

ADJUDICATORY ISSUE INFORMATION

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SECY-07-0013

FOR: The Commissioners

FROM: John F. Cordes, Director
Office of Commission Appellate Adjudication

SUBJECT: 2006 ANNUAL REPORT ON COMMISSION ADJUDICATION

PURPOSE: To provide the Commission a perspective on the adjudicatory caseload and the Commission's role in adjudication during calendar year 2006.

INTRODUCTION:

The Commission has authority to review decisions of Presiding Officers and the Atomic Safety and Licensing Boards. The Office of Commission Appellate Adjudication (OCAA) assists the Commission in this adjudicatory role by monitoring cases and drafting the Commission's appellate decisions. The Commission may exercise appellate authority either when a dissatisfied party to an NRC adjudicatory proceeding seeks review of a board's or presiding officer's decision, or when the Commission, on its own initiative, determines that review is warranted. The Commission may also offer guidance to the licensing boards on significant novel questions raised in an ongoing proceeding, as when a board certifies a question or refers its ruling to the Commission. In addition, NRC regulations give the Commission original jurisdiction to resolve particular categories of adjudications, such as reactor license transfer adjudications.

I am providing the Commission this report on agency adjudications for calendar year 2006 ("CY2006") as part of OCAA's monitoring role over adjudicatory matters. This report updates information in OCAA's last Annual Report (SECY-06-0042, February 28, 2006) and includes additional information, in chart form, on the published Commission decisions (CLIs) issued in CY2006.

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COMMISSION ADJUDICATORY ACTIVITIES:

1. Commission Adjudicatory Decisions in CY2006

CY2006 was a typical adjudicatory year for the Commission. The Commission issued 29 decisions, essentially the same as its average of 28.6 over the five prior calendar years.¹ These decisions spanned a wide variety of proceedings:

- five reactor license renewals (Millstone, Palisades, Monticello, Oyster Creek, and Pilgrim / Vermont Yankee),
- four enforcement actions against Davis-Besse employees regarding the near-breach of the plant's containment vessel (Siemaszko, Geisen, Miller, and Moffitt),
- two materials licenses (Hydro and Pa'ina),
- two combined operating licenses for different fuel fabrication plants (LES and USEC),
- two license transfers ((i) Beaver Valley / Davis-Besse / Perry, and (ii) Calvert Cliffs / Nine Mile Point / Ginna / Turkey Point / St. Lucie / Seabrook / Duane Arnold),
- one reactor license amendment (Vermont Yankee),
- an on-site ISFSI (Diablo Canyon),
- one off-site ISFSI (PFS),
- two early site permits (Clinton and Grand Gulf)
- Yucca Mountain.

OCAA drafted 28 of last year's 29 Commission decisions.² Of those 28 decisions, the Commission upheld or denied review of board orders in 16,³ partially or wholly overturned

¹ Twenty-nine in CY2005, 39 in CY2004, 18 in CY2003, 29 in CY2002, and 28 in CY2001.

² OCAA acted as a consultant on one Commission decision -- involving a petition to reopen the closed Millstone proceeding. OGC drafted that decision because the case fell outside OCAA's area of responsibility. CLI-06-4.

³ CLI-06-1, -6, -9, -10, -11, -12, -13, -14, -15, -17, -18, -19, -21, -24, -25, and -29.

(reversed, vacated, or remanded) board orders in 4,⁴ and was not faced with challenges to board orders in the remaining 8.⁵

The Commission's decisions continue to interpret and clarify NRC regulations, the AEA and NEPA. Significant OCAA work in CY2006 included decisions:

- addressing the impacts of depleted uranium disposal (LES, CLI-06-15).
- addressing the degree of specificity the Commission requires from the Department of Justice when DOJ (through the Staff) asks the Commission to hold an enforcement proceeding in abeyance pending the conclusion of DOJ's own parallel criminal case (Siemaszko, CLI-06-12, & Geisen, CLI-06-19).
- ruling that the DOE draft license application was not "documentary material" under the agency's regulations, and therefore need not be released to the public (DOE, CLI-06-5).
- setting bounds on the scope of uncontested "mandatory hearings" on early site permit applications (Exelon, CLI-06-20).
- clarifying the meanings of the terms "total effective dose equivalent" and "background radiation" with respect to air emissions from licensed operations (Hydro Resources, CLI-06-14).

