

September 15, 2010

MEMORANDUM FOR: Stephen G. Burns
General Counsel

R. W. Borchardt
Executive Director for Operations

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 8:45 A.M.,
WEDNESDAY, SEPTEMBER 15, 2010, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-09-0090 – Final Update of the Commission's Waste Confidence Decision

The Commission¹ approved a final rule which updates the Commission's 1990 Waste Confidence findings and amends 10 CFR 51.23(a), subject to the changes below.

The following revisions should be made to 10 CFR 51.23 and Waste Confidence Findings (2) and (4):

§ 51.23: Temporary storage of spent fuel after cessation of reactor operation – generic determination of no significant impact.

- (a) The Commission has made a generic determination that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor in a combination of storage in its spent fuel storage basin and at either onsite or offsite independent spent fuel storage installations. Further, the Commission believes there is reasonable assurance that sufficient mined geologic repository capacity will be available to dispose of the commercial high-level radioactive waste and spent fuel generated in any reactor when necessary.

Finding 2: The Commission finds reasonable assurance that sufficient mined geologic repository capacity will be available to dispose of the commercial high-level radioactive waste and spent fuel generated in any reactor when necessary.

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 Jaczko, and Commissioners Apostolakis, Magwood and Ostendorff were present in the Conference Room. Commissioner Svinicki participated in the meeting via speakerphone.

Finding 4: The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 60 years beyond the licensed life of operation (which may include the term of a revised or renewed license) of that reactor in a combination of storage in its spent fuel storage basin and either onsite or offsite independent spent fuel storage installations.

The Office of the General Counsel (OGC) should modify the statements of consideration (SOC) to reflect the Commission's decision and update the factual information contained in the SOC. For example, the SOC should explain that the Commission is removing the target date from the rule and Finding 2 because it is premature to predict a date at this time, particularly considering the uncertainties created by the significant political challenge of siting a high-level waste repository. The SOC should make clear that removing the target date is not an assumption or endorsement of indefinite, onsite storage. In addition, the SOC should explain use of the phrase "when necessary" in the rule and Finding 2. This explanation should reflect the Commission's confidence that there will be no temporal gap between when a repository will be necessary and the availability of sufficient repository capacity because the necessity of transitioning from storage of high-level waste and spent fuel to disposal will be discovered and understood as it approaches and mined geological repository disposal will have been developed in advance of that time. The SOC should explain that this transition could result from federal action that may be triggered by any number of political, technical, legal, or environmental circumstances.

The final rule package should be submitted to the Commission for its information ten business days prior to sending it to the Office of the Federal Register for publication, and should include a redline-strikeout version.

(OGC)

(SECY Suspense:

11/15/10)

Noting its assurance in the adequacy of the current waste confidence rule, the Commission finds it prudent for the staff to begin a separate longer-term rulemaking effort. This longer-term rulemaking effort would update the waste confidence rule to account for storage at onsite storage facilities, offsite storage facilities, or both, that would address impacts of storage beyond a 120 year time frame with the ultimate timeframe, which could be two or three hundred years or more, determined by the staff's technical judgment during the course of the analysis. As with elimination of the target date from the rule and Finding 2, initiation of this rulemaking effort, however, does not mean that the Commission is in any way assuming or endorsing indefinite, onsite storage. Rather, the purpose of this rulemaking is to ensure that the waste confidence rule continues to be fully informed by the current circumstances and scientific knowledge, and also to provide long-term stability to the rule. The primary focus of the analysis should be on the potential environmental impacts resulting from the use of currently available technologies for spent fuel management, transportation, and disposal. However, the staff should also assess how the proposed project might reflect the potential application of advanced spent fuel management technologies, including approaches that would enable short-lived species to be separated from spent fuel and stored until they decay, as well as the potential for application of alternative approaches to disposal, such as a deep borehole. To support this longer-term waste confidence update, the staff should prepare a draft Environmental Impact Statement (EIS). The lead responsibility for this rulemaking effort should be with the Executive Director for Operations.

The staff should provide the Commission with a plan for this longer-term rulemaking. The plan should include staff's recommendation on the appropriate timeframe for the technical analysis, updated budget estimates, timelines for the rulemaking to begin as soon as possible, and any

resource impacts that this high-priority rulemaking would have on already-budgeted work. The plans and Fiscal Year 2011 resources for this longer-term rulemaking should be integrated and realigned, to the extent possible, with the staff's current efforts to examine extended storage and transportation of spent nuclear fuel resulting from COMSECY-10-0007. The staff's plan should also consider the schedule of the activities of the Department of Energy's Blue Ribbon Commission on America's Nuclear Future to ensure that the NRC can respond to potential modifications of national policy.

(EDO)

(SECY Suspense:

12/30/10)

The proposed longer-term rule and draft environmental impact statement should be sent to the Commission in a Notation Vote Paper.

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
CFO
OCAA
OCA
OIG
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR