October 19, 2007

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

THE DEPARTMENT OF ENERGY'S MEMORANDUM
IN RESPONSE TO THE COMMISSION'S OCTOBER 5, 2007 ORDER

On October 5, 2007, the Commission entered an Order requesting the NRC Staff and interested participants in the Pre-License Application Presiding Officer (PAPO) docket to file a memorandum setting out their views of the PAPO Board's concerns regarding the "very real possibility of significant delays" in this proceeding as a consequence of the time required for processing approvals for access to safeguards information (SGI). This is the Department of Energy's (DOE) memorandum in response to that Order.

DOE supports any reasonable effort to expedite background checks for access to SGI in this proceeding. However, DOE is not convinced that the need for background checks creates the "very real possibility of significant delays" in this proceeding.

In the first place, the number of SGI documents in this proceeding is expected to be extremely limited. Prior to the PAPO Board's memorandum, DOE had identified only 21 documents with SGI that were under consideration as potential documentary material for production on the Licensing Support Network (out of some 3.5 million documents that DOE is making available), and the other participants reported that they had no SGI documents. *See* Tr.

at 1200. Since then the number of DOE's documents with confirmed SGI that qualify as documentary material has currently been reduced to zero. While DOE expects to create additional documentary material with SGI, the number of SGI documents is expected to remain extremely modest. DOE also does not expect that the License Application itself will contain SGI.

Further, persons desiring access to the limited number of SGI documents in this proceeding will need to establish a "need to know" in addition to a satisfactory background check. A person cannot meet this "need to know" requirement unless he or she demonstrates possession of the technical competence to evaluate the SGI. *In re Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2)*, CLI-04-21, 60 N.R.C. 21, 2004 NRC LEXIS 161, *12-15 (July 29, 2004) (to "gain access to safeguards information, a witness must possess the technical expertise to evaluate the information requested."). This "need to know" requirement will provide a practical limitation on the number of persons who will need a background check.

There are also practical ways to manage SGI issues in the proceeding that could avoid the need for delays. For instance, contentions involving SGI matters could be litigated by representative parties, thereby avoiding the need for representative(s) of each participant from obtaining a background check.

DOE also notes that the need for background checks to obtain access to SGI is a longstanding requirement, and that the need for such background checks has been the subject of discussion in this proceeding since 2005. For instance, in December 2005 the parties submitted for the PAPO Board's consideration a joint proposed case management order that addressed requirements for access to SGI, including background checks. *See* Joint Proposed Third Case Management Order for Sensitive Unclassified Information (December 19, 2005) at 10-11.

Interested persons have been on notice, therefore, that background checks are a prerequisite for access to SGI in this proceeding and that they can request background checks during the pre-license application phase if they anticipate wanting access to SGI in the licensing proceeding.

Respectfully submitted,

U.S. DEPARTMENT OF ENERGY

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October 19, 2007

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 Matter)	)	

THE DEPARTMENT OF ENERGY'S MEMORANDUM
IN RESPONSE TO THE COMMISSION'S OCTOBER 5, 2007 ORDER
CERTIFICATE OF SERVICE

I certify that copies of the foregoing THE DEPARTMENT OF ENERGY'S MEMORANDUM IN RESPONSE TO COMMISSION'S OCTOBER 5, 2007 ORDER in the above-captioned proceeding have been served on the following persons on October 19, 2007 by Electronic Information Exchange.

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