

## **NRC's Licensing Process: Judging The Safety Of A Proposed Repository 2008 Update**

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Division of High-Level Waste Repository Safety**

**Workshop for Affected Units of Local and Tribal  
Government  
April 17, 2008**



### **Purpose**

- Continue Discussions with Affected Units of Local and Tribal Government about how NRC will decide whether to authorize construction of a repository at Yucca Mountain



## **NRC's Role At Yucca Mountain**

- Independent regulator
- Primary mission is to protect public health and safety and the environment
- Must decide whether to authorize DOE to construct the proposed repository
- If authorization is granted, NRC will inspect to assure DOE complies with safety and security requirements

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## **Roles Of Other Agencies At Yucca Mountain**

- Department of Energy (DOE)
  - Characterize site; prepare Environmental Impact Statement; prepare license application
  - Subject to NRC authorization: construct and operate the repository; provide long-term oversight
- Environmental Protection Agency (EPA)
  - Establish environmental standards that NRC must use to decide whether to authorize the potential repository

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## Who Makes The Decisions At NRC?

- Five NRC Commissioners
  - Appointed by the President
  - Confirmed by the Senate
  - At most 3 of any one political party
  - 5-year term of service
  - Chairman designated by the President

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## What Is The Role Of NRC's Professional Staff?

- Implement Commission regulations and policies
- Recommend public health & safety, environmental, and security regulations
- Evaluate license applications and amendments
- Inspect applicants and licensees
- Advise Commission on safety, environmental, and security matters
- Communicate with the public

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## **What Is The Role Of The Atomic Safety And Licensing Board Panel?**

- Independently conducts all licensing and other hearings for the Commission usually with three-judge Hearing Boards
- Panel manages activities of the High-Level Waste Licensing Support Network and maintains the Digital Data Management System

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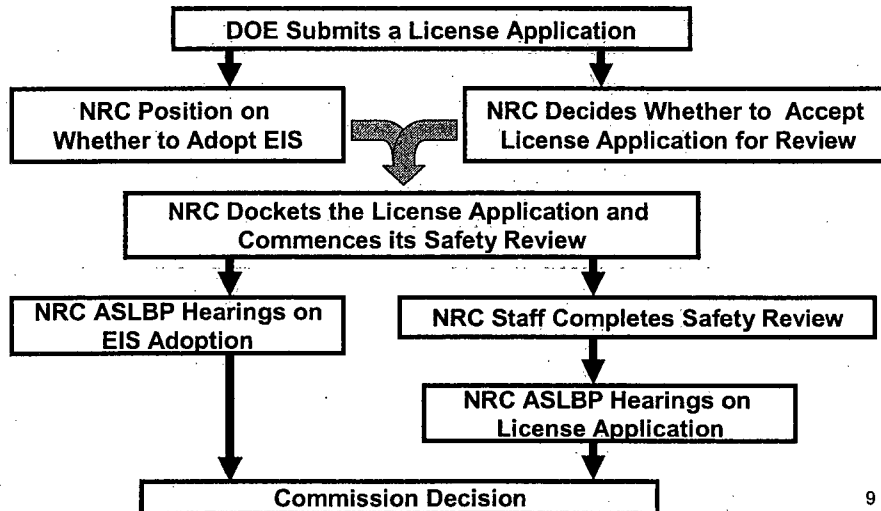
## **NRC Must Decide Whether To Allow DOE To Construct A Repository At Yucca Mountain**

- If DOE submits a license application, the Nuclear Waste Policy Act, as amended, provides that NRC decide in three to four years

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## Overview of NRC's Decision Process



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## Changes in NRC's Communication Process with DOE

- Receipt of license application will result in changes to NRC interactions with DOE and public stakeholders.
- NRC/DOE interactions will focus on the safety review process, and obtaining information necessary for NRC to make a regulatory decision.
- NRC's licensing interactions with DOE will continue to be open for public observation.

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## **NRC Communications with Affected Units of Local Government and Tribes**

- NRC expects to rely more on its public website ([www.nrc.gov](http://www.nrc.gov)) as a comprehensive source of information on Yucca Mountain, including:
  - Electronic information about NRC and its decision process for the proposed repository at Yucca Mountain
  - NRC documents, letters, meeting notices, and summaries
  - Status of NRC staff's safety review and hearing process
  - Notice of meetings, teleconferences, and other NRC interactions with DOE.

