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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555

IN RESPONSE, PLEASE  
REFER TO: M940318A

March 21, 1994

OFFICE OF THE  
SECRETARY

MEMORANDUM FOR: William C. Parler, General Counsel  
Stephen G. Burns, Director  
Office of Commission Appellate Adjudication

FROM: *for* Samuel J. *Chilk*, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION  
AND VOTE, 11:30 A.M., FRIDAY, MARCH 18, 1994,  
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE  
FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO  
PUBLIC ATTENDANCE)

I. SECY-94-008 - Petition for Adjudicatory Hearing by  
Environmentalists, Inc.

The Commission, by a 4-0\* vote, approved an order responding to a petition by Environmentalists, Inc. seeking an adjudicatory hearing regarding the removal of radioactive components of the Yankee Nuclear Power Station and their shipment to the Barnwell facility in South Carolina. The order denied the petition.

(Subsequently, on March 18, 1994, the Assistant Secretary signed the Order.)

9403240209 940321  
PDR 10CFR  
PT9.7 PDR

\* Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Remick was not present when this item was affirmed. Accordingly the formal vote of the Commission was 3-0 in favor of the decision. Commissioner Remick, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote.

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II. SECY-94-067 - Georgia Power Company -- Staff's Motion for Stay of LBP-94-06

The Commission, by a 4-0\* vote, approved an order responding to a NRC staff motion to stay the effectiveness of LBP-94-06. The Commission order established a "housekeeping" stay to maintain the status quo pending a final Commission decision, after response from the other parties, on the staff's motion for a stay.

(Subsequently, on March 18, 1994, the Assistant Secretary signed the Order.)

III. SECY-94-038 - Supplemental Ethics Regulations

The Commission, by a 4-0\* vote, approved the supplemental employee conduct regulations relating to outside employment and security ownership restrictions. The attached edits and clarifications should be incorporated into the final rule in consultation with the Office of Government Ethics and the FRN should be forwarded for signature and publication.

(OGC)

(SECY Suspense: 4/29/94)

Attachment:  
As stated

cc: The Chairman  
Commissioner Rogers  
Commissioner Remick  
Commissioner de Planque  
EDO  
OIG  
OCA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR - Advance  
DCS - P1-24

\* Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Remick was not present when this item was affirmed. Accordingly the formal vote of the Commission was 3-0 in favor of the decision. Commissioner Remick, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote.

(3) Entities manufacturing or selling nuclear power or test reactors;

(4) Architectural-engineering companies providing services relating to a nuclear power reactor;

(5) Applicants for, or holders of, a certified standard design;

(6) Entities licensed or regulated by the Commission to mill, convert, enrich, fabricate, store, or dispose of source or special nuclear material, or applicants for such licenses that are designated by the Commission because they are or will be substantially engaged in such nuclear fuel cycle or disposal activities; *byproduct,*

(7) The parent corporation of any subsidiary described in paragraphs (b)(1) - (b)(6) of this section; and

(8) An energy or utility sector investment fund which has more than 25% of its assets invested in securities issued by entities described in paragraphs (b)(1)-(b)(7) of this section.

(c) Definitions. For purposes of this section:

(1) A covered employee means:

(i) A member of the Commission;

(ii) The Inspector General of the NRC;

(iii) A member of the Senior Executive Service (SES);

(iv) An employee who holds a non-SES position above GG-15; and

(v) Any other employee, including a special Government employee, whose duties and responsibilities, as determined by the Commission or its designees, require application of the securities ownership prohibition contained in this section to ensure public confidence that NRC programs are conducted impartially and objectively. The positions of these employees are specified in NRC Management Handbook 7.7, which is available in the NRC Public Document Room; and

(2) The term "securities" includes all interests in debts or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal

The Commission has eliminated the requirement contained in 10 CFR 0.735-29 that employees who are subject to the security ownership restrictions certify each year that they are in compliance. Because the annual certifications have rarely revealed violations of the substantive restrictions, there is inadequate justification for continuing this requirement. However, to monitor compliance, the NRC will continue to require employees holding designated positions to certify compliance upon commencement of employment with the agency or upon promotion for the first time to a position covered by the security ownership restriction. Agency employees will also be required to report to the Office of the General Counsel in writing any prohibited securities obtained after the initial certification. This will permit the Office of the General Counsel to track required divestitures.

On the effective date of this regulation, the NRC will issue Management Directive 7.7 and its accompanying Handbook which lists those agency positions covered by the security ownership restrictions. The Handbook will also describe procedures for obtaining Certificates of Divestiture and waivers from the security ownership restrictions. Both the Management Directive and Handbook will be available at the NRC Public Document Room, 2120 L Street, NW, Washington, D.C. 20055-0001. Copies will also be available in each NRC Office.

#### Section 5801.103 Prior approval for outside employment

5 CFR 2635.803 authorizes individual agencies, by supplemental regulation, to require agency employees to obtain approval before engaging in outside employment or other outside activities. The NRC has long had the prior approval requirement, set forth in 10 CFR 0.735-40. Section 5801.103 of the final rule retains the requirement that NRC employees obtain prior written approval before engaging in outside employment with entities that are regulated by or have business with the Commission. [INSERT]

The agency designees for approval of outside employment and internal agency procedures for obtaining the necessary approvals will be set forth in NRC Management Directive 7.8 and the accompanying Handbook. This Directive and Handbook will be issued on the effective date of this regulation and will be available in the NRC Public Document Room and in each NRC Office.

### **III. Repeal of Superseded Portions of the NRC Conduct Regulations and Related Modifications**

The final rule repeals the NRC conduct regulations 10 CFR 0.735-8, 0.735-29, and 0.735-40, effective on the same day that this rule takes effect. The information collection requirements

[Insert on page 4 of draft FRN]

The NRC's policy has been, and will continue to be, to encourage teaching, lecturing or writing not prohibited by 5 CFR 2635 or other applicable law.

A F F I R M A T I O N V O T E

R E S P O N S E S H E E T

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION  
FROM: COMMISSIONER DE PLANQUE  
SUBJECT: SECY-94-038 - SUPPLEMENTAL ETHICS REGULATIONS

APPROVED  (w/comment) DISAPPROVED \_\_\_\_\_ ABSTAIN \_\_\_\_\_

NOT PARTICIPATING \_\_\_\_\_ REQUEST DISCUSSION \_\_\_\_\_

COMMENTS:

Although at first glance it appears that the supplemental ethics regulations only apply to male NRC employees, I recognize that the draft final rule is in accord with 5 C.F.R. § 2635.102(j) which provides that "[h]e, his, and him include she, hers and her." While this quaint remembrance of the past may be the preference of the Office of Government Ethics, I would like to think that the Nuclear Regulatory Commission is more forward thinking. I note that, in fact, the draft final rule OGC forwarded to OGE used terms like "employee," rather than "his," when both genders are intended. Presumably, the return to the generic "he," "his" and "him" was one of the "editorial suggestions" requested by OGE. I recommend that OGC return the draft to the stylistic devices used in the original draft which are consistent with NRC's practice.

  
SIGNATURE

RELEASE VOTE

March 7, 1994

DATE

WITHHOLD VOTE

ENTERED ON "AS" YES  No \_\_\_\_\_