

may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, attn: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov), and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the requirements set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to

set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated in Rockville, Maryland, this 2nd day of July, 2004.

For the Nuclear Regulatory Commission.

**J.E. Dyer,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-15789 Filed 7-12-04; 8:45 am]

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. PAPO-00]**

**Commissioners: Nils J. Diaz, Chairman, Edward McGaffigan, Jr., Jeffrey S. Merrifield; In the Matter of U.S. Department of Energy (High Level Waste Repository: Pre-Application Matters); CLI-04-20; Order**

The Commission has promulgated regulations, found in 10 CFR part 2, subpart J, which, among other things, provide for the use of an electronic information management system to make documents available to the participants in any eventual licensing proceeding on a high-level radioactive waste repository. Requiring participants to place pertinent documents into the Licensing Support Network (LSN) for use by the other participants obviates the need for the traditional means of document discovery and will allow potential parties to use some part of the pre-application period to review documentary information and prepare contentions for filing in petitions to intervene. In promulgating its regulations, the Commission recognized that there is a potential for disputes among the participants regarding document withholding from the LSN.

Section 2.1010 of subpart J requires that the Commission designate an official to rule on those disputes, a Pre-

License Application Presiding Officer (PAPO). Subpart J defines the PAPO as “one or more members of the Commission, or an atomic safety and licensing board (ASLB), or a named officer who has been delegated final authority in the pre-license application phase with jurisdiction specified at the time of designation.” 10 CFR 2.1010(a)(1). That official is to be designated no later than fifteen days after the Department of Energy (DOE)—the potential applicant for a license authorizing construction of a high-level radioactive waste repository—provides a written certification to the NRC pursuant to 10 CFR 2.1009(b) that DOE has identified the pertinent documentary information and made it electronically available.<sup>1</sup> DOE provided that certification to NRC on June 30, 2004. The purpose of this order is to designate a PAPO and set forth the jurisdiction of that official.

### **Designation of the PAPO**

The Commission hereby designates the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, G. Paul Bollwerk, III, as the PAPO. As set forth below, he is authorized to delegate that authority.

### **PAPO's Powers and Jurisdiction**

The Commission authorizes the PAPO to delegate his authority in whole or in part to any member or members of the Atomic Safety and Licensing Board Panel to serve singly or jointly on one or more boards.

Pursuant to 10 CFR 2.1010(e), the PAPO possesses all the general powers specified in § 2.319 and § 2.321(c) that the PAPO requires to carry out its responsibilities. As provided by 10 CFR 2.1010(a)(1) and (b), the PAPO is granted this authority *solely* for the purpose of ruling on disputes over the electronic availability of documents, including disputes relating to claims of privilege and those relating to the implementation of recommendations of the Advisory Review Panel established under § 2.1011(d). Pursuant to § 2.1010(b), the PAPO shall rule on any claim of document withholding except as otherwise provided in this order or subsequent order of the Commission. In 10 CFR 2.1005, the Commission has delineated classes of documents that are to be excluded from the LSN. The Commission calls attention to recent changes to that section of the regulations. See 69 FR 32836 (June 14,

<sup>1</sup> We note receipt of a June 2, 2004, letter from counsel for the State of Nevada requesting the Commission “to appoint a Pre-Application Presiding Officer immediately.” This Order addresses that request.

2004). No issue lacking a direct relation to the LSN is to be entertained by the PAPO.

The Commission's interest is in assuring the availability of information and not in dissipating resources on meaningless disputes. The PAPO possesses authority under 10 CFR 2.1010(e) and 2.319 to restrict irrelevant, unreliable, duplicative or cumulative arguments and to regulate the course of the proceedings and the conduct of the participants. The Commission expects the PAPO to use this authority to ensure a fair and impartial process.

#### Clarification Regarding Appeals of PAPO Actions

Although 10 CFR 2.1010(a)(1) refers to "a named officer who has been delegated *final* authority on the matter to serve as the [PAPO]" (underlining added), a right of appeal from a PAPO order issued under 10 CFR 2.1010 is recognized under § 2.1015(b). A notice of appeal, accompanied by a supporting brief, must be filed with the Commission no later than ten days after service of the order in accordance with 10 CFR 2.1015.

