

September 6, 2006

MEMORANDUM FOR: John F. Cordes, Director  
Office of Commission Appellate Adjudication

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:50 P.M., WEDNESDAY, SEPTEMBER 6, 2006,  
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO  
PUBLIC ATTENDANCE)

**I. SECY-06-0166 - Pacific Gas & Elec. Co. (Diablo Canyon ISFSI), Docket No. 72-26-ISFSI "Motion by San Luis Obispo Mothers for Peace, Sierra Club, and Peg Pinard for Declaratory and Injunctive Relief with Respect to Diablo Canyon ISFSI"**

The Commission approved a Memorandum and Order responding to a motion by San Luis Obispo Mothers for Peace, Sierra Club, and Peg Pinard for Declaratory and Injunctive Relief (collectively as "SLOMFP") with respect to the Diablo Canyon independent spent fuel storage installation (ISFSI). Based on a recent court decision in the Ninth Circuit, SLOMFP asks the NRC to declare the PG&E ISFSI license invalid, declare that any further construction by PG&E will be conducted at its own risk, and prevent PG&E from loading spent fuel into the ISFSI pending completion of an Environmental Impact Statement discussing the environmental impacts of a terrorist attack. The Memorandum and Order denies SLOMFP's motion for declaratory and injunctive relief as unnecessary and premature. Commissioner Jaczko has offered a separate dissenting opinion.

(Subsequently, on September 6, 2006, the Secretary signed the Memorandum and Order.)

**II. SECY-06-0169 - Amergen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station) Docket No. 50-0219, Legal Challenges to LBP-06-07 and LBP-06-11**

The Commission approved a Memorandum and Order responding to four legal challenges to the Atomic Safety and Licensing Board's decisions in LBP-06-07 and LBP-06-11. In LBP-06-07, the Board rejected proposed contentions filed by the New Jersey Department of Environmental Protection ("New Jersey") and admitted a narrowed version of the proposed contention filed by the Nuclear Information and Resource Service ("NIRS"), Jersey Shore Nuclear Watch, Inc., Grandmothers, Mothers and More for Energy Safety, New Jersey Public Interest Research Group, New Jersey Sierra Club, and New Jersey Environmental Federation (collectively, "Citizens"). An appeal filed by New Jersey argues that its three proposed contentions should have been admitted. Appeals filed by AmerGen and the NRC staff argue that the Board erred in admitting the narrowed version of the Citizen's proposed contention. In LBP-06-11, the Board denied a motion by Citizens for leave to add contentions or supplement the basis of its original contention. An appeal filed by Citizens challenges this denial. The Memorandum and Order affirms the Board's decision in LBP-06-07 with respect to New Jersey's appeal of the rejection of its second and third contentions and denies review of LBP-06-11. Decisions on New Jersey's appeal of the rejection of its first contention and on AmerGen's and the NRC staff's appeals of LBP-06-07 are postponed until further notice. Commissioner Jaczko has offered a separate dissenting opinion.

(Subsequently, on September 6, 2006, the Secretary signed the Memorandum and Order.)

**III. SECY-06-0174 - Pa'ina Hawaii, LLC, LBP-06-4, 63 NRC 99 (2006) and LBP-06-12, 63 NRC 409 (2006)**

The Commission approved a Memorandum and Order responding to an appeal by Pa'ina Hawaii of two Atomic Safety and Licensing Board Orders issued on January 24, 2006 and March 24, 2006 which admitted for litigation two environmental contentions and one safety contention. The Memorandum and Order dismisses Pa'ina's appeal as untimely.

(Subsequently, on September 6, 2006, the Secretary signed the Memorandum and Order.)

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