

# ADJUDICATORY ISSUE INFORMATION

January 22, 2007

SECY-07-0013

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**FOR:** The Commissioners

**FROM:** John F. Cordes, Director  
Office of Commission Appellate Adjudication

**SUBJECT:** 2006 ANNUAL REPORT ON COMMISSION ADJUDICATION

**PURPOSE:** To provide the Commission a perspective on the adjudicatory caseload and the Commission's role in adjudication during calendar year 2006.

## **INTRODUCTION:**

The Commission has authority to review decisions of Presiding Officers and the Atomic Safety and Licensing Boards. The Office of Commission Appellate Adjudication (OCAA) assists the Commission in this adjudicatory role by monitoring cases and drafting the Commission's appellate decisions. The Commission may exercise appellate authority either when a dissatisfied party to an NRC adjudicatory proceeding seeks review of a board's or presiding officer's decision, or when the Commission, on its own initiative, determines that review is warranted. The Commission may also offer guidance to the licensing boards on significant novel questions raised in an ongoing proceeding, as when a board certifies a question or refers its ruling to the Commission. In addition, NRC regulations give the Commission original jurisdiction to resolve particular categories of adjudications, such as reactor license transfer adjudications.

I am providing the Commission this report on agency adjudications for calendar year 2006 ("CY2006") as part of OCAA's monitoring role over adjudicatory matters. This report updates information in OCAA's last Annual Report (SECY-06-0042, February 28, 2006) and includes additional information, in chart form, on the published Commission decisions (CLIs) issued in CY2006.

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## **COMMISSION ADJUDICATORY ACTIVITIES:**

### **1. Commission Adjudicatory Decisions in CY2006**

CY2006 was a typical adjudicatory year for the Commission. The Commission issued 29 decisions, essentially the same as its average of 28.6 over the five prior calendar years.<sup>1</sup> These decisions spanned a wide variety of proceedings:

- five reactor license renewals (Millstone, Palisades, Monticello, Oyster Creek, and Pilgrim / Vermont Yankee),
- four enforcement actions against Davis-Besse employees regarding the near-breach of the plant's containment vessel (Siemaszko, Geisen, Miller, and Moffitt),
- two materials licenses (Hydro and Pa'ina),
- two combined operating licenses for different fuel fabrication plants (LES and USEC),
- two license transfers ((i) Beaver Valley / Davis-Besse / Perry, and (ii) Calvert Cliffs / Nine Mile Point / Ginna / Turkey Point / St. Lucie / Seabrook / Duane Arnold),
- one reactor license amendment (Vermont Yankee),
- an on-site ISFSI (Diablo Canyon),
- one off-site ISFSI (PFS),
- two early site permits (Clinton and Grand Gulf)
- Yucca Mountain.

OCAA drafted 28 of last year's 29 Commission decisions.<sup>2</sup> Of those 28 decisions, the Commission upheld or denied review of board orders in 16,<sup>3</sup> partially or wholly overturned

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<sup>1</sup> Twenty-nine in CY2005, 39 in CY2004, 18 in CY2003, 29 in CY2002, and 28 in CY2001.

<sup>2</sup> OCAA acted as a consultant on one Commission decision -- involving a petition to reopen the closed Millstone proceeding. OGC drafted that decision because the case fell outside OCAA's area of responsibility. CLI-06-4.

<sup>3</sup> CLI-06-1, -6, -9, -10, -11, -12, -13, -14, -15, -17, -18, -19, -21, -24, -25, and -29.

(reversed, vacated, or remanded) board orders in 4,<sup>4</sup> and was not faced with challenges to board orders in the remaining 8.<sup>5</sup>

The Commission's decisions continue to interpret and clarify NRC regulations, the AEA and NEPA. Significant OCAA work in CY2006 included decisions:

- addressing the impacts of depleted uranium disposal (LES, CLI-06-15).
- addressing the degree of specificity the Commission requires from the Department of Justice when DOJ (through the Staff) asks the Commission to hold an enforcement proceeding in abeyance pending the conclusion of DOJ's own parallel criminal case (Siemaszko, CLI-06-12, & Geisen, CLI-06-19).
- ruling that the DOE draft license application was not "documentary material" under the agency's regulations, and therefore need not be released to the public (DOE, CLI-06-5).
- setting bounds on the scope of uncontested "mandatory hearings" on early site permit applications (Exelon, CLI-06-20).
- clarifying the meanings of the terms "total effective dose equivalent" and "background radiation" with respect to air emissions from licensed operations (Hydro Resources, CLI-06-14).

