Nuclear Operating Company, Inc.
40 Inverness Center Parkway
P.O. Box 1295, Bin B-022
Birmingham, AL 35201-1295
E-mail: bdchisol@southernco.com

Mary Maclean D. Asbill, Esq.
Lawrence D. Sanders, Esq.
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
E-mail: masbill@law.emory.edu;
lsanders@law.emory.edu

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036
E-mail: dcurran@harmoncurran.com

Margaret Parish
Law Clerk
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: map4@nrc.gov

Original Signed by Emile L. Julian

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 15th day of December 2006