OCAA often provides the Commission with multiple draft decisions on particularly difficult cases which, in CY2006, included Siemaszko (CLI-06-16) and Oyster Creek (CLI-06-24). The multiple drafts are intended to give the Commission options on how to proceed. Even when OCAA does not provide multiple drafts, our SECY Papers regularly point out possible alternative approaches that the Commission might wish to consider.

OCAA strives to submit its draft decisions expeditiously, and has nearly always been successful in meeting this goal. Our overall average turnaround time (between receiving the final relevant document and filing OCAA's draft decision with SECY) was 32 days for the 33 draft decisions

⁴ CLI-06-5 (reversing a Board ruling that DOE must place its draft Yucca Mountain license application on the Licensing Support Network), CLI-06-16 (vacating a Board's grant of discretionary intervention), CLI-06-20 (taking *sua sponte* review of two board orders requiring the Staff turn over or create documents relevant to the Staff's review of two early site permit applications), and CLI-06-22 (modifying the basis for one Board ruling regarding a cost estimate for depleted uranium disposal).

⁵ CLI-06-2 (license transfer), CLI-06-3 (motion to reopen proceeding), CLI-06-7 (granting review and setting briefing schedule), CLI-06-8 (letter seeking to stay the issuance of license amendment), CLI-06-23 (denying motion for declaratory and injunctive relief), CLI-06-26 (denying "petition for Backfit Order"), CLI-06-27 (request for reconsideration of Commission decision), and CLI-06-28 (*sua sponte* review of late-filed contention regarding NEPA and terrorism). The CLI that OGC drafted also falls within this category. CLI-06-4 (motion to reopen proceeding).

that OCAA submitted in CY2006. See attached Chart. Our median turnaround time was 23 days. We met our 60-day turnaround goal in all but three cases, two of which were delayed because of a temporary backlog of draft decisions to prepare.

2. Pending Commission Appeals/Petitions for Review

As of December 31, 2006, OCAA was drafting 7 Commission decisions in the following cases:⁶

- Palisades (license transfer) (2 draft decisions on separate issues)
- Grand Gulf (early site permit)
- Pilgrim and/or Vermont Yankee (3 license renewal decisions)
- Oyster Creek (license renewal application; case presents NEPA terrorism issue)

3. Anticipated Adjudicatory Matters

OCAA expects that the Commission will face the following additional important adjudicatory matters in CY2007:

- Vogtle (Early Site Permit)
- Possible *sua sponte* reviews of the Board orders that will follow the mandatory hearings in the Early Site Permit adjudications for Clinton, North Anna, and Grand Gulf.
- More disputes over PAPO rulings in Yucca Mountain.
- More challenges based on the NEPA terrorism issue.

ATOMIC SAFETY AND LICENSING BOARD PANEL ACTIVITIES:

The Board reports that, in CY2006, it opened 6 new proceedings, managed 21, closed 8, and also issued 28 LBPs. The following 13 cases were pending before the Board on Dec. 31, 2006:

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| ● Siemaszko (Enforcement) | ● North Anna (ESP) |
| ● Vermont Yankee (Uprate) | ● Oyster Creek (License Renewal) |
| ● Vermont Yankee (License Renewal) | ● Pa'ina Hawaii (Materials License) |
| ● Vogtle (ESP) | ● Pilgrim (License Renewal) |
| ● Geisen (Enforcement) | ● U.S. Army - Jefferson Proving Ground (Decommissioning) |
| ● Grand Gulf (ESP) | ● USEC (Materials License) |
| ● High Level Waste - PAPO | |

⁶ Subsequently, OCAA submitted draft Commission decisions in these cases.

If the Commissioners would like any additional information on this Annual Report or any adjudicatory proceeding, I would be happy to provide it.

Attachment: Chart