

February 17, 2009

MEMORANDUM FOR: R. W. Borchardt  
Executive Director for Operations

Brooke Poole, Director  
Office of Commission Appellate Adjudication

Karen D. Cyr  
General Counsel

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:25 P.M.,  
TUESDAY, FEBRUARY 17, 2009, COMMISSIONERS'  
CONFERENCE ROOM, ONE WHITE FLINT NORTH,  
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-08-0152 – Final Rule – Consideration of Aircraft Impacts for New Nuclear Power Reactors (RIN 3150-A119)

The Commission approved a final rule amending certain requirements in 10 CFR Parts 50 and Part 52 for consideration of aircraft impacts for new nuclear power reactors, subject to the changes noted in Attachment 1.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rulemaking, Directives, and Editing Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

The staff, with support from OGC, should expedite the processing of this rulemaking as necessary to support delivery of the final rule to the Office of the Federal Register no later than June 5, 2009. The revised rule package (with changes highlighted, if practicable) should be submitted to the Commission for information three days prior to sending it to the Office of the Federal Register.

(EDO) (SECY Suspense: 6/2/09)

II. SECY-08-0170 - Final Rule: 10 CFR Part 63, "Implementation of a Dose Standard After 10,000 Years" (RIN 3150-AH68)

The Commission approved a final rule amending 10 CFR Part 63 to include licensing criteria applicable after 10,000 years for a proposed repository at Yucca Mountain, and to specify the use of current methods of dosimetry for calculating radiation exposures, subject to the changes noted in Attachment 2.

The Commission's revisions to the Federal Register notice are being made to emphasize the statutory primacy of EPA's role in setting the dose standard. These revisions should not be

construed as casting doubt or judgment on the adequacy or protectiveness of EPA's final standards.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rulemaking, Directives, and Editing Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

3/20/09)

III. SECY-08-0199 – Tennessee Valley Authority (Bellefonte Nuclear Power Plant Units 3 and 4), LBP-08-16 (Ruling on Standing, Hearing Petition Timeliness, and Contention Admissibility) (Sept. 12, 2008)

The Commission approved a Memorandum and Order responding to two referred rulings and a Board suggestion that the Commission initiate a low-level waste confidence rulemaking. The Memorandum and Order reverses the Board's admission of the referred safety and environmental contentions, and declines to accept the Board's suggestion that the Commission conduct a "low-level waste confidence" rulemaking proceeding.

Commissioner Jaczko disapproved the Memorandum and Order and provided a dissenting opinion.

(Subsequently, on February 17, 2009, the Secretary signed the Memorandum and Order.)

IV. SECY-09-0024 - Detroit Edison Co. (Fermi Unit 3)--Various Procedural Requests

The Commission approved a Memorandum and Order responding to two motions filed by the Michigan Chapter of the Sierra Club, Beyond Nuclear, Citizens for Alternatives to Chemical Contamination, Citizens Resistance at Fermi 2, Coalition for a Nuclear-Free Great Lakes, Don't Waste Michigan, Toledo Coalition for Safe Energy, and several individuals (collectively, "Petitioners"). The Memorandum and Order grants the Petitioners a 10-day extension from the date of this Order to the deadline for filing requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI), and denies the Petitioners' remaining requests.

Commissioner Jaczko disapproved the Memorandum and Order, in part, and provided a dissenting opinion.

(Subsequently, on February 17, 2009, the Secretary signed the Memorandum and Order.)

Attachment: 1) Changes to the Final Rule in SECY-08-0152  
2) Changes to the Final Rule in SECY-08-0170

cc: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
Commissioner Svinicki

EDO  
CFO  
OCAA  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ASLBP (via E-Mail)  
PDR

**Changes to the Final Rule in SECY-08-0152**

1. The staff should edit the entire rulemaking package to be consistent with the below changes. The staff should also make appropriate conforming changes to § 52.63 and § 52.83, and the current design certification rules (e.g., paragraph VI.A)
  - a. The staff should delete, all references to “mitigating, to the extent practical...the effects of the aircraft impact” from the rule language, beginning at 50.150(b)(1)(i), and replaced with the following acceptance criteria:

“Each applicant subject to this section shall perform a design-specific assessment of the effects on the facility of the impact of a large, commercial aircraft. Using realistic analyses, the applicant shall identify and incorporate into the design those design features and functional capabilities to show that, with reduced use of operator actions:

(A) the reactor core remains cooled, or the containment remains intact; and  
(B) spent fuel cooling or spent fuel pool integrity is maintained.”
  - b. The staff should revise the rule to allow a combined license applicant referencing an existing design certification the flexibility to address the rule’s requirements solely in the COL application.
2. The staff should insert a footnote to 10 CFR 50.150(b)(2) to read:

(2) *Aircraft impact characteristics.*<sup>1</sup> The assessment...

<sup>1</sup> Changes to the detailed parameters on aircraft impact characteristics set forth in guidance shall be approved by the Commission.

