

September 19, 1997

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

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 11:30 A.M., FRIDAY, SEPTEMBER 19, 1997, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-97-209 - Louisiana Energy Services (Claiborne Enrichment Center); Citizens Against Nuclear Trash's Motion for Reconsideration of CLI-97-11

The Commission approved the attached order denying the motion of Citizens Against Nuclear Trash (CANT) for reconsideration of the Commission order, CLI-97-11, that remanded one issue on waste disposal and decommissioning funding to the Atomic Safety and Licensing Board.

(Subsequently, on September 19, 1997 the Secretary signed the Order.)

Attachment: As stated

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
EDO
OGC
CIO
CFO
OCAA
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR - Advance
DCS - P1-17

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Shirley Ann Jackson, Chairman
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.

In the matter of)
)
)
Louisiana Energy Services) Docket No. 70-3070-ML
)
(Claiborne Enrichment Center))

CLI-97-

ORDER

Citizens Against Nuclear Trash (CANT) has filed a motion for reconsideration of CLI-97-11, 46 NRC ____ (September 3, 1997). In CLI-97-11, we remanded for clarification one issue decided by the Atomic Safety and Licensing Board in its decision on waste disposal and decommissioning funding, LBP-97-3, 45 NRC 99 (1997). For the reasons discussed below, the Commission denies CANT's motion for reconsideration of CLI-97-11.

Our remand order asked the Board to clarify its explanation of why deep-mine disposal is a plausible strategy for handling depleted uranium waste. CANT believes that because its petition for review challenged the Board's explanation, the Commission is compelled by its own regulations to grant plenary review rather than order a remand for clarification. We disagree. The section of our regulations to which CANT refers, 10 C.F.R. 2.786, describes considerations under which the Commission "may" grant a petition for review but does not mandate any circumstance under which the Commission must take review. Commission review under section 2.786 establishes a certiorari-like process that leaves full discretion to the Commission. Nothing in the rule prevents a remand to the Board prior to a Commission decision on whether to grant plenary review.

The Commission considers an immediate remand of the deep-mine disposal issue the most efficient way to deal with what we view as an unclear Board discussion of the issue. The Board, as the Commission's primary adjudicatory fact-finder, is well equipped to handle the remanded matter. Giving the Board an opportunity to clarify the deep-mine disposal issue leaves the Commission free to focus its attention on other pending issues in this proceeding.⁽¹⁾

CANT is not prejudiced by a remand. The Commission expects that the deep-mine disposal issue will be fully aired by the Board and that CANT will have sufficient opportunity to have its concerns addressed. Moreover, when the Board issues its supplemental decision, CANT will be free to supplement its petitions for Commission review if CANT remains dissatisfied with the Board's treatment of the issue. The Commission has neither granted nor denied the petitions for review and would give appropriate consideration to any supplemental petition.

In sum, the Commission sees no reason to reconsider its decision to remand the deep-mine disposal issue to the Board. Accordingly, reconsideration is denied.

IT IS SO ORDERED.

For the Commission

John C. Hoyle
Secretary of the Commission

Dated at Rockville, Maryland, this ____ day of September, 1997.

1. Recently, on September 11, 1997, the Licensing Board issued a procedural order that, among other things, requested the parties' views on the "basis for the Licensing Board's jurisdiction to proceed" on the remanded issue. This Board inquiry may stem from Commission precedent divesting the Board of jurisdiction over matters pending on appeal or on a petition for review. See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-823, 22 NRC 773 (1985). But that general practice, while sensible in most cases, does not apply where, as in this case, the Commission expressly retains jurisdiction and orders a remand for Board consideration of a particular issue. See generally Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-770, 19 NRC 1163, 1168, 1181-82 (1984). In these circumstances, "[w]e see no valid purpose to be served by an extended metaphysical discussion of when jurisdiction ... passes" from one adjudicatory body to another. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-726, 17 NRC 755, 757 (1983).