

October 7, 2004

MEMORANDUM FOR: Luis A. Reyes  
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, 2:35 P.M.,  
THURSDAY, OCTOBER 7, 2004, COMMISSIONERS'  
CONFERENCE ROOM, ONE WHITE FLINT NORTH,  
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-04-0109 - Final Rulemaking to Add New Section 10 CFR 50.69, "Risk-informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors"

The Commission approved a final rule adding a new section 50.69 to 10 CFR Part 50 that provides an alternative set of requirements for treatment of structures, systems, and components (SSCs). The alternative requirements use a risk-informed categorization process to determine the safety significance of the SSCs. These requirements can be voluntarily adopted by light-water reactor licensees and applicants.

The staff should incorporate the following changes to 10 CFR 50.69(d)(2) which refers to the treatment of low safety significant SSCs in the risk-informed safety class 3 (RISC-3):

(2) *RISC-3* SSCs. The licensee or applicant shall ensure, with reasonable confidence, that RISC-3 SSCs remain capable of performing their safety-related functions under design basis conditions, including seismic conditions and environmental conditions and effects throughout their service life. The treatment of RISC-3 SSCs must be consistent with the categorization process. Inspection and testing, and corrective action shall be provided for RISC-3 SSCs.

(i) *Inspection and Testing*. Periodic inspection and testing activities must be conducted to determine that RISC-3 SSCs will remain capable of performing their safety-related functions under design basis conditions; and

(ii) *Corrective Action*. Conditions that would prevent a RISC-3 SSC from performing its safety-related functions under design basis conditions must be corrected in a timely manner. For significant conditions adverse to quality, measures must be taken to provide reasonable confidence that the cause of the condition is determined and corrective action taken to preclude repetition.

The rulemaking package, including *Federal Register* Notice and public comment responses, should be modified to reflect these changes, including a discussion of “reasonable confidence”.

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.

(EDO)

(SECY Suspense:

11/12/04)

II. SECY-04-0165 - State of Alaska Department of Transportation and Public Facilities (Confirmatory Order Modifying License); Appeals of LBP-04-16 by NRC Staff and Licensee

The Commission approved a Memorandum and Order responding to an appeal by the Alaska Department of Transportation (ADOT) and the NRC staff of the Atomic Safety and Licensing Board’s decision in LBP-04-16 which granted Mr. Robert Farmer’s petition for hearing and admitted one of his contentions. The Memorandum and Order reverses the Board’s majority decision to grant Mr. Farmer a hearing and terminates the proceeding.

(Subsequently, on October 7, 2004, the Secretary signed the Memorandum and Order.)

III. SECY-04-0168 - Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72-22-ISFSI

The Commission approved a Memorandum and Order addressing two issues concerning the financial assurance given by the applicant, Private Fuel Storage, L.L.C. (PFS), in this licensing proceeding. The first issue is whether, prior to beginning operations, PFS should be required to have service contracts in place with prices set in a specific amount as determined at the evidentiary hearing. The second is how many units must the service contracts cover prior to the start of operations. The Memorandum and Order finds that PFS can demonstrate reasonable financial assurance so long as its license is subject to the condition that it use its model service agreement to cover all inventory accepted at the site and reverses the Board’s order requiring fixed prices in the service contracts and requiring PFS have contracts covering a certain number of units prior to the start of operations.

(Subsequently, on October 7, 2004, the Secretary signed the Memorandum and Order.)

IV. SECY-04-0171 - CAN's Motion to Dismiss the Yankee Rowe License Termination Proceeding or to Re-notice it

The Commission approved a Memorandum and Order responding to a Motion by Citizen’s Awareness Network (CAN) that the Yankee Rowe License Termination Proceeding be dismissed or re-noticed. The Memorandum and Order denies CAN’s motion.

(Subsequently, on October 7, 2004, the Secretary signed the Memorandum and Order.)

V. SECY-04-0172 - Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2):  
Licensing Board's Referral of its Ruling on "Need to Know" During Discovery

The Commission approved a Memorandum and Order responding to a Licensing Board referral of a ruling in LBP-04-21 in which the Board made a "need-to-know" determination allowing the intervenor, Blue Ridge Environmental Defense League (BREDL), to obtain two classified NRC staff documents during pre-hearing discovery. The Memorandum and Order accepts the Board's referral, clarifies the need-to-know standard for discovery, and reverses the Board's decision in LBP-04-21 to provide BREDL access to the documents it requested.

(Subsequently, on October 7, 2004, the Secretary signed the Memorandum and Order.)

VI. COMSECY-04-0058 - Draft Notice and Order for USEC, Inc.

The Commission approved a Notice and Order concerning the receipt of an application submitted on August 23, 2004, by United States Enrichment Corporation, Inc. (USEC) for a license to possess and use source, byproduct, and special nuclear material and to enrich uranium by the gas centrifuge process. The Notice and Order provides Notice of Receipt of Application; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; Notice of Hearing; and directs the Atomic Safety Licensing Board to certify to the Commission on an interlocutory basis novel legal or policy issues that would benefit from Commission consideration should such issues arise in the proceeding. The Order also sets a hearing schedule.

(Subsequently, on October 7, 2004, the Secretary signed the Notice and Order.)

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