

September 4, 2002

MEMORANDUM FOR: William D. Travers
Executive Director for Operations

John F. Cordes, Director
Office of Commission Appellate Adjudication

Karen D. Cyr
General Counsel

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 10:25 A.M., WEDNESDAY, SEPTEMBER 4, 2002,
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO
PUBLIC ATTENDANCE)

I. SECY-02-0135 - Final Rule: 10 CFR Part 63: Specifications of a Probability for Unlikely Features, Events, and Processes

The Commission⁽¹⁾ approved a final rule amending 10 CFR Part 63 to establish the annual probability of occurrence that defines an unlikely feature, event, or process.

Following incorporation of the attached 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: 10/4/02)

II. SECY-02-0145 - Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility); Board's Certified Question Regarding Procedure

The Commission ruled on a certified question concerning whether the appropriate provisions of 10 CFR Part 2, Subparts I and G, concerning the procedures for dealing with classified and safeguards information should be applied in this modified Subpart L proceeding. The Commission approved a Memorandum and Order which accepts the Board's procedural recommendations in this matter and directs the Staff to keep the Board apprised of changes in the status of the Memorandum of Understanding between the NRC and the Department of Energy regarding the two agencies' responsibilities for granting security clearances.

(Subsequently, on September 4, 2002, the Secretary signed the Memorandum and Order.)

The Office of the General Counsel (OGC) should determine whether revisions to 10 CFR Part 2, Subpart I, to make it generally applicable to all adjudicatory proceedings, can be accomplished without the need to re-notice the proposed rule. If so, OGC should provide the Commission with a proposed revision to Subpart I to address staff's recommendation.

(OGC)

(SECY Suspense: 9/30/02)

Attachment: Changes to the Final Rule in SECY-02-0135

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

Changes to the Final Rule in SECY-02-0135

- On page 3, paragraph 1, delete the 1st through 3rd sentences (NRC published a proposed ... Mountain, Nevada.) Revise line 5 to read ' ... NRC published ~~at its~~ final rule,' In line 7, insert a new sentence after the period that reads: We are now finalizing one particular matter that specifies a probability for unlikely features, events, and processes. In line 9, delete "final".
- On page 4, last paragraph, delete the 1st sentence (On January 25, ... (67 FR 3628).) and insert the following in its place: NRC published a proposed rule, "10 CFR Part 63: Specification of a Probability for Unlikely Features, Events, and Processes," on January 25, 2002 (67 FR 3628), and requested public comments. That proposed rule defined the term "unlikely" in quantitative terms. This action was taken to allow NRC to implement EPA's final standards for a potential repository at Yucca Mountain, Nevada. The Commission was careful to point out that its specification for unlikely events was in the context of very specific assessments (i.e., those made to assess compliance with ground-water protection and human-intrusion standards) over a long time frame, and this specification was not intended to suggest or imply precedent for other significantly different applications that used the term "unlikely". Start a new paragraph with the next sentence which starts with "Unlike the broader"
- On page 7, paragraph 1, line 1, delete the comma.
- On page 9, 1st full paragraph, revise lines 3 and 4 to read ' ... however, would not be consistent with ~~sacrificing~~ the intent that' Revise line 11 to read ' ... as likely FEPs, asis....'
- On page 11, last paragraph, delete footnote 3.
- On page 14, last paragraph, revise line 5 to read ' ... millisievert/year (mSv/yr) (~~mSVyr~~) (4 millirem/year'
- On page 19, in Response 3.1, revise line 1 to read 'During the development of ~~the~~ the proposed rulemaking,'
- On page 20, insert a new section III. as follows and renumber the following sections:

III. Changes from the Proposed Rule

Section 63.342 Limits on performance assessments

The word "should" has been replaced with the word "shall" to be consistent with the final EPA standard (40 CFR 197.36).

- On page 21, in the paragraph on Public Protection Notification, revise line 1 to read ' ... information collection requirement does not'
- On page 23, last paragraph, lines 1 and 4, replace "should" with "shall".

Changes to the Regulatory Analysis

- On page 2, last paragraph, line 3, replace "An" with "At". Revise line 4 to read ' ... the repository is which ~~what~~ FEPs should be'
- On page 4, 1st full paragraph, revise lines 3 & 4 to read ' ... determination of which ~~what~~ unlikely FEPs should be excluded from the analysis of compliance with the ~~the consequences of~~ human intrusion and ground-water protection standards would not occur until'

1. 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." Chairman Meserve and Commissioners Diaz, McGaffigan, and Merrifield were present in the Conference Room. Commissioner Dicus participated in the meeting via speakerphone.