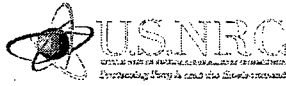
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## **Some Important Considerations**

- NRC cannot provide legal advice to potential parties in a hearing; AULGs and Tribes are encouraged to consult with counsel
- Detailed technical matters under review by NRC staff will be discussed only after completion of the safety review. Staff will present its findings in the Safety Evaluation Report.

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## **NRC Will Decide Whether To Deny Or Authorize Construction Of A Repository By...**

- Reviewing all information objectively
- Making transparent decisions based on facts
- Maintaining an open, public, and fair adjudicatory process

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## **Possible Outcomes**

If the license application is submitted,  
NRC could:

- Deny the license application
- Authorize construction of the repository with or without specific conditions

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## Summary

- Any NRC decision on a potential license application for a repository will:
  - Be based on NRC staff's comprehensive, independent safety review
  - Include full and impartial public hearings that follow formal, well-established rules to ensure an open, objective decision





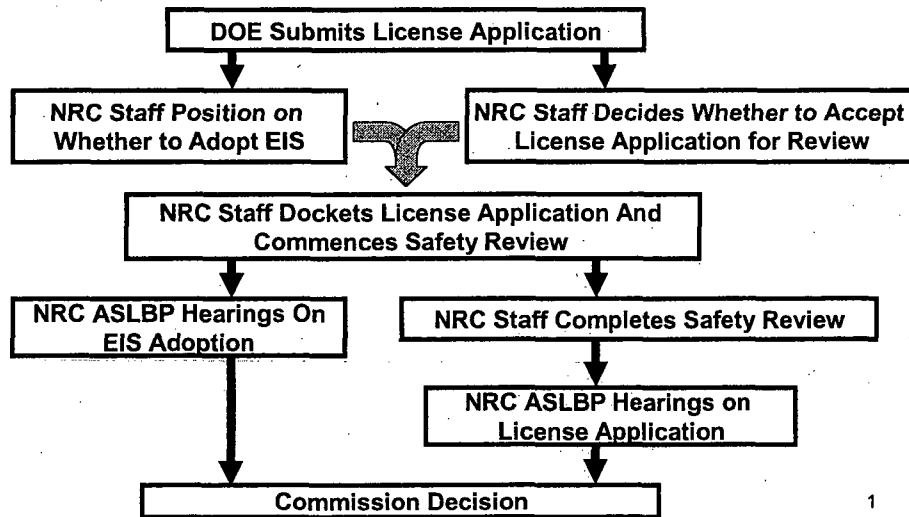
## NRC's Decision Process: Estimated Timeline

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Workshop for Affected Units of Local and Tribal Government  
April 17, 2008



### Overview of NRC's Decision Process





## **Access to Documents**

- Six months prior to submitting an application, DOE must certify that its documentary material supporting the application is available in NRC's Licensing Support Network (LSN) and provide monthly updates
- DOE certified availability of its documents on LSN on 10/19/2007
- NRC's Pre-Application Presiding Officer (PABO) Board upheld DOE's certification on 12/12/2007

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## **Document Access Requirement For Other Participants**

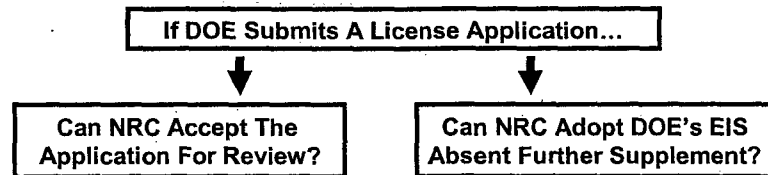
- The NRC staff certified its document collection in July of 2004 and has provided regular updates, as required
- Potential parties and interested government participants were to have certified the availability of their documents not later than 90 days after DOE's certification (by January 18, 2008)
- 17 participants are certified

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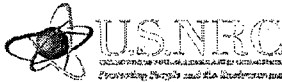


## Submission of a License Application

- DOE has announced its intent to submit an application for the proposed repository at Yucca Mountain not later than June 2008



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## Public Meeting On License Application

- If DOE submits a license application for the proposed repository at Yucca Mountain, NRC will hold a public meeting 2 – 4 weeks later
- DOE will be asked to walk through its application and answer questions from the NRC staff