3. The staff should add the following sentence after the last full sentence on page 26 of the Statements of Considerations: “Changes to these detailed parameters on aircraft impact characteristics set forth in this guidance shall be approved by the Commission.”
4. The staff should make the following typographical and grammatical corrections to the rule and its accompanying documents to the degree they apply following the major changes directed by the Commission.
  - a. Federal Register Notice, page 43, line 11, insert “to” after “need”.
  - b. Federal Register Notice, page 64, line 13, clarify the sentence: “As a result of these provisions, every future nuclear power plant will meet the aircraft impact rule, which is the NRC’s key objective in adopting this final aircraft impact rule.” As written it is overly broad and the terms “every future,” and “plant,” are undefined.
  - c. Federal Register Notice, page 67, line 3, insert “to” after “expected”.
  - d. Federal Register Notice, page 67, line 20 insert quotation mark after the word impact.
  - e. Federal Register Notice, page 70, line 12, change “an” to “and”.

- f. Federal Register Notice, page 87, line 7, insert “reactor” after “manufactured”.
- g. Federal Register Notice, page 108, line 18, replace “or” with “nor” and insert “they” after “are”.
- h. Federal Register Notice, page 109, line 3, replace “or” with “nor” and insert “they” after “are”.
- i. Enclosure 3, page 18, line 7, replace the second “or” with “of”.
- j. Enclosure 3, page 18, second line from the bottom, replace the second “or” with “of”.
- k. Enclosure 3, page 19, paragraph 1, line 7, replace “on” with “of”.
- l. Enclosure 3, page 19, paragraph 1, line 9, insert “the” after “with”.
- m. Enclosure 3, page 19, paragraph 3, line 4, replace “or” with “of”.
- n. Enclosure 3, page 20, first full paragraph, line 12, replace “there” with “their”.
- o. Enclosure 3, page 20, first full paragraph, line 18, delete “to”.
- p. Enclosure 3, page 20, first full paragraph, line 19, replace the second “or” with “of”.
- q. Enclosure 3, page 20, second full paragraph, line 19, insert an extra line before the sentence beginning with “*Comment*”.
- r. Enclosure 3, page 22, second full paragraph, line 2, insert “the” after “of”.
- s. Enclosure 3, page 34, last paragraph, line 7, replace “transforms” with “transform”.
- t. Enclosure 3, page 38, delete the extra line in the “NRC Response”.
- u. Enclosure 3, page 46, insert an extra line between the second “Comment” and “NRC Response” section.
- v. Enclosure 3, page 47, second sentence of “NRC Response”, revise the following phrase for grammar and clarity: “...the NRC determined that the impact of a large, commercial aircraft is a beyond-design-basis event and therefore are not considered necessary for reasonable assurance of adequate protection to public health and safety.”
- w. Enclosure 3, page 47, third paragraph of “Comment” section, delete the extra line.
- x. Enclosure 3, page 50, insert an extra line between the second “NRC Response” and “Comment” section.
- y. Enclosure 3, page 54, second paragraph of “NRC Response” should be revised for clarity and consistency with other responses.
- z. Enclosure 3, page 61, second “Comment” section, replace “SLOMP” with “SLOMFP”

(2 occurrences).

aa. Enclosure 3, page 62, first full paragraph, replace "SLOMP" with "SLOMFP" (3 occurrences).

**Changes to the Final Rule in SECY-08-0170**

1. On pages 14 -17, delete the response to *Issue 1* and replace it with “While EnPA does not require NRC regulations to be *identical* to EPA’s, EnPA does direct the Commission to modify its technical criteria to be consistent with EPA’s standards for a geologic repository at the Yucca Mountain site. Thus, NRC is required to adopt EPA’s post 10,000 year standard, and the NRC has done so. The NRC’s notice of proposed rulemaking notified potential commenters that comments such as these on EPA’s revised standards should be directed to EPA for EPA’s response.”
2. On page 18, delete the response to *Issue 2* and replace it with “As explained in response to issue 1 under NRC Adoption of EPA standards of this document, EnPA requires the Commission to modify its technical criteria to be consistent with EPA’s standards for a geologic repository at the Yucca Mountain site. The NRC’s notice of propose rulemaking notified potential commenters that comments such as these on EPA’s revised standards should be directed to EPA for EPA’s response.”
3. On page 24, last paragraph, delete the sentence in lines 4 through 6 and replace it with “The NRC’s notice of proposed rulemaking notified potential commenters that comments, such as these on EPA’s revised standards should be directed to EPA for EPA’s response.”
4. On page 31, 2<sup>nd</sup> full paragraph, delete the last sentence (The location specified ... assessment.).
5. On pages 62 - 63, delete the response to *Issue 6* and replace with “As explained in response to issue 1 under NRC Adoption of EPA standards of this document, EnPA requires the Commission to modify its technical criteria to be consistent with EPA’s standards for a geologic repository at the Yucca Mountain site. Moreover, the question whether the “zero-release” assumption of the S-3 rule may need to be revisited in the future is not presented in this rulemaking proceeding.”
6. On page 71, paragraph (b), revise line 1 to read ‘ ... methods used to satisfy the ....’