#### Termination of Jurisdiction

The jurisdiction of the PAPO shall terminate at the time that an Atomic Safety and Licensing Board has been appointed to preside over the high-level waste repository licensing proceeding,<sup>2</sup> the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel or the Commission rules otherwise, the PAPO shall retain jurisdiction over those disputes pending before it at the time a Licensing Board has been appointed for the high level waste repository licensing proceeding.

#### Application of Ex Parte and Separation of Functions Rules

The ex parte and separation of function rules (10 CFR 2.347 and 2.348 respectively) shall apply to those limited matters falling within the PAPO's jurisdiction and to appeals to the Commission of PAPO rulings.

#### Technical Requirements for Legal Filings

An addendum to the order discusses and displays how the participants shall caption any filing seeking a ruling or other action from the PAPO. The caption includes, as will be noted, both

<sup>2</sup> The Commission expects that none of the one or more Atomic Safety and Licensing Boards that may be needed for such proceeding will be appointed until after DOE files an application, the application has been docketed by the NRC staff, a Notice of Opportunity for Hearing has been published by the NRC, and at least one person has filed a petition to intervene and request a hearing.

the identification of the originator of the request and the number of the request by that particular originator. Subsequent responses and any other related papers should carry the same caption. This will aid electronic retrieval of the documents and facilitate identification of filings and rulings on any specified dispute.

Other requirements governing submissions shall be as the part 2 rules provide unless the PAPO or the Commission provides otherwise.

*It is so ordered.*

Dated in Rockville, Maryland, this 7th day of July, 2004.

For the Commission.

**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

#### Addendum to CLI-O4-20

The caption used on the above Order appointing a PAPO should be used for all filings with the PAPO.

Beneath the caption, the participant shall number each of its requests for action by the PAPO. Thus, for example, a participant's first request should be numbered [name of participant]-01. Its second request will be numbered [name of participant]-02. By requiring each of the participants to number its requests, it will make it easy for the PAPO and the participants to refer to the various requests.

Thus were a participant to file a request, its first filing would read as follows:

U.S. Dept of Energy: High Level Waste  
Repository Pre-Application Matters  
Docket No. PAPO-00  
Name of Participant-01

[FR Doc. 04-15788 Filed 7-12-04; 8:45 am]

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### NUCLEAR REGULATORY COMMISSION

#### Sunshine Act Meeting

**DATES:** Weeks of July 12, 19, 26; August 2, 9, 16, 2004.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

#### Week of July 12, 2004

*Tuesday, July 13, 2004*

2:15 p.m.—Discussion of Security Issues (closed—ex. 1).

*Wednesday, July 14, 2004*

1:15 p.m.—Affirmation Session (Public Meeting). (If needed.)

*Thursday, July 15, 2004*

11:30 a.m.—Discussion of Security Issues (closed—ex. 1).

#### Week of July 19, 2004—Tentative

*Wednesday, July 21, 2004*

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting). (Contact: John Larkins (301) 415-7360.)

This meeting will be webcast live at the Web address [www.nrc.gov](http://www.nrc.gov).

#### Week of July 26, 2004—Tentative

There are no meetings scheduled for the Week of July 26, 2004.

#### Week of August 2, 2004—Tentative

There are no meetings scheduled for the Week of August 2, 2004.

#### Week of August 9, 2004—Tentative

There are no meetings scheduled for the Week of August 9, 2004.

#### Week of August 16, 2004—Tentative

*Wednesday, August 18, 2004*

9:30 a.m.—Discussion of Security Issued (closed—ex. 1).

\*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Dave Gamberoni, (301) 415-1651.

\* \* \* \* \*

**ADDITIONAL INFORMATION:** By a vote of 3-0 on July 6, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that "Affirmation of (1) Pacific Gas & Electric Co. (Diablo Canyon Power Plant, Units 1 and 2); Applicant's motion to terminate proceeding and Intervenor's motion to vacate, (2) Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), Order on the Board's certified questions on admissibility of a security contention, and (3) Appointment of a Pre-License Application Presiding Officer (PAPO) for High Level Waste Repository Pre-License Application Phase" be held July 7, and on less than one week's notice to the public.

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The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator,