

June 22, 1995

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations

Carlton R. Stoiber, Director  
Office of International Programs

John F. Cordes, Acting Director  
Office of Commission Appellate Adjudication

FROM: John C. Hoyle, Secretary \s\

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION  
AND VOTE, 10:30 A.M., THURSDAY, JUNE 22,  
1995, COMMISSIONERS' CONFERENCE ROOM, ONE  
WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN  
TO PUBLIC ATTENDANCE)

I. SECY-95-060 - Final Rule Revising 10 CFR Part 110, Import and  
Export of Radioactive Waste

The Commission, by a 3-0 vote, approved a notice of final rulemaking to amend the import and export regulations in 10 CFR Part 110 to make import and export of radioactive waste subject to specific licensing. Commissioner Jackson did not participate in this matter.

The following changes should be made to the rule:

1. the final rule should be modified so as to remove the provision that the NRC will consider whether the export will be to a country that has the administrative and technical capacity and regulatory structure to manage and dispose of the waste;
2. the Discussion section of the notice should be modified in accordance with the foregoing deletion and the following points should be made:
  - a) the IAEA Code of Practice provides in clear terms that a receiving State should not permit receipt of radioactive waste for management or disposal unless it has an appropriate "administrative and technical capacity and regulatory structure to manage and dispose of such waste in a manner consistent with international safety standards;"

- b) by contrast, the Code of Practice is far from clear in providing that a sending State is to satisfy itself "in accordance with the receiving State's consent" that the receiving State is meeting the foregoing requirement; the Code does not indicate how the sending State should accomplish this or explain the intended meaning of the phrase "in accordance with the receiving State's consent;"
  - c) the NRC will expect a receiving State to indicate to the Department of State, during the process for obtaining the Receiving State's consent, that it has found that it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste. At this time, the NRC is not prepared to include provisions in this final rule that would necessitate independent and specific NRC assessments and findings and an opportunity for adjudication regarding the adequacy of the Receiving State's administrative and technical capacity and regulatory structure for managing and disposing of the waste. This decision flows from: (1) the ambiguity of the guiding provision in the IAEA Code; (2) the NRC's long-standing policy of not considering health, safety and environmental impacts in foreign countries; (3) the ongoing work -- under the aegis of the IAEA -- to develop a Convention on Safety of Radioactive Waste Management; and, (4) Congressional inaction regarding implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal.
  - d) As indicated in the notice for the proposed rule, the NRC does not contemplate any circumstances in which a license would be issued to export radioactive waste to a country without a regulated waste disposal program. Moreover, the Commission would obtain the views of the Executive Branch before approving an application for export of radioactive waste.
3. § 110.42(d)(2) should be modified in essentially the following manner:
- (2) The receiving country, after being advised of the information required by § 110.32(f)(95) ~~and finding that it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste,~~ consents to receipt of the radioactive waste. ~~The Commission will also consider whether the export will be to a country that has the administrative and technical capacity and regulatory structure to manage and dispose of the waste.~~

4. The term "Attendant Radioactive Waste" should be changed to a formulation such as "attendant radioactive material" or "radioactive components of recycling or resource recovery material" so as to avoid unnecessary limitations on the usefulness of the material for recycling or resource recovery.

The revised Federal Register Notice, should be reviewed by the Rules Review and Publications Branch, ADM, and returned to SECY along with the final markup of the package indicating all changes made.

(OIP)

(SECY Suspense: 7/7/95)

(SECY will provide Commissioners an information copy of the package before forwarding it to the Federal Register for publication.)

## II. SECY-95-128 - Final Rulemaking Package for 10 CFR 50.36, "Technical Specifications"

The Commission, by a 4-0 vote, approved amendments to its regulations to codify criteria for determining the content of technical specifications for nuclear power reactors. Licensees covered by the regulations may voluntarily use the criteria as a basis to propose the relocation of existing technical specifications that do not meet any of the criteria from the facility license to licensee-controlled documents.

The Federal Register Notice should be reviewed by the Rules Review and Publications Branch, ADM, and returned to SECY for signature and publication in the Federal Register.

(EDO)

(SECY Suspense: 7/7/95)

The staff should provide a status report to the Commission at the end of a year describing the experience the staff and licensees have had in applying the four criteria to the adoption of new technical specifications. The report should identify problems, if any, that may have been discovered during the period. Focus should be given to lessons learned and progress made on developing more definitive guidance for implementation of Criterion 4 and any effort to add systems and components (beyond those noted in SECY-95-128) to the technical specifications should be carefully considered so as not to undermine the significant accomplishments of the TSIP.

(EDO)

(SECY Suspense: 9/1/96)

## III. SECY-95-144 - Georgia Power Company's Motion for Order Preserving the Licensing Board's Jurisdiction (Docket Nos. 50-424-OLA-3, 50-425-OLA-3)

The Commission, by a 3-0 vote, approved an order responding to a motion from the Georgia Power Company that requested the

Commission to stay indefinitely inquiries being conducted by the NRC Office of Investigation. The order denies the requested stay. Commissioner Jackson did not participate in this matter.

(Subsequently, on June 22, 1995, the Secretary signed the Order.)

IV. SECY-95-159 - Curators of the University of Missouri --  
Petitions for Reconsideration of CLI-095-01

The Commission, by a 3-0 vote, approved an order responding to motions by the University of Missouri and intervenors to reconsider a number of issues decided in CLI-95-01. The order clarifies the Commission's earlier order as requested by the University and denies the intervenors' request for reconsideration. Commissioner Jackson did not participate in this matter.

(Subsequently, on June 22, 1995, the Secretary signed the Order.)

cc: The Chairman  
Commissioner Rogers  
Commissioner de Planque  
Commissioner Jackson  
OGC  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR - Advance  
DCS - OP1-24