

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Paul S. Ryerson
Richard E. Wardwell

In the Matter of

U.S. DEPARTMENT OF ENERGY

(High Level Waste Repository)

Docket No. 63-001-HLW

ASLBP No. 09-892-HLW-CAB04

May 13, 2011

ORDER

(Granting DOE's Motion for Clarification)

In response to a memorandum from the Licensing Support Network (LSN) Administrator (LSNA) explaining that the premise underlying the Board's earlier efforts to preserve the LSN document collections of the parties may no longer be valid,¹ CAB-04 issued an order on April 11, 2011.² That order directed, inter alia, that each party preserve all LSN documents in PDF format and submit its document collection, together with the associated bibliographic header files, to the NRC Office of the Secretary (SECY) on optical storage media as specified in the agency's Guidance for Electronic Submissions to the Commission, Revision 6 (May 7, 2010) (Guidance).³ Now before us is the motion of the Department of Energy (DOE) for clarification of the April 11, 2011 order.⁴

¹ Memorandum from Daniel J. Graser, Licensing Support Network Administrator, to CAB-04 Administrative Judges (Feb. 18, 2011).

² CAB Order (Concerning LSNA Memorandum and Parties' LSN Document Collections) (April 11, 2011) (unpublished). The Board's efforts to fulfill its responsibility to preserve the electronic document discovery database containing the lengthy history and underlying research of the Yucca Mountain geologic repository residing on the LSN, a system mandated by 10 C.F.R. Part 2, Subpart J, and over which CAB-04 was established to preside, is set forth in footnote 4 of that order. See id. at 2 n.4.

³ See id. at 3.

⁴ See U.S. Department of Energy's Motion for Clarification and Status Report Regarding the Board's Order Dated April 11, 2011 (Apr. 21, 2011) [hereinafter DOE Motion].

Inyo County, California and Aiken County, South Carolina have no objection to DOE's motion.⁵ While the NRC Staff reiterates its continuing objecting to any LSN document production, it does not object to the substance of DOE's clarification motion.⁶ In its motion, DOE indicates that it conferred with the LSNA and the Secretary's technical staff about the issues on which it seeks clarification and that they agree with DOE's proposals.⁷ DOE's motion for clarification is granted.

First, DOE requests clarification of that part of the Board's April 11, 2011 order requiring that the parties submit their LSN document collections on optical media in accordance with the agency's Guidance.⁸ Noting that certain of the technical requirements in the Guidance present issues for DOE, it states that it is converting its LSN documents from the current full text and image TIFF format into "PDF/A format."⁹ DOE states that:

[t]he PDF/A format means that the PDF images are capable of text searches and have embedded fonts. DOE will also provide the bibliographic header files in XML format for these documents and for those documents in DOE's LSN collection that are currently header only. These XML files will include the participant accession number and the LSN accession number.¹⁰

It should be understood by DOE that its conversion to PDF/A format is permissible with the understanding that, except as otherwise herein noted, all documents converted to PDF/A format in all other respects must meet the standards in the NRC's Guidance, including fast web viewing.

⁵ See DOE Motion at 4. DOE's motion indicates that when it informed the parties pursuant to 10 C.F.R. § 2.323(b) of its intent to file its clarification motion, the State of Nevada, State of Washington, NCAC, the State of California, the State of South Carolina, Nye County, Nevada and White Pine County, Nevada took no position on DOE's request but reserved their right to respond once the motion was filed. See id. Thereafter, none of those parties filed answers.

⁶ See NRC Staff Answer to U.S. Department of Energy's Motion for Clarification and Status Report Regarding the April 11, 2011 Order (May 2, 2011) at 1-2.

⁷ DOE Motion at 2.

⁸ Id.

⁹ Id.

¹⁰ Id.

Second, because of the size of its LSN document collection, DOE's motion states that it would be considerably less expensive and labor intensive (as well as more efficient for the LSNA and the Secretary's technical staff) if DOE were allowed to submit its documents on high capacity external hard drives.¹¹ DOE's request concerning external hard drives is granted and DOE may submit its LSN document collection to the Secretary on high capacity external hard drives with the understanding, however, that the high capacity external hard drives are capable of connecting to a computer using a universal serial bus (USB) interface and compatible with a Microsoft Windows operating system.