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### **NRC Staff Must Decide Whether to Accept the Application for Review ( the “Docketing Decision”)**

- Verify that the license application:
  - Contains all required information
  - Documents DOE's safety case
- DOE must also comply with document access requirements
- This is not a detailed technical review
- Decision expected in 90 days (~September 2008)

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### **Possible Outcomes Of Docketing Decision:**

- NRC staff is unable to accept the application for review
  - Application is returned to DOE
  - Explanation and instructions are provided, as appropriate
- NRC staff accepts the application for review
  - NRC staff docket the application and begins safety review
  - NRC publishes a Notice of Hearing in the *Federal Register*
  - Notice will include NRC staff's position on whether it is practicable to adopt EIS without further supplement

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## **NRC MUST REVIEW AND DECIDE WHETHER TO ADOPT A YUCCA MOUNTAIN EIS**

- EIS must accompany license application
- NRC will review the EIS and its supplements
- NRC must adopt the EIS unless:
  - Requested NRC licensing action differs from the action proposed in the license application in a way that may significantly affect the environment; **or**
  - Significant and substantial new information or considerations make the EIS inadequate
- Decision expected in 90 days (~September 2008)

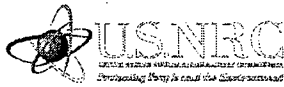
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## **IF DOE FAILS TO ADDRESS COMMENTS ON THE EIS, WILL NRC CONSIDER THEM AS “NEW INFORMATION OR CONSIDERATIONS”?**

- Yes, during its adoption review, NRC staff will consider such comments as new information or considerations
- NRC staff will decide independently whether they render the EIS inadequate or in need of further supplement

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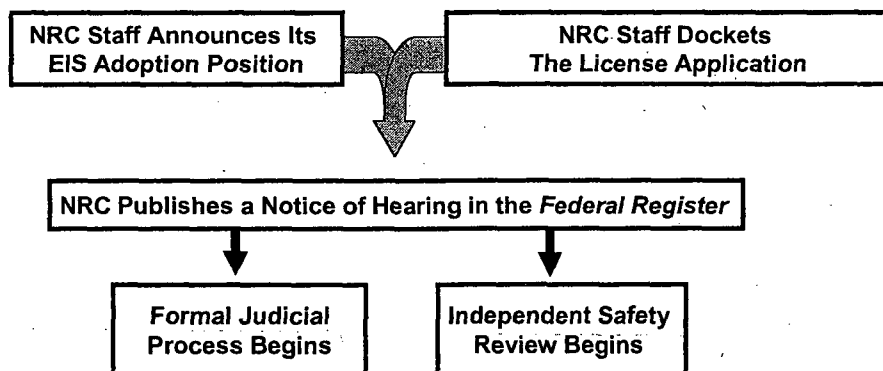
## Possible Outcomes of NRC's Adoption Determination Process

- Adopt
- Not adopt
- Adopt with additional supplement
  - DOE
  - NRC

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## If NRC Accepts Application For Review :



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## Petitions and Requests

- Potential parties must petition for leave to intervene and submit proposed contentions
- Parties may contest the application, NRC EIS adoption decision, or both
- Tribal or Local Governments may request status as Interested Governmental Participants
- All participants must comply with NRC's document access requirements
- Petitions and requests must be filed within 30 days of the Notice of Hearing (~October 2008)

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## What Does Participation Entail?

- Both Parties and Interested Governmental Participants can:
  - Engage in discovery
  - Introduce evidence
  - Interrogate witnesses
  - File proposed findings
  - Appeal to the Commission

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## Party or Governmental Participant?

- Party
  - Has at least one contention admitted
  - Admissible contentions are subject to litigation
- Interested Governmental Participant
  - May or may not take a position on an issue
  - Relies on other parties to raise contentions

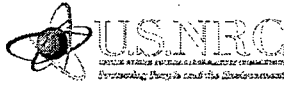


## First Pre-hearing Conference

Parties, interested governmental participants, and petitioners for intervention meet before the ASLB to discuss:

- Identity of participants in the proceeding
- Proposed contentions
- Discovery schedule
- Will be held ~ 60 days after Notice of Hearing (~December 2008)





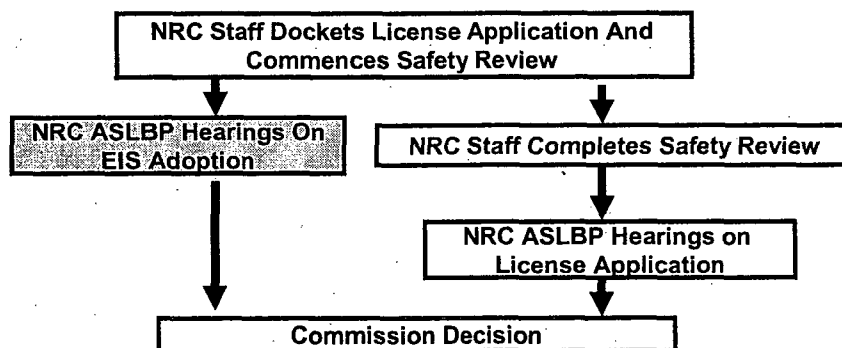
## First Pre-hearing Conference Order

- Decisions and schedules will be set in an order issued by the ASLB (~January 2009)
- Potential parties and interested governmental participants have 10 days to appeal the order and another 10 days to file briefs opposing other appeals
- The Commission will rule on appeals to the first pre-hearing conference order (~March 2009)

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## Hearings On EIS Adoption



- Could begin as early as summer 2009

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## **NRC Staff Safety Review**

- Thorough, technical review of license application
- If needed, NRC staff may:
  - request additional information
  - conduct independent confirmatory analyses
- Proceeds in parallel with EIS adoption hearings
- Results documented in the Safety Evaluation Report (SER) [~ March 2010]

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## **Second Pre-hearing Conference**

- After the Staff issues its SER
- Participants will meet before the ASLB to discuss:
  - Final issues for evidentiary hearing
  - The schedule for the filing of testimony
  - The schedule for the hearing

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## **Second Pre-hearing Conference Order**

- Decisions and schedules will be set in an order issued by the ASLB (~May 2010)
- Potential parties and interested governmental participants have 10 days to appeal the order and another 10 days to file briefs opposing other appeals
- The Commission will rule on appeals to the second pre-hearing conference order (~July 2010)

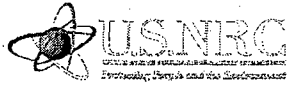
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## **Evidentiary Hearing**

- Formal, trial-like process
- ASLB presides over conduct of hearing
- Oral and documentary evidence
- Witnesses cross-examined
- Structured to foster independent and impartial decisions based on a record of evidence
- Will start ~September 2010

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## **Initial Decision Will Be Issued By ASLB**

- Written decision on matters in controversy in the proceeding
- Findings of fact and conclusions of law based on record of the proceeding
  - Exhibits
  - Transcript of testimony
  - Rulings on legal issues
- Decision expected ~ May 2011

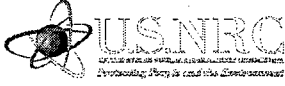
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## **Participant Options**

- Within 10 days
  - petition for reconsideration
  - file a motion to stay the decision
  - appeal to the Commission
- Within 10 more days
  - respond to other stay motions
  - respond to other petitions for reconsideration
- Within 30 days
  - file a brief in support of or opposition to an appeal

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## Appeals To The Commission

- Initial decisions and certain preliminary rulings can be appealed to the Commission
- ASLB may refer rulings to Commission; parties may request certification of a question for Commission review
- Based on alleged errors of fact or law
- Commission will issue a final decision ~ October 2011

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## Summary

- Any NRC decision on a potential license application for a repository will:
  - Be based on NRC staff's comprehensive, independent safety review
  - Include full and impartial public hearings that follow formal, well-established rules to ensure an open, objective decision

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## **Interactions with NRC in HLW Adjudicatory Process: Technical & Procedural Issues**

