



OFFICE OF THE SECRETARY

UNITED STATES NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555

IN RESPONSE, PLEASE REFER TO: M940401B

DCS

April 1, 1994

MEMORANDUM FOR: William C. Parler, General Counsel
Stephen G. Burns, Director
Office of Commission Appellate Adjudication
FROM: John C. Hoyle, Assistant Secretary
SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION AND VOTE, 11:30 A.M., FRIDAY, APRIL 1, 1994, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-94-046 - Final Rule on Equal Access to Justice Act (10 CFR Part 12)

The Commission, by a 4-0 vote, approved a final rule implementing the Equal Access to Justice Act that allows persons who prevail against the Government in certain agency adjudicatory proceedings to recover attorney fees and other costs.

The attached modifications to the final rule should be made, the FRN should be reviewed by the Rules, Review and Directives Branch, ADM, and be returned to the SECY for signature and publication.

(OGC) (SECY Suspense: 4/22/94)

II. SECY-94-043 - Sequoyah Fuels Corp. -- Petition for Review of LBP-93-25

The Commission, by a 4-0 vote, approved an order granting a petition for review of LBP-93-25. The Board order granted Sequoyah Fuels Corporation's request to withdraw its license renewal application and thereby terminated the proceeding. The petition for review was submitted by the Native Americans for a Clean Environment (NACE) and the Cherokee Nation, intervenors in the proceeding.

(Subsequently, on April 1, 1994, the Assistant Secretary signed the Order.)

Attachment: As stated

Handwritten signature and initials

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

§ 12.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after ~~the Commission's final disposition of the proceeding.~~

~~(b) For purposes of this rule, final disposition means~~ the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the NRC and to the courts.

b
(x) *after the filing of an application for an award,*
~~(z)~~ If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Subpart C - Procedures for Considering Applications

§ 12.301 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 12.202(b) for confidential financial information.