

April 3, 1998

MEMORANDUM FOR: L. Joseph Callan
Executive Director for Operations

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

FROM: Annette L. Vietti-Cook, Acting Secretary /s/

SUBJECT: STAFF REQUIREMENTS - Affirmation Session, 10:30 A.M., FRIDAY, APRIL 3, 1998,
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE,
MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-98-024- Final Amendments to 10 CFR Parts 60, 72, 73, 74, and 75, "Physical Protection for Spent Nuclear Fuel and High-Level Radioactive Waste"

The Commission approved a final rule which provides amendments to 10 CFR Parts 60, 72, 73, 74, and 75 to clarify and make consistent physical protection requirements for independent storage of spent nuclear fuel and high-level radioactive waste, subject to the modifications and clarifications in attachment 1.

Following incorporation of the 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.

(EDO)

(SECY Suspense: 5/29/98)

In addition, the staff should report when it will be able to proceed with physical protection rulemaking for Part 50 licensees who have ceased operations and are storing the spent fuel in the pool, and who remain under the physical protection requirements of 10 CFR 73.55 with exemptions on a case by case basis. The staff should explain the criteria for granting exemptions to 10 CFR 73.55 requirements in the interim period before the rulemaking is completed.

(EDO)

(SECY Suspense: 5/1/98)

II. SECY-98-021 - Louisiana Energy Services -- Review of LBP-96-25 (NEPA Issues); Review of LBP-97-8 (Environmental Justice)

The Commission approved an order addressing the environmental questions raised in these two Atomic Safety and Licensing Board (Board) decisions regarding the proposed Claiborne Enrichment Center (CEC) that Louisiana Energy Services (LES) plans to build near Homer, Louisiana. The Commission granted petitions for review by LES and by the NRC staff to consider first the issue of whether the Final Environmental Impact Statement (FEIS) failed to discuss adequately the need for the CEC, the alternative of no action, and the CEC's secondary benefits and second, whether the FEIS failed to address adequately the "environmental justice" issues.

The Commission (with all Commissioners agreeing and one exception, as noted below) approved the attached order affirming in part, reversing in part, and remanding for further proceedings the Board's NEPA rulings in LBP-96-25 and LBP-97-8. Specifically, the Memorandum and Order affirms the Board's finding regarding the likely price effects of the CEC but provides additional guidance to the Board that in performing ultimate cost-benefit balancing under NEPA, the Board must consider, in addition to the price effects, the other benefits of the CEC. It also affirms the Board's decision to require the NRC staff to revise the current FEIS "no action" discussion to reflect an evaluation of both the costs and the benefits of not building the CEC and to reconsider the FEIS's current discussion of resumed logging. It reverses the Board's decision to invalidate the FEIS's reliance on the CEC's secondary benefits and reverses the Board's decision to require a thorough NRC inquiry into possible racial discrimination in the siting of the CEC. It affirms the Board's decision that the NRC staff should revise the FEIS to provide more analysis of the CEC's effect on pedestrian traffic between the nearby communities and to analyze local property value effects more thoroughly.

Chairman Jackson disapproved only section 5.a. of the Commission order (with respect to LBP-97-8), titled racial discrimination in siting. She would have affirmed in part and reversed in part the Board's requirement of a further NRC staff investigation into the Claiborne Enrichment Center's siting. In light of the alleged irregularities, gaps, and inconsistencies in the siting process, it was her preference that the NRC staff should further investigate the siting process, without focussing on LES's alleged intentional racial motives, to ensure that the siting criteria were reasonable and applied equitably.

(Subsequently, on April 3, 1998, the Acting Secretary signed the Order.)

Attachments: 1. Comments and Clarifications to SECY-98-024
2. Memorandum and Order in LES matter

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

ATTACHMENT 1

Comments and Clarifications to SECY-98-024

1. The staff should clarify that the requirements in 10 CFR 73.51(d)(1) through (13) provide one method acceptable to the NRC for meeting performance capabilities of 10 CFR 73.51(b)(2) and to add language (similar to 10 CFR 61.58) to the effect that the Commission may authorize other methods for meeting these performance capabilities.
2. In a number of places throughout the final rulemaking package, it is stated that this final rule will codify standards for protecting spent fuel at the various storage facilities licensed under Part 72. This and similar statements in the Federal Register notice, the regulatory analysis, the Congressional letters, and other places should be modified to mention protecting materials licensed under Part 60.
3. The cost estimates in Tables 2 and 3 should reflect more up to date cost figures, or at a minimum, should be adjusted for inflation.
4. In the letters to Representative Schaefer and Senator Inhofe, paragraph 2, line 2, insert 'Part 60 or' after 'under.'
5. In the letters to GAO, Vice President Gore, and Speaker Gingrich; paragraph 1, line 5, insert 'Part 60 or' after 'under.' In paragraph 3, revise sentence 1 to read 'Enclosure 1 contains a copy of the final rule, which is being' Revise sentence 3 to read 'Enclosure 2 contains a copy of NUREG-1619 and Enclosure 3 contains the "Regulatory Analysis" that was prepared for this final rule, which contains'

ATTACHMENT 2

See file 98-021.ORD