

December 18, 2002

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

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:25 A.M.,
WEDNESDAY, DECEMBER 18, 2002, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)¹

I. SECY-02-0117 - Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-04, 55 NRC 158 (2002) (Granting Applicant's Petition for Review of Board's Admission of Terrorism Contention in LBP-01-35, 54 NRC 403 (2002))

The Commission approved a Memorandum and Order which reviews the Licensing Board's decision insofar as it admitted a contention filed by Georgians Against Nuclear Energy (GANE) under the National Environmental Policy Act (NEPA) based on the risk of terrorist attacks. The Memorandum and Order reverses the Board's decision to admit GANE's terrorism contention.

II. SECY-02-0118 - Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation), CLI-02-03, 55 NRC 155 (2002) (Accepting Referred Ruling Denying Admission of Utah's Terrorism Contention in LBP-01-37, 54 NRC 476 (2001))

The Commission approved a Memorandum and Order which reviews the Licensing Board's decision in this case which denied the admission of a late-filed contention of the State of Utah under the National Environmental Policy Act (NEPA) related to the threat of a terrorist attack on Private Fuel Storage, L.L.C.'s proposed independent spent fuel storage installation (ISFSI). The Memorandum and Order declines to require a NEPA review of the impact of terrorism at the proposed PFS facility and affirms the Licensing Board's decision rejecting Utah's late-filed terrorism contention.

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." Commissioner Dicus was not present when this item was affirmed. Accordingly the formal vote of the Commission was 4-0 in favor of the decisions. Commissioner Dicus, however, had previously indicated that she would approve these Orders and had she been present she would have affirmed her prior vote.

III. SECY-02-0119 - Duke Energy Corp. (McGuire Nuclear Station, Units 1 & 2; Catawba Nuclear Station, Units 1 & 2), CLI-02-06, 55 NRC 164 (2002) (Accepting Certification of Terrorism-related Issue in LBP-02-04, 55 NRC 49 (2002))

The Commission approved a Memorandum and Order which reviews 14 security- and terrorism-related contentions related to Duke Energy Corporation's license renewal application for the McGuire and Catawba Nuclear Stations. The Licensing Board certified these contentions to the Commission for review. The Memorandum and Order declines consideration of the security- and terrorism-related contentions and directs the Board to reject those contentions.

IV. SECY-02-0120 - Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Unit No. 3), CLI-02-05, 55 NRC 131 (2002) (Accepting Referred Ruling Denying Admission of the Intervenors' Terrorism Contention in LBP-02-05, 55 NRC 161 (2002))

The Commission approved a Memorandum and Order which reviews the terrorism contention related to Dominion Nuclear Connecticut, Inc.'s application for a license amendment to increase the storage capacity of its spent fuel pool. The Memorandum and Order affirms the Licensing Board's decision to reject the terrorism contention proposed by the interveners.

V. SECY-02-0157 - Duke Energy Corporation (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station, Units 1 & 2)

The Commission approved a Memorandum and Order responding to Duke Energy Corporation's motion for clarification of CLI-02-17 and addressing a Licensing Board certified question to the Commission. The Memorandum and Order clarifies the issue of severe accident mitigation analyses and remands to the Board several additional issues related to this matter.

VI. SECY-02-0207 - Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72-22-ISFSI; Utah's "Suggestion of Lack of Jurisdiction" and Petition for Rulemaking under the Nuclear Waste Policy Act

The Commission approved a Memorandum and Order responding to "Utah's Suggestion of Lack of Jurisdiction" related to the Private Fuel Storage (PFS) license application. The Memorandum and Order rejects Utah's argument.

Subsequently, on December 18, 2002, the Secretary signed these Memoranda and Orders.

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