Third, DOE's motion notes that a small number of documents in its LSN collection were scanned into electronic images from low quality paper or microfilm creating images that may not produce optical character recognition (OCR) capable of converting to PDF/A format.¹² According to DOE, these documents otherwise meet the OCR exceptions set forth in 10 C.F.R. §§ 2.1011, 2.1013, but when the Secretary receives these documents its program ensuring compliance with the agency's Guidance may fail the documents.¹³ To avoid this problem, DOE requests that the Secretary be permitted reasonably to accommodate the DOE LSN documents that meet the OCR standard exceptions in 10 C.F.R. Part 2, Subpart J of the regulations.¹⁴ DOE's request in this regard is granted.

Fourth, DOE's motion states that it discussed a number of other technical issues with the LSNA and the Secretary's technical staff and all agreed that the LSNA and the Secretary's technical staff would implement the following variations from the agency's Guidance:

1. Each document's file name will be its LSN participant accession number rather than the naming convention addressed in § 2.4 of the Guidance.

¹¹ Id.

¹² Id. at 3.

¹³ Id.

¹⁴ Id.

2. If a DOE document is currently in color format on the LSN, DOE will preserve that format in its PDF submission even though § 2.10 of the Guidance discourages the use of color.

3. For any DOE LSN document exceeding 50 megabytes, DOE will be allowed to submit it as a single document file, even though the document exceeds the 50 megabyte file-size limitation of § 2.5 of the Guidance.

4. In the DOE transmittal to the Secretary, DOE will list each storage media unit, the size of the collection on that unit, and the first and last document on that drive. DOE is excused from the requirements of § 2.7 of the Guidance, providing that the transmittal letter forwarding electronic documents should include a listing of certain information for each file (e.g., file name, size of each file).¹⁵

These technical issues and their resolution agreed upon by DOE, the LSNA and the Secretary's technical staff are acceptable to the Board. Any future necessary variations from the agency's Guidance agreed to in advance by DOE, the LSNA, and the Secretary's technical staff will be acceptable to the Board and do not require further motions for clarification.

As noted above, DOE's motion for clarification is granted.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

/RA/

Paul S. Ryerson
ADMINISTRATIVE JUDGE

/RA/

Richard E. Wardwell
ADMINISTRATIVE JUDGE

Rockville, Maryland
May 13, 2011

¹⁵ Id.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (Granting DOE'S Motion for Clarification), dated May 13, 2011, have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board (ASLBP)
Mail Stop T-3F23
Washington, DC 20555-0001

Construction Authorization Board 04 (CAB04)

Thomas S. Moore, Chair
Administrative Judge
thomas.moore@nrc.gov

Paul S. Ryerson
Administrative Judge
paul.ryerson@nrc.gov

Richard E. Wardwell
Administrative Judge
richard.wardwell@nrc.gov

Anthony C. Eitreim, Esq., Chief Counsel
ace1@nrc.gov
Katherine Tucker, Law Clerk
katie.tucker@nrc.gov
Daniel J. Graser, LSN Administrator
djg2@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop O-15D21
Washington, DC 20555-0001
Michelle D. Albert, Esq.

michelle.albert@nrc.gov

Jessica Bielecki, Esq.

jessica.bielecki@nrc.gov

Elva Bowden Berry, Esq.

elva.bowdenberry@nrc.gov

Joseph S. Gilman, Paralegal

joseph.gilman@nrc.gov

Christopher Hair, Esq.

christopher.hair@nrc.gov

Daniel W. Lenehan, Esq.

daniel.lenehan@nrc.gov

Megan A. Wright, Esq.

megan.wright@nrc.gov

Mitzi A. Young, Esq.

may@nrc.gov

OGC Mail Center

OGCMailCenter@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop O-7H4M
Washington, DC 20555-0001
OCAA Mail Center
ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001
Hearing Docket
hearingdocket@nrc.gov

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue S.W.
Washington, DC 20585
Martha S. Crosland, Esq.
martha.crosland@hq.doe.gov
Nicholas P. DiNunzio, Esq.
nick.dinunzio@rw.doe.gov
Sean A. Lev, Esq.
sean.lev@hq.doe.gov
James Bennett McRae
ben.mcrae@hq.doe.gov
Cyrus Nezhad, Esq.
cyrus.nezhad@hq.doe.gov
Christina C. Pak, Esq.
christina.pak@hq.doe.gov

Office of Counsel, Naval Sea Systems Command
Nuclear Propulsion Program
1333 Isaac Hull Avenue, SE, Building 197
Washington, DC 20376
Frank A. Putzu, Esq.
frank.putzu@navy.mil

For U.S. Department of Energy
Talisman International, LLC
1000 Potomac St., NW, Suite 300
Washington, DC 20007
Patricia Larimore, Senior Paralegal
plarimore@talisman-intl.com

Counsel for U.S. Department of Energy
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
Lewis M. Csedrik, Esq.
lcsedrik@morganlewis.com
Raphael P. Kuyler, Esq.
rkuyler@morganlewis.com
Charles B. Moldenhauer, Esq.
cmoldenhauer@morganlewis.com
Thomas D. Poindexter, Esq.
tpoindexter@morganlewis.com
Alex S. Polonsky, Esq.
apolonsky@morganlewis.com
Thomas A. Schmutz, Esq.
tschmutz@morganlewis.com
Donald J. Silverman, Esq.
dsilverman@morganlewis.com
Shannon Staton, Legal Secretary
sstaton@morganlewis.com
Annette M. White, Esq.
Annette.white@morganlewis.com
Paul J. Zaffuts, Esq.
pzaffuts@morganlewis.com

Counsel for U.S. Department of Energy
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Kelly L. Faglioni, Esq.
kfaglioni@hunton.com
Donald P. Irwin, Esq.
dirwin@hunton.com
Stephanie Meharg, Paralegal
smeharg@hunton.com
Edward P. Noonan, Esq.
enoonan@hunton.com
Michael R. Shebelskie, Esq.
mshebelskie@hunton.com
Jason Wool, Esq.
jwool@hunton.com
Belinda A. Wright, Sr. Professional Assistant
bwright@hunton.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
ORDER (Granting DOE'S Motion for Clarification)

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1750 K Street, NW, Suite 350
Washington, DC 20006
Martin G. Malsch, Esq.
mmalsch@nuclearlawyer.com
Susan Montesi:
smontesi@nuclearlawyer.com

Counsel for State of Nevada
Egan, Fitzpatrick, Malsch & Lawrence, PLLC
1777 N.E. Loop 410, Suite 600
San Antonio, TX 78217
Charles J. Fitzpatrick, Esq.
cfitzpatrick@nuclearlawyer.com
John W. Lawrence, Esq.
jlawrence@nuclearlawyer.com
Laurie Borski, Paralegal
lborski@nuclearlawyer.com

Bureau of Government Affairs
Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
Marta Adams, Chief Deputy Attorney General
madams@ag.nv.gov

Nevada Agency for Nuclear Projects
Nuclear Waste Project Office
1761 East College Parkway, Suite 118
Carson City, NV 89706
Steve Frishman, Tech. Policy Coordinator
steve.frishman@gmail.com
Susan Lynch, Administrator of Technical Prgms
szeeee@nuc.state.nv.us

Counsel for Nye County, Nevada
Ackerman Senterfitt
801 Pennsylvania Avenue, NW, #600
Washington, DC 20004
Robert Andersen, Esq.
robert.andersen@akerman.com

Nye County Regulatory/Licensing Advisor
18160 Cottonwood Rd. #265
Sunriver, OR 97707
Malachy Murphy, Esq.
mrmurphy@chamberscable.com

Nye Co. Nuclear Waste Repository Project Office
2101 E. Calvada Boulevard, Suite 100
Pahrump, NV 89048
Zoie Choate, Administrative Technical Coordinator
zchoate@co.nye.nv.us
Celeste Sandoval, Quality Assurance Records Spec.
csandoval@co.nye.nv.us

Counsel for Lincoln County, Nevada
Whipple Law Firm
1100 S. Tenth Street
Las Vegas, NV 89017
Annie Bailey, Legal Assistant
baileys@lcturbonet.com
Adam L. Gill, Esq.
adam.whipplelaw@yahoo.com
Eric Hinckley, Law Clerk
erichinckley@yahoo.com
Bret Whipple, Esq.
bretwhipple@nomademail.com

Lincoln County District Attorney
P. O. Box 60
Pioche, NV 89403
Gregory Barlow, Esq.
lcdca@lcturbonet.com

Lincoln County Nuclear Oversight Program
P.O. Box 1068
Caliente, NV 89008
Connie Simkins, Coordinator
jcciac@co.lincoln.nv.us

For Lincoln County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
mikebaughman@charter.net

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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Clark County, Nevada
500 S. Grand Central Parkway
Las Vegas, NV 98155
Phil Klevatorick, Sr. Mgmt Analyst
klevatorick@co.clark.nv.us
Elizabeth A. Vibert, Deputy District Attorney
Elizabeth.Vibert@ccdavn.com

Counsel for Clark County, Nevada
Jennings, Strouss & Salmon
1350 I Street, N.W., Suite 810
Washington, DC 20005-3305
Alan I. Robbins, Esq.
arobbins@jsslaw.com
Debra D. Roby, Esq.
droby@jsslaw.com

