

IN RESPONSE, PLEASE
REFER TO: M041208A

December 8, 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, 12:55
P.M., WEDNESDAY, DECEMBER 8, 2004, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-04-0180 - Hydro Resources, Inc. (Rio Rancho, New Mexico) Review of LBP-04-03 (Financial Assurance)

The Commission approved a Memorandum and Order responding to petitions filed by the licensee and intervenors for review of parts of the Presiding Officer's decision in LBP-04-03. The licensee's petition requested review of the rulings on estimated labor and equipment costs. The intervenor's petition requested review of the refusal to consider arguments raised which challenged the estimate of the volume of water needed to be processed and circulated to restore groundwater. The Memorandum and Order affirms LBP-04-03's ruling on the water volume issue and reverses the rulings on the labor and equipment issues.

(Subsequently, on December 8, 2004, the Secretary signed the Memorandum and Order.)

II. SECY-04-0190 - Final Rule: Security Requirements for Portable Gauges Containing Byproduct Material (RIN 3150-AH06)

The Commission approved a final rule amending 10 CFR 30.34 to require a portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

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:

1/14/05)

The staff should either update current guidance documents or create a new one for use by licensees and NRC inspectors and license reviewers. This guidance should provide that the

two independent barriers should clearly increase the deterrence value over that of a single barrier and should make the gauge more difficult to steal. This guidance should include the example that if two chains are used, the new chain should be substantially larger and more difficult to cut than the existing chain. Simply having two chains with locks would not satisfy the rule unless each chain and lock combination were physically robust enough to provide both a deterrence and a reasonable delay mechanism.

III. SECY-04-0192 - Motion to Quash OI Subpoena Issued to Rene Chun

The Commission approved a Memorandum and Order responding to a Motion to Quash an Office of Investigations subpoena issued to Rene Chun. The Memorandum and Order grants the Motion to Quash in part, subject to a condition expressed in the Order; and denies the Motion to Quash in part; and sets a new date for compliance with the subpoena.

(Subsequently, on December 8, 2004, the Secretary signed the Memorandum and Order.)

IV. SECY-04-0208 - Louisiana Energy Services, L.P. (National Enrichment Facility)

The Commission approved a Memorandum and Order responding to 1) petitions for reconsideration of CLI-04-25 filed by New Mexico Environment Department (NMED) and the Attorney General of New Mexico (AGNM), 2) Licensing Board referral of ruling on motions for clarification on participation, 3) NMED and AGNM motions to file a late-filed contention, and 4) Licensing Board referral of ruling on AGNM request for "co-lead" party status. The Memorandum and Order 1) denies the petitions for reconsideration of CLI-04-25, 2) affirms the Board's decisions denying NMED's and AGNM's requests to participate on other parties' admitted contentions, 3) remands to the Board for its consideration NMED and AGNM motions to file a late-filed contention, and 4) affirms the Board's decision rejecting AGNM's request to serve as a "co-lead" party with other intervenors.

(Subsequently, on December 8, 2004, the Secretary signed the Memorandum and Order.)

V. SECY-04-0212 - Dominion Nuclear Connecticut, Inc., (Millstone Nuclear Power Station, Units 2 and 3), Docket Nos. 50-336-LR & 50-423-LR; LBP-04-15, 60 NRC 81 (July 28, 2004), Reh'g Denied, LBP-04-22, 60 NRC (Sept. 20, 2004)

The Commission approved a Memorandum and Order responding to an appeal by the Connecticut Coalition Against Millstone (CCAM) of the Licensing Board's decision in LBP-04-15 that denied CCAM's petition for intervention on the ground that the contentions were inadmissible. The Memorandum and Order also responds to CCAM's appeal of LBP-04-22 in which the Licensing Board denied CCAM's motion for reconsideration of LBP-04-15 and request for permission to provide additional support for its contentions. The Memorandum and Order affirms the Licensing Board's decisions in LBP-04-15 and LBP-04-22, denies CCAM's two appeals, and terminates this proceeding.

(Subsequently, on December 8, 2004, the Secretary signed the Memorandum and Order.)

VI. SECY-04-0216 - Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2):
Intervenor's Motion for Reconsideration of CLI-04-29

The Commission approved a Memorandum and Order responding to Motion for Reconsideration of CLI-04-29 by Blue Ridge Environmental Defense League. The Memorandum and Order denies Blue Ridge Environmental Defense League's Motion for Reconsideration of CLI-04-29.

(Subsequently, on December 8, 2004, the Secretary signed the Memorandum and Order.)

Attachment: Comments and Changes to the Final Rule in SECY-04-0190

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

Comments and Changes to the Federal Register Notice in SECY-04-0190

1. On page 2, paragraph 1, revise line 4 to read ' ... material. **One source** ~~The first~~ is a sealed' Revise lines 5 and 6 to read ' ... measure density. **Another** ~~The second~~ source is a' Insert a new sentence after the period at the end of line 7 which reads: 'Other sources have also been utilized in portable gauges.'
2. On page 2, paragraph 2, line 1, insert a comma after 'NRC'. Revise line 2 to read ' ... Agreement States, regulates'
3. On page 3, revise line 2 from the top to read ' ... 50-percent recovery rate, based'
4. On page 3, 1st full paragraph, revise line 4 to read ' ... the controlled of a' Revise line 5 to read ' ... come into close' Revise line 6 to read ' ... is abandoned, in the environment, **inadvertently** recycled, in a steel mill, or used'
5. On page 4, revise line 7 from the top to read ' ... proposed amendment **to** in 10 CFR'
6. On page 5, next to last paragraph, revise line 3 to read ' ... were **three** ~~two~~ incidents' Also in line 3, update the year, as appropriate.
7. On page 6, 1st full paragraph, revise line 7 to read ' ... still concerned **with** ~~about~~ the' Revise line 10 to read ' ... who come into close'
8. On page 7, 1st full paragraph, revise line 3 to read source location as **a** sufficient security measure based on **the**' Revise line 6 to read ' ... safety from **the** potential' Revise line 12 to read ' ... as necessary, ~~before adoption~~ to meet' Revise line 13 to read ' ... already requires ~~the~~ licensees to' Revise line 15 to read ' ... reduce the **instances** number of'
9. On page 8, paragraph 3, revise line 1 to read ' ... stated that the rule **requirements** would not'
10. On page 12, last paragraph, revise line 1 to read ' ... to require a secured **d** key for'
11. On page 13, last paragraph, delete the 1st 3 sentences (NRC disagrees that ... measures.)
12. On page 14, insert the following after the period in line 3 from the top: 'NRC disagrees that licensees, who are diligent about security, do not have gauges stolen. Many gauges were stolen from compliant licensees by thieves defeating current security measures.'
13. On page 15, 1st full paragraph, revise line 4 to read ' ... gauges are in highly visible'
14. On page 15, last paragraph, revise line 4 from the bottom to read ' ... significant cost impacts **s** on licensees'

15. On page 17, revise line 2 from the top to read ‘ ... is able **to** cut one’
16. On page 17, 1st full paragraph, delete the last sentence (NRC believes that ... time-consuming.) Insert a new paragraph that reads: ‘However, since this is a performance-based rule, licensees must ensure that the two physical barriers chosen clearly increase the deterrence value and would make the gauge more difficult to steal.’
17. On page 21, last paragraph, revise line 1 to read ‘ ... not provide any **data in support of a basis** for higher cost **impact**, NRC’ Delete the last sentence (Because the commenter ... estimate.)
18. On page 22, paragraph, 2, revise line 3 to read ‘ ... portable gauges. ~~due to increased security requirements.~~’ Delete the sentence in lines 5 through 7 (A reduction in the ... gauges.)
19. On page 22, last paragraph, the last sentence is unclear and needs to be revised.
20. On page 23, 4th full paragraph, revise the last 2 lines to read ‘ ... gauge is about \$450. ~~and is waived by one of the manufacturers with the purchase of a new gauge.~~’
21. On page 24, revise line 1 from the top to read ‘ ... speculative. The **second** other’
22. On page 24, 1st full paragraph, revise line 8 from the top to read ‘ ... past two years. ~~,but it is still low.~~’
23. On page 25, 2nd full paragraph, delete the last sentence (Given the amount ... insignificant.)
24. On page 25, last paragraph, revise line 2 to read ‘ ... extremely low ~~—In~~ **and in** general, the’ Revise line 4 to read ‘ ... **Therefore, there is a considerably reduced risk to public health and safety. Additionally, b**Because XRF analyzers are’ Revise line 5 to read ‘ ... of a vehicle, ~~—The~~ XRF analyzers’
25. On page 30, last paragraph, revise line 5 to read ‘ ... in road constructions and’

Changes to the Regulatory Analysis

26. On page 1, paragraph 2, revise the last line to read ‘ ... abandoned, ~~in the environment,~~ is **inadvertently** recycled, ~~in a steel mill,~~ or is used’
27. On page 3, paragraph 2, revise line 3 to read ‘ ... shackles **s** to’
28. On page 11, paragraph 2, revise line 10 to read ‘ ... Total **national** annual costs’
29. On page 15, revise line 6 from the top to read ‘ ... gauges. The estimated **annual**’

Changes to the Final Environmental Assessment

30. On page 3, last paragraph, revise the last line to read ‘ ... abandoned, ~~in the environment,~~ is **inadvertently** recycled, ~~in a steel mill,~~ or is used’