

October 26, 2005

MEMORANDUM FOR: John F. Cordes, Director
Office of Commission Appellate Adjudication
FROM: Annette L. Vietti-Cook, Secretary /RA/
SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:20 P.M., WEDNESDAY, OCTOBER 26, 2005,
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO
PUBLIC ATTENDANCE)¹

I. SECY-05-0168 - U.S. Army (Jefferson Proving Ground Site)(Materials License amendment)

The Commission approved a Memorandum and Order responding to a referral from the Board of its ruling LBP-05-25 reinstating a conditionally dismissed prior proceeding concerning the U.S. Army's plan for decommissioning the Jefferson Proving Ground site in Indiana. The Memorandum and Order affirms the decision to reinstate the earlier proceeding and remands with instructions to use, for the remainder of this adjudication, the recently-revised rules of procedure for adjudications.

(Subsequently, on October 26, 2005, the Secretary signed the Memorandum and Order.)

II. SECY-05-0169 - Dominion Nuclear Connecticut, Inc., (Millstone Nuclear Power Station, Unit 2 and 3), Docket Nos. 50-336-LR & 50-423-LR, LBP-05-16 (July 20, 2005)

The Commission approved a Memorandum and Order responding to a certified question submitted by the Board to the Commission on whether to grant Suffolk County New York's request for an exemption from (or waiver of) the final sentence of 10 CFR § 50.47 (a)(1) (providing that emergency planning issues are not germane to license renewal determinations). In CLI-05-18, the Commission accepted review of the certified question and provided three additional questions to the parties. The Memorandum and Order denies Suffolk County's request for an exemption from (or waiver of) 10 CFR § 50.47(a)(1). The Commission finds that the balance of late-filing factors weighs against considering Suffolk County's petition to intervene and that Suffolk County's three emergency planning contentions fall outside the scope of, and are immaterial to this proceeding, and that those contentions are therefore inadmissible. Based on the preceding conclusions, the Commission terminates this adjudicatory proceeding.

(Subsequently, on October 26, 2005, the Secretary signed the Memorandum and Order.)

III. SECY-05-0175 - AmerGen Energy Co. (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289-LT02

The Commission approved a Memorandum and Order responding to petitioner Eric Epstein, who is requesting that NRC publish a notice of opportunity for hearing, and also grant his petition to intervene and request for a hearing, regarding any license transfers associated with the pending merger of Public Service Enterprise Group, Inc. (PSEG) into Exelon Corp., the indirect parent of licensee AmerGen Energy Company LLC (AmerGen), insofar as that merger affects Unit 1 of the Three Mile Island Station (TMI-1). The Memorandum and Order denies all of Mr. Epstein's requests.

(Subsequently, on October 26, 2005, the Secretary signed the Memorandum and Order.)

IV. SECY-05-0176 - Exelon Generation Company, LLC & PSEG Nuclear, LLC (Peach Bottom Atomic Power Station, Units 2 and 3), Docket Nos. 50-277-LT & 50-278-LT

This proceeding involves the proposed merger of the corporate parents of Exelon Generation Company, LLC, and Public Service Enterprise Group, LLC, (PSEG) and the consequent transfers of the 50-percent non-operating interests in Units 2 and Units 3 of the Peach Bottom facility. To accomplish these goals, the companies need, and have requested, a license transfer authorization. The Commission approved a Memorandum and Order responding to petitioner Eric Epstein, who argues that the license transfers raise issues involving financial and technical qualifications as well as the possible extent of foreign ownership. The Memorandum and Order rejects Mr. Epstein's claim of standing and consequently dismisses this proceeding. The Commission also directs the NRC Staff to consider Mr. Epstein's contentions and Supplemental Filing as they were "written comments" under 10 CFR § 2.1305.

(Subsequently, on October 26, 2005, the Secretary signed the Memorandum and Order.)

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

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 Diaz and Commissioners McGaffigan, Merrifield, and Jaczko were present in the Conference Room. Commissioner Lyons participated in the meeting via speakerphone.