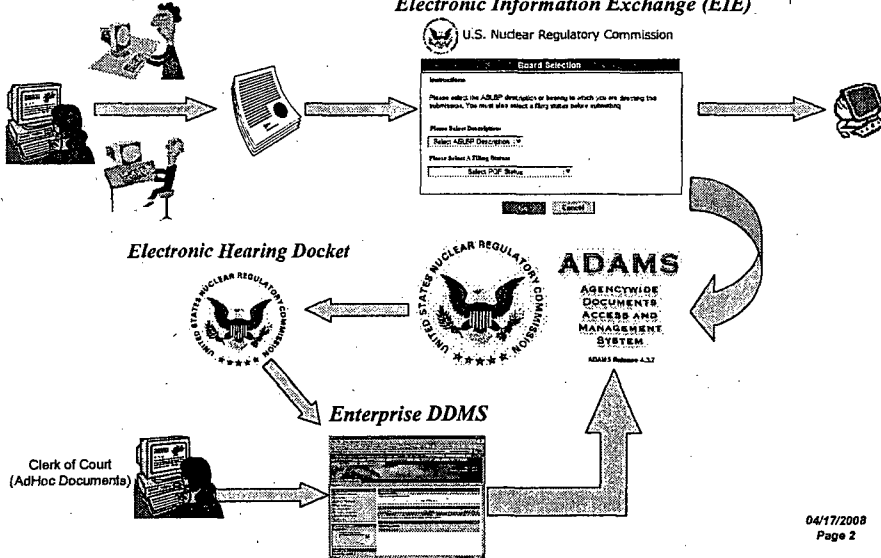
**Daniel J. Graser**  
**Anthony C. Eitrem**  
*Atomic Safety and Licensing Board Panel*

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## **U.S. NRC An Electronic Environment**

*Licensing Support Network (LSN)*

*Electronic Information Exchange (EIE)*



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## **Primary Processes Are Automated**

- **Licensing Support Network (LSN) – Document Discovery**
- **Electronic Submittals (EIE) – Participant Formal Communication, Filing, Service**
- **Electronic Hearing Docket (EHD) – Public Access to the Record**
- **Digital Data Management System (DDMS) – Participant Access to the Record and Case Scheduling**

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## **LSN Technical/Procedural Reminders**

- **Do not delete LSN Materials Post-Certification other than those specifically allowed by Case Management Orders**
- **Certification process:**
  - **self certifications**
  - **NRC does not “approve” your certification**
  - **EIE service list is acknowledgement that it has been served**
  - **Certification “validity” is challengeable by other parties**

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## **LSN Reminders (continued)**

- **LSNA is a technical resource for LSN & DDMS**
- **LSNA communication with Boards is formal and via EIE so that all other parties are informed**

**Do not submit collection Certification and other Board communication to the LSNA**

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## **Electronic Submittal Technical/Procedural Reminders**

- **NRC-issued Digital Certificates are "Windows only" at this time**
- **Like passwords used for DDMS and EHD/Protective Order File, they expire after a set number of days**
- **Users should keep track of when the digital certificate or system password was issued/when it will expire**
- **Don't wait until the last minute**

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## More About Digital Certificates

- **Prerequisite for EIE & DDMS**
  - See: <http://www.nrc.gov/site-help/e-submittals/submit-documents.html>
- **Portable**
  - can be copied to other computers
- **Tied to installed environment**
  - must be reinstalled if you get a new desktop/laptop
- **Procedures are posted on website at:**  
<http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hlw-hearings.html>
- **POC for EIE and EHD is:**  
NRC Public Document Room  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Phn: (800) 397-4209  
Phn: (301) 415-4737  
Fax: (301) 415-3548

TDD (for the hearing impaired): 1-800-635-4512

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## EHD Technical/Procedural Reminders

- **“What is in the Docket?”**
  - It is publicly accessible at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hlw-hearings.html>
- **“Can you Clarify Filing Requirements (dates, format, content, etc.)?”**
  - Board assigned to the case provides scheduling and case management information
- **Submitting PDF versions of Privilege Logs but not sending file used to generate to the LSNA**
- **Missing Participant’s POC (name to be posted on LSN) for requesting privileged documents as required by Case Management Order**
- **If you need help with Adjudicatory Hearing Submissions contact: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)**

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## **DDMS Technical/Procedural Reminders**

- **Routine document pipeline into DDMS is via EIE – ADAMS – EHD pipeline**
- **Pre-requisites for DDMS access**
  - digital certificate
  - be added to the Service list
- **Contact SECY to be added to the service list for a proceeding**
- **Caution on Ad hoc submission prior to hearing:**
  - providing documents on a CD to the clerk of the court before the start of a hearing does not constitute notification (service) to other parties

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## **Important To Remember**

- **Case-specific requirements are found in Board Orders**
- **Read Online Help information for EIE and EHD**
- **Absent good cause, use of EIE is mandatory**
- **PDR as the first tier "help desk" for technical questions about EIE or EHD**
- **Digital certificates needed for EIE, EHD Protective Order, and DDMS access**

**Effective and efficient use of NRC systems is key to meeting 3-year schedule for proceedings**

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## Points of Contact

- **Licensing Support Network and DDMS**
  - Dan Graser (301)415-7401 [Dan.Graser@NRC.GOV](mailto:Dan.Graser@NRC.GOV)
  - Matt Schmit (301)415-7469 [Matthew.Schmit@NRC.GOV](mailto:Matthew.Schmit@NRC.GOV)
  - Andrew Weklie (301)415-6541 [Andrew.Weklie@NRC.GOV](mailto:Andrew.Weklie@NRC.GOV)

- **POC for EIE and EHD is:**

NRC Public Document Room  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
Phn: (800) 397-4209  
Phn: (301) 415-4737  
Fax: (301) 415-3548  
TDD (for the hearing impaired): 1-800-635-4512

- **Electronic Submittals & EHD Content**

- *New! Quick Start Guide!*
- *Consolidates information from multiple pages*

<http://www.nrc.gov/site-help/e-submittals/quick-start-guide-electronic-submission-instructional-blue-box.pdf>

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## Interactions with the ASLBP

- **What is the ASLBP?**
  - **The Atomic Safety & Licensing Board Panel is:**
    - *Independent Adjudicatory Arm of NRC*
    - *Acts as the Commission's "Trial Court"*
    - *Authority Delegated by Commission*
    - *Hears cases in Licensing Boards of Three Judges*
    - *Was Created by §191 of the Atomic Energy Act*

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## **ASLBP Judges**

- **Who are Judges & How Qualified?**
  - **Licensing Boards typically consist of One Legal and Two Technical Judges**
  - **Majority of Technical Judges are Part Time**
  - **Technical Judges are Experts in their Scientific Disciplines**
  - **Recommended by Screening Committee and Appointed by Commission**

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## **ASLBP Judges cont.**

- **How Independent Are They?**
  - **No individual supervision of adjudicative actions, including by the Commission**
  - **Not subject to any performance reviews**
  - **Not eligible for any performance bonus compensation**
  - **Not subject to any negative compensation action or demotion**
  - **No promotional opportunities**
  - **Only subject to termination for cause**

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## ***ASLBP Judges cont.***

- ***Not Administrative Law Judges (ALJ's)***
  - ***ASLBP Judges are hired under authority of the AEA, not federal personnel laws***

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## ***ASLBP Objectives***

- ***Fundamental Purpose is to Hear and Decide Disputes regarding proposed NRC Licensing actions, and***
- ***In so doing Create a Complete and Accurate Record of the Proceeding so that it can be Fairly and Efficiently reviewed by the Commission***
- ***ASLBP Decisions are Not Final until approved by the Commission***

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## About ASLBP Proceedings

- **They are Formal Legal Proceedings not unlike Federal District Court**
  - **Legally sophisticated environment**
  - **Judges and ASLBP Staff cannot and will not answer legal questions or provide legal advice**
  - **Not a learn-as-you-go opportunity**
  - **Non-lawyer Party Representatives will be expected to know and follow the rules and procedures**

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## About ASLBP Proceedings cont.

- **Rules of Practice (10 CFR Part 2)**
  - **are lengthy, detailed and complex and were written by lawyers for lawyers**
  - **Procedures and time limits for filings and actions are strictly enforced**
- **Substantive Regulations - 10 CFR Parts 51 & 63**
  - **are lengthy, detailed and complex and were written by technical experts for technical experts**
  - **the technical issues to be litigated will be complex**

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## **About ASLBP Proceedings cont.**

### ***ASLBP Chief Counsel strongly recommends retaining qualified legal counsel***

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## **Additional Information**

- **More information about the ASLBP and what it does:**  
<http://www.nrc.gov/about-nrc/regulatory/adjudicatory/aslbp-respons.html>
- **List of all ASLBP Judges with Bios:**  
<http://www.nrc.gov/about-nrc/organization/panel-members.html>
- **Contact:**  
**Anthony C. Eitreim**  
**301-415-7390**  
**[Anthony.Eitreim@nrc.gov](mailto:Anthony.Eitreim@nrc.gov)**

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