

April 12, 2002

MEMORANDUM FOR: William D. Travers  
Executive Director for Operations

John F. Cordes, Director  
Office of Commission Appellate Adjudication

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:35 P.M.,  
FRIDAY, APRIL 12, 2002, COMMISSIONERS' CONFERENCE  
ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND  
(OPEN TO PUBLIC ATTENDANCE)<sup>1</sup>

I. COMSECY-02-0014 - Re-Affirmation of Final Rule on Part 35 - Medical Use of Byproduct Material

The Commission approved a final rule which amending 10 CFR Part 35. The final rule has been revised to include Subpart J, Training and Experience Requirements, as was included in the proposed rule. The Commission approved the publication and implementation of this final rule subject to incorporation of the comments and changes in the attachment.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

II. SECY-02-0045 - Pacific Gas and Electric Co. (Diablo Canyon Power Plant, Units 1 and 2), Docket Nos. 50-275-LT, 50-323-LT

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<sup>1</sup> 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." Commissioners Dicus and Merrifield were not present when these items were affirmed. Accordingly the formal vote of the Commission was 3-0 in favor of the decisions. With respect to the final rule on Part 35, Commissioner Diaz would not have included the statement that the Commission will consider changes in training and experience because the Commission indeed always has the opportunity to improve a rulemaking, as appropriate. He believes that by stating this point, the overall revised training and experience requirements could be placed in question by those who need finality. Commissioners Dicus and Merrifield had previously indicated that they would approve these papers and had they been present they would have affirmed their prior vote.

The Commission approved a Memorandum and Order related to the license transfer application submitted by Pacific Gas and Electric Co. (PG&E). The Memorandum and Order seeks briefs from the parties including the parties' views on two questions.

(Subsequently, on April 12, 2002, the Secretary signed the Memorandum and Order.)

III. SECY-02-0047 - International Uranium (USA) Corporation (White Mesa Uranium Mill) Appeal of LBP-02-03 (MLA-10)

The Commission approved a Memorandum and Order responding to an appeal by the Glen Canyon Group of the Utah Sierra Club (Sierra Club) of its dismissal in LBP-02-03 and an unpublished Memorandum and Order (Rejecting Unauthorized Filing) of January 2, 2002, from the license amendment proceeding where International Uranium Corporation (IUSA) would be authorized to receive and process alternative feed material from a site in Maywood, New Jersey. The Memorandum and Order vacates LBP-02-03 and the unpublished Memorandum and Order and remands the proceeding to the Presiding Officer to reconsider whether to accept any portion of the Sierra Club's response to IUSA's supplemental filing, and if appropriate, to reconsider the Sierra Club's standing to intervene in this proceeding.

(Subsequently, on April 12, 2002, the Secretary signed the Memorandum and Order.)

IV. SECY-02-0050 - Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2)

The Commission approved a Memorandum and Order responding to appeals submitted by Duke Energy Corporation (Duke) and the NRC staff from the Atomic Safety and Licensing Board's (Board) January 24, 2002, order (LBP-02-04) in this license renewal proceeding involving four of Duke's nuclear power plants. The Memorandum and Order reverses the mixed oxide fuel ruling in LBP-02-04, vacates the Board's March 1, 2002 order, and dismisses the staff's motion for stay and interlocutory review of the March 1, 2002 order as moot.

(Subsequently, on April 12, 2002, the Secretary signed the Memorandum and Order.)

V. SECY-02-0065 - Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72-22-ISFSI; Protective Order for Documents Submitted with Skull Valley Band's Brief in Response to CLI-02-08. (Granting Review of Environmental Justice Ruling, LBP-02-08)

The Commission approved a Memorandum and Order responding to a motion from the Skull Valley Band of Goshute Indians for a protective order covering two documents attached to its brief filed in response to CLI-02-08. The Protective Order grants the Skull Valley Band's motion.

(Subsequently, on April 12, 2002, the Secretary signed the Memorandum and Order.)

Attachment: Changes to the Final Rule on 10 CFR Part 35 in COMSECY-02-0014

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
EDO  
OGC  
CFO  
OCAA  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

### Changes to the Final Rule on 10 CFR Part 35 in COMSECY-02-0014

1. On page 11, 1<sup>st</sup> full paragraph, line 5, insert text before the last sentence that notes the availability of the revised draft NUREG-1556, Volume 9, for comment because the FRN for the final rule will be published during the public comment period for the NUREG. Revise line 7 to read ' ... is gained **by both the NRC and our licensees.**'
2. On page 16, last paragraph, capitalize the 'P' in '10 CFR Part 35' in lines 6 and 7.
3. On page 17, revise line 2 to read ' ... training, and experience, **and as well as** ....'
4. On page 44, in the 1<sup>st</sup> full paragraph (in redline), revise line 5 to read ' ... may not be ready **to apply** for recognition ....' Revise lines 7 and 8 to read ' ... medical personnel ~~, and might cause shortages of authorized medical personnel,~~ because ....' Revise line 13 to read ' ... option of **complying with** ~~meeting~~ either the requirements ....' Delete the last sentence (The NRC states that ... 2-year period.) and insert the following: 'During this transition period, the NRC will continue working with the ACMUI and the medical community to resolve any concerns with the training and experience requirements. The Commission will consider changes to the training and experience requirements, as appropriate.' The same change should be made in the paragraph on pages 323 and 324. Similar changes should be made throughout the rule.
5. On page 203, Issue 2. Delete Issue 2 to be consistent with the format for the rest of this section of the FRN.
6. On page 490, paragraph 1, 4<sup>th</sup> line from the end, delete the 2<sup>nd</sup> appearance of 'section'. In the 2<sup>nd</sup> line from the end, specify which section will replace the current section.
7. On page 494, 1<sup>st</sup> full paragraph (in redline), delete the sentence in line 4 (At that time ... be deleted.) And insert the following in its place: 'During this transition period, the NRC will continue working with the ACMUI and the medical community to resolve any concerns with the training and experience requirements. The Commission will consider changes to the training and experience requirements, as appropriate.'
8. On page 495, paragraph 1, revise line 2 to read ' ... change **has been** ~~was~~ made ....'
9. On page 499, last paragraph, revise line 1 to read ' ... was not ~~be~~ changed.'
10. On page 528, last paragraph, revise lines 6 and 7 to read ' ... medical personnel ~~, and might cause shortages of authorized medical personnel,~~ because ....' Add text to note availability of the transcript for the February 2002 ACMUI meeting, as noted for the earlier ACMUI meeting.

11. On page 529, revise line 4 from the top to read ' ... for 2 years. ~~and Subpart J will be deleted after the 2-year period.~~ During this transition period, the NRC will continue working with the ACMUI and the medical community to resolve any concerns with the T&E requirements. The Commission will consider changes to the training and experience requirements, as appropriate.'
12. The Statement of Considerations should be revised to start the 2-year transition period at the effective date of the final rule.