Counsel for Eureka County, Nevada
Harmon, Curran, Speilberg & Eisenberg, LLP
1726 M. Street N.W., Suite 600
Washington, DC 20036
Diane Curran, Esq.
dcurran@harmoncurran.com

Eureka County, Nevada
Office of the District Attorney
701 S. Main Street, Box 190
Eureka, NV 89316-0190
Theodore Beutel, District Attorney
tbeutel.ecda@eurekanv.org

Nuclear Waste Advisory for Eureka
County, Nevada
1983 Maison Way
Carson City, NV 89703
Abigail Johnson, Consultant
eurekanrc@gmail.com

For White Pine County, Nevada
Intertech Services Corporation
PO Box 2008
Carson City, NV 89702
Mike Baughman, Consultant
mikebaughman@charter.net

For Eureka County, Nevada
NWOP Consulting, Inc.
1705 Wildcat Lane
Ogden, UT 84403
Loreen Pitchford, Consultant
lpitchford@comcast.net

Eureka County Public Works
PO Box 714
Eureka, NV 89316
Ronald Damele, Director
rdamele@eurekanv.org

Counsel for Churchill, Esmeralda, Lander,
and Mineral Counties, Nevada

Armstrong Teasdale, LLP
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134-6237
Jennifer A. Gores, Esq.
jgores@armstrongteasdale.com

Kolesar & Leatham
1975 Village Center Circle, Suite 140
Las Vegas, NV 89134
Robert F. List, Esq.
rlist@klnevada.com

Esmeralda County Repository Oversight Program-
Yucca Mountain Project
PO Box 490
Goldfield, NV 89013
Edwin Mueller, Director
muellered@msn.com

Mineral County Nuclear Projects Office
P.O. Box 1600
Hawthorne, NV 89415
Linda Mathias, Director
yuccainfo@mineralcountynv.org

For Lincoln and White Pine County, Nevada
Jason Pitts, LSN Administrator
P.O. Box 126
Caliente, NV 89008
jayson@idtservices.com

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For White Pine County, Nevada
Kelly Brown, District Attorney
801 Clark Street
Ely, NV 89301
kbrown@mwpower.net

White Pine Co. Nuclear Waste Project Ofc
959 Campton Street
Ely, NV 89301
Mike Simon, Director
wpnucwst1@mwpower.net
Melanie Martinez, Sr. Mgmt. Asst.
wpnucwst2@mwpower.net

Counsel for Inyo County, California
Gregory L. James, Attorney at Law
712 Owens Gorge Road
HC 79, Box
Mammoth Lakes, CA 93546
E-Mail: gljames@earthlink.net

Counsel for Inyo County, California
Law Office of Michael Berger
479 El Sueno Road
Santa Barbara, CA 93110
Michael Berger, Esq.
michael@lawofficeofmichaelberger.com
Robert Hanna, Esq.
robert@lawofficeofmichaelberger.com

Inyo Co Yucca Mtn Repository Assessment Ofc
P. O. Box 367
Independence, CA 93526-0367
Cathreen Richards, Associate Planner
crichards@inyocounty.us

Counsel for State of Washington
Office of the Attorney General
P. O. Box 40117
Olympia, WA 98504-0117
Todd R. Bowers, Esq.
toddb@atg.wa.gov
Andrew A. Fitz, Esq.
andyf@atg.wa.gov
Michael L. Dunning, Esq.
michaeld@atg.wa.gov
H. Lee Overton, Esq.
leo1@atg.wa.gov
Diana MacDonald
dianam@atg.wa.gov
Sharon Nelson
sharonn@atg.wa.gov

California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Kevin, W. Bell, Senior Staff Counsel
kwbell@energy.state.ca.us

California Department of Justice
Office of the Attorney General
1300 I Street, PO Box 944255
Sacramento, CA 94244-2550
Susan Durbin, Deputy Attorney General
susan.durbin@doj.ca.gov
Michele Mercado, Analyst
michele.Mercado@doj.ca.gov

California Department of Justice
Office of the Attorney General
1515 Clay Street, 20th Fl, PO Box 70550
Oakland, CA 94612-0550
Timothy E. Sullivan, Deputy Attorney General
timothy.Sullivan@doj.ca.gov

California Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Brian Hembacher, Deputy Attorney General
brian.hembacher@doj.ca.gov

Counsel for State of South Carolina
Davidson & Lindemann, P.A.
1611 Devonshire Drive
P.O. Box 8568
Columbia, SC 29202
Kenneth P. Woodington, Esq.
kwoodington@dml-law.com

Counsel for Aiken County, SC
Haynsworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
P. O. Box 11889
Columbia, SC 29211-1889
Thomas R. Gottshall, Esq.
tgottshall@hsblawfirm.com
Ross Shealy, Esq.
rshealy@hsblawfirm.com

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32303
Cynthia Miller, Esq.
cmiller@psc.state.fl.us

Counsel for Native Community Action Council
Alexander, Berkey, Williams & Weathers LLP
2030 Addison Street, Suite 410
Berkeley, CA 94704
Curtis G. Berkey, Esq.
cberkey@abwwlaw.com
Rovianne A. Leigh, Esq.
rleigh@abwwlaw.com
Scott W. Williams, Esq.
swilliams@abwwlaw.com

Native Community Action Council
P.O. Box 140
Baker, NV 89311
Ian Zabarte, Member of Board of Directors
mrizabarte@gmail.com

Counsel for Prairie Island Indian Community
Public Law Resource Center PLLC
505 N. Capitol Avenue
Lansing, MI 48933
Don L. Keskey, Esq.
donkeskey@publiclawresourcecenter.com

Prairie Island Indian Community Legal Department
5636 Sturgeon Lake Road
Welch, MN 55089
Philip R. Mahowald, Esq.
pmahowald@piic.org

Nuclear Energy Institute
Office of the General Counsel
1776 I Street, NW Suite 400
Washington, DC 20006-3708
Michael A. Bauser, Esq.
mab@nei.org
Anne W. Cottingham, Esq.
awc@nei.org
Ellen C. Ginsberg, Esq.
ecg@nei.org

Counsel for Nuclear Energy Institute
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Jay E. Silberg, Esq.
jay.silberg@pillsburylaw.com
Timothy J.V. Walsh, Esq.
timothy.walsh@pillsburylaw.com

Counsel for Nuclear Energy Institute
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006-3817
William A. Horin, Esq.
whorin@winston.com
Rachel Miras-Wilson, Esq.
rwilson@winston.com
David A. Repka, Esq.
drepka@winston.com
Carlos L. Sisco, Senior Paralegal
csisco@winston.com

Counsel for National Association of Regulatory
Utility Commissioners (NARUC)
1101 Vermont Avenue, Suite 200
Washington, DC 20005
James Ramsay, Esq.
jramsay@naruc.org
Robin Lunt, Esq.
rlunt@naruc.org
Deana Dennis, Legal Assistant
ddennis@naruc.org

U.S. DEPARTMENT OF ENERGY (High Level Waste Repository) Docket No. 63-001-HLW
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Counsel for Joint Timbisha Shoshone Tribal Group
Fredericks, Peebles, & Morgan LLP
1001 Second St.
Sacramento, CA 95814
Felicia M. Brooks, Data Administrator
fbrooks@ndnlaw.com
Ross D. Colburn, Law Clerk
rcolburn@ndnlaw.com
Sally Eredia, Legal Secretary
seredia@ndnlaw.com
Darcie L. Houck, Esq.
dhouck@ndnlaw.com
Brian Niegemann, Office Manager
bniegemann@ndnlaw.com
John M. Peebles, Esq.
jpeebles@ndnlaw.com
Robert Rhoan, Esq.
rrhoan@ndnlaw.com

Fredericks, Peebles, & Morgan LLP
3610 North 163rd Plaza
Omaha, NE 68116
Shane Thin Elk, Esq.
sthinelk@ndnlaw.com

Counsel for Joint Timbisha Shoshone Tribal Group
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P. O. Box 2719
Madison, WI 53701-2719
Julie Dobie, Legal Secretary
jdobie@gklaw.com
Steven A. Heinzen, Esq.
sheinzen@gklaw.com
Douglas M. Poland, Esq.
dpoland@gklaw.com
Hannah L. Renfro, Esq.
hrenfro@gklaw.com
Jacqueline Schwartz, Paralegal
jschwartz@gklaw.com

Godfrey & Kahn, S.C.
780 N. Water Street
Milwaukee, WI 53202
Arthur J. Harrington, Esq.
aharrington@gklaw.com

For Joint Timbisha Shoshone Tribal Group
Indian Village Road, P.O. Box 206
Death Valley, CA 92328-0206
Joe Kennedy, Executive Director
joekennedy08@live.com
Tameka Vazquez, Bookkeeper
purpose_driven12@yahoo.com

[Original Signed by Christine M. Pierpoint]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of May, 2011