OCAA often provides the Commission with multiple draft decisions on particularly difficult cases which, in CY2006, included Siemaszko (CLI-06-16) and Oyster Creek (CLI-06-24). The multiple drafts are intended to give the Commission options on how to proceed. Even when OCAA does not provide multiple drafts, our SECY Papers regularly point out possible alternative approaches that the Commission might wish to consider.

OCAA strives to submit its draft decisions expeditiously, and has nearly always been successful in meeting this goal. Our overall average turnaround time (between receiving the final relevant document and filing OCAA's draft decision with SECY) was 32 days for the 33 draft decisions

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<sup>4</sup> CLI-06-5 (reversing a Board ruling that DOE must place its draft Yucca Mountain license application on the Licensing Support Network), CLI-06-16 (vacating a Board's grant of discretionary intervention), CLI-06-20 (taking *sua sponte* review of two board orders requiring the Staff turn over or create documents relevant to the Staff's review of two early site permit applications), and CLI-06-22 (modifying the basis for one Board ruling regarding a cost estimate for depleted uranium disposal).

<sup>5</sup> CLI-06-2 (license transfer), CLI-06-3 (motion to reopen proceeding), CLI-06-7 (granting review and setting briefing schedule), CLI-06-8 (letter seeking to stay the issuance of license amendment), CLI-06-23 (denying motion for declaratory and injunctive relief), CLI-06-26 (denying "petition for Backfit Order"), CLI-06-27 (request for reconsideration of Commission decision), and CLI-06-28 (*sua sponte* review of late-filed contention regarding NEPA and terrorism). The CLI that OGC drafted also falls within this category. CLI-06-4 (motion to reopen proceeding).

that OCAA submitted in CY2006. See attached Chart. Our median turnaround time was 23 days. We met our 60-day turnaround goal in all but three cases, two of which were delayed because of a temporary backlog of draft decisions to prepare.

## **2. Pending Commission Appeals/Petitions for Review**

As of December 31, 2006, OCAA was drafting 7 Commission decisions in the following cases:<sup>6</sup>

- Palisades (license transfer) (2 draft decisions on separate issues)
- Grand Gulf (early site permit)
- Pilgrim and/or Vermont Yankee (3 license renewal decisions)
- Oyster Creek (license renewal application; case presents NEPA terrorism issue)

## **3. Anticipated Adjudicatory Matters**

OCAA expects that the Commission will face the following additional important adjudicatory matters in CY2007:

- Vogtle (Early Site Permit)
- Possible *sua sponte* reviews of the Board orders that will follow the mandatory hearings in the Early Site Permit adjudications for Clinton, North Anna, and Grand Gulf.
- More disputes over PAPO rulings in Yucca Mountain.
- More challenges based on the NEPA terrorism issue.

## **ATOMIC SAFETY AND LICENSING BOARD PANEL ACTIVITIES:**

The Board reports that, in CY2006, it opened 6 new proceedings, managed 21, closed 8, and also issued 28 LBPs. The following 13 cases were pending before the Board on Dec. 31, 2006:

- |                                    |                                                          |
|------------------------------------|----------------------------------------------------------|
| ● Siemaszko (Enforcement)          | ● North Anna (ESP)                                       |
| ● Vermont Yankee (Uprate)          | ● Oyster Creek (License Renewal)                         |
| ● Vermont Yankee (License Renewal) | ● Pa'ina Hawaii (Materials License)                      |
| ● Vogtle (ESP)                     | ● Pilgrim (License Renewal)                              |
| ● Geisen (Enforcement)             | ● U.S. Army - Jefferson Proving Ground (Decommissioning) |
| ● Grand Gulf (ESP)                 | ● USEC (Materials License)                               |
| ● High Level Waste - PAPO          |                                                          |

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<sup>6</sup> Subsequently, OCAA submitted draft Commission decisions in these cases.

If the Commissioners would like any additional information on this Annual Report or any adjudicatory proceeding, I would be happy to provide it.

Attachment: Chart

**CHART 1**

**COMMISSION ADJUDICATORY DECISIONS, JANUARY - DECEMBER 2006**

<b>Decision Number/Cite/Date/Attorney</b>	<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Decision Being Challenged</b>	<b>Relief Sought</b>	<b>Commission Action</b>	<b>SECY Number/Date</b>	<b>Last Salient Document Date</b>	<b>Turn around Time</b>	<b>Complexity Level</b>
CLI-06-03, 63 NRC 19 (1/31/06) (SS)	Private Fuel Storage L.L.C.	ISFSI	CLI-05-19, 62 NRC 403	Reopen the proceeding	Motion denied	06-0002, (1/03/06)	11/18/05	46	Average
CLI-06-04, 63 NRC 32 (1/31/06) (OGC) (CM)	Dominion Nuclear Connecticut, Inc.	Reactor License Renewal	CLI-04-36, 60 NRC 81	Reopen the proceeding	Motion denied	06-0005, (1/06/06)			
CLI-06-06, 63 NRC 161 (2/02/06) (SS)	Nuclear Management Co. L.L.C. (Monticello)	Reactor License Renewal	LBP-05-31	Reversal of board's rulings on standing & admissibility of contentions	"Appeal" denied	06-0011, (1/13/06)	12/14/05	30	Average
CLI-06-07, 63 NRC 165 (2/27/06) (SS)	Hydro Resources, Inc.	Materials License Application	LBP-06-1	Petition for Review	Review granted; filing schedule established	06-0037, (2/15/06)	2/10/06	5	Average
CLI-06-08, 63 NRC 235 (3/03/06) (SS)	Entergy Nuclear Vermont Yankee, L.L.C. & Entergy Nuclear Oper., Inc. (Vermont Yankee)	Reactor Operating License Amendment	N/A	Request for stay of issuance of OLA	Request denied	06-0046, (3/02/06)	2/28/06	2	Average

<b>Decision Number/Cite/Date/Attorney</b>	<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Decision Being Challenged</b>	<b>Relief Sought</b>	<b>Commission Action</b>	<b>SECY Number/Date</b>	<b>Last Salient Document Date</b>	<b>Turn around Time</b>	<b>Complexity Level</b>
CLI-06-09, 63 NRC 433 (4/03/06) (BA)	USEC Inc.	Application to construct a uranium enrichment facility	LBP-05-28	Reversal of the Board's denial of Geoffrey Sea's Petition to Intervene	Affirmed the Board's order	06-0044 (3/01/06)	11/10/05	111	Average
CLI-06-10, 63 NRC 451 (4/03/06) (CC)	USEC Inc.	Application for Uranium Enrichment Facility	LBP-05-28	Reversal of Board denial of intervention petition (PRESS)	Affirmed Board's order	06-0057 (3/13/06)	12/16/05	87	Average
CLI-06-11, 63 NRC 483 (4/03/06) (BA)	Hydro Resources, Inc.	Petition for Review of cultural resource challenge to uranium mining license	LBP-05-26	Review of Board order	Declined to grant review of the Board's order	06-0061 (3/17/06)	10/20/05	148	Average
CLI-06-12, 63 NRC 495 (5/03/06) (RF)	Andrew Siemaszko	Enforcement	Board Order holding proceeding in indefinite abeyance	Reversal of Board Order	Affirmance of Board order	06-0086 (4/14/06)	3/21/06	23	Average
CLI-06-13, 63 NRC 508 (5/15/06) (RF)	Pa'ina Hawaii	Materials License Application	Board Orders admitting contentions	Reversal of Board Orders & rejection of contentions as inadmissible	Appeals dismissed without prejudice	06-0090 (4/21/06)	4/17/06	4	Average

<b>Decision Number/Cite/Date/Attorney</b>	<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Decision Being Challenged</b>	<b>Relief Sought</b>	<b>Commission Action</b>	<b>SECY Number/Date</b>	<b>Last Salient Document Date</b>	<b>Turn around Time</b>	<b>Complexity Level</b>
CLI-06-14, 63 NRC 510 (5/16/06) (SS)	Hydro Resources, Inc.	Materials License Application	LBP-06-1 (PID- Radiological emissions)	Reversal of Board order finding proposed operations' emissions within acceptable limits	Board upheld	06-0091 (4/21/06)	3/20/06	31	Average
CLI-06-15, 63 NRC 687 (6/02/06) (CC)	LES, L.P.	Application/uran ium enrichment facility	LBP-06-08; LBP-06-09	Reversal of Board decisions on NEPA analysis	Affirmed & added to Boards' decisions	06-0116 (5/18/06)	4/06/06	42	Complex
CLI-06-16, 63 NRC 708 (6/02/06) (RF)	Andrew Siemaszko	Enforcement	Order granting discretionary intervention	Reversal of Board Order & denial of discretionary intervention	Remand of issue to Board	06-0062 (3/17/06)  new draft submitted per 06- 0120 (5/23/06)	1/13/06  5/23/06	63  0 days (same- day turn around)	Complex (3 drafts submitted to Comm'rs)  Average
CLI-06-17, 63 NRC 727 (6/23/06) (SS)	Nuclear Management Co. L.L.C. (Palisades)	License Renewal	LBP 06-10 (Denial of Petition to Intervene)	Reversal	Affirmed Board	06-0110 (5/16/06)	3/27/06	50	Average



<b>Decision Number/Cite/Date/Attorney</b>	<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Decision Being Challenged</b>	<b>Relief Sought</b>	<b>Commission Action</b>	<b>SECY Number/Date</b>	<b>Last Salient Document Date</b>	<b>Turn around Time</b>	<b>Complexity Level</b>
CLI-06-18, 64 NRC 1 (7/26/06) (RF)	Pa'ina Hawaii	Materials License Application	Board Order approving Joint Stipulation	Reversal of Board Order	Appeal denied	06-0140 (6/20/06)	5/19/06	32	Average
CLI-06-19, 64 NRC 9 (7/26/06) (RF)	David Geisen	Enforcement	Order denying Staff motion to hold proceeding in abeyance	Reversal of Board order & approval of abeyance	Appeal denied	06-0147 (6/28/06)	06/14/06	14	Average
CLI-06-20, 64 NRC 15 (7/26/06) (SS)	Exelon Generation Co. (Clinton ESP) System Energy Resources (Grand Gulf ESP)	ESP	Board Order directing Staff to produce documents	Reversal of Boards order	Vacated	06-0148 (6/28/06)	6/15/06	13	Average
CLI-06-21, 64 NRC 30 (7/26/06) (RF)	Florida Power & Light Co.	License Transfer	N/A	Permission to intervene, & a hearing to challenge LT Application	Denial of Petition to Intervene & Request for Hearing	06-0154 (07/11/06)	6/16/06	19	Average
CLI-06-22, 64 NRC 37 (8/17/06) (BA)	LES, L.P.	Application/uranium enrichment facility	LBP-06-15	Reversal of Board's 3 <sup>rd</sup> Partial Initial decision (financial assurance)	Accepted Review/affirmed Board's conclusion	06-0162 (7/24/06)	7/3/06	21	Average

Decision Number/Cite/Date/Attorney	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action	SECY Number/Date	Last Salient Document Date	Turn around Time	Complexity Level
CLI-06-23, 64 NRC 107 (9/06/06) (JC)	Pacific Gas & Electric Co. (Diablo Canyon)	ISFSI license	N/A	Declaratory & Injunctive relief	Motion denied	06-0166 (7/27/06)	7/17/06	10	Average
CLI-06-24, 64 NRC 111 (9/06/06) (BA)	AmerGen Energy Co., L.L.C. (Oyster Creek)	License Renewal Application	1.) LBP-06-07 2.) LBP-06-11	1.) Reversal of Board's denial of N.J.'s petition to intervene & of Board's grant of Citizens' petition to intervene 2.) Reversal of Board's denial of motion to add contentions or supplement basis for contention	Affirmed in part/postponed in part	06-0109 (5/16/06) *** 06-0169 (7/31/06)	1.) 4/10/06 2.) 4/17/06 *** 6/12/06 (notice of pertinent case law)	1.) 36 2.) 29 *** 49	Complex (multiple drafts & delayed because of 9 <sup>th</sup> Circuit NEPA-Terrorism issue)
CLI-06-25, 64 NRC 128 (9/06/06) (RF)	Pa'ina Hawaii	Materials License Application	Board Order admitting three contentions	Reversal of board Order & termination of adjudication	Denial of appeal & affirmation of Board order admitting safety contention	06-0174 (8/04/06)	07/19/06	16	Average
CLI-06-26, 64 NRC ____ (10/10/06) (CC)	Entergy Nuclear Operations (Pilgrim/Vermont Yankee)	Reactor License Renewal	N/A	"Petition for Backfit Order"	Petition denied	06-0199 (9/14/06)	8/25/06	20	Average

<b>Decision Number/Cite/ Date/Attorney</b>	<b>Case Name</b>	<b>Type of Proceeding</b>	<b>Decision Being Challenged</b>	<b>Relief Sought</b>	<b>Commission Action</b>	<b>SECY Number/ Date</b>	<b>Last Salient Document Date</b>	<b>Turn around Time</b>	<b>Complexity Level</b>
CLI-06-27 64 NRC ____ (11/09/06) (BA)	Pacific Gas & Electric Co. (Diablo Canyon)	ISFSI	CLI-06-23	Petition for Reconsideration	Petition denied	06-0216 (10/25/06)	9/28/06	27	Average
CLI-06-28, 64 NRC ____ (11/9/06) (SS)	Grand Gulf ESP	Early Site Permit	none	none	Sua Sponte—respond to late contention on NEPA/terrorism	06-0218 10/26/06	10/17/06	9	Average
CLI-06-29 64 NRC ____ (12/14/06) (CC)	Hydro Resources, Inc.	Materials License (ISL)	LBP-06-19	review of & reversal of LBP	Petition denied	06-0221 (11/07/06)	9/26/06	42	Complex
CLI-07-1 64 NRC ____ (1/11/07) (RF)	Entergy Nuclear Vermont Yankee (Vermont Yankee)	Reactor License Renewal	LBP-06-20	review & reversal of LBP (declining to admit one contention)	Petition denied	06-0227 (11/21/06)	10/30/06	22	Average
CLI-07-2 65 NRC ____ (1/11/07) (CC)	Entergy Nuclear (Pilgrim)	Reactor License Renewal	LBP-06-23	interlocutory review of denial of contention	Appeal denied	06-0238 (12/11/06)	11/13/06	28	Average

Decision Number/Cite/Date/Attorney	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action	SECY Number/Date	Last Salient Document Date	Turn around Time	Complexity Level
CLI-07-__ 65 NRC __ (1/ /07) (SS)	Entergy Nuclear (Pilgrim) & Entergy Nuclear Vermont Yankee (Vermont Yankee)	Reactor License Renewals	LBP-06-20 & LBP-06-23	reversal of 2 Boards' denial of hearing	Appeals denied	06-0240 (12/18/06)	11/13/06	35	Average
CLI-07-__ 65 NRC __ (1/ /07) (BA)	AmerGen Energy Co. (Oyster Creek)	Reactor License Renewal	LBP-06-07	reversal of Board order rejecting terrorism contention	Appeal denied	06-0240 (12/22/06)	12/19/06 (date of NRC's & SG's decision on how to address <u>Mothers for Peace</u> cert. petition)	3	Average
CLI-07-__ 65 NRC __ (1/ /07) (SS)	Nuclear Management Co. L.L.C. (Palisades)	Reactor License Renewal	none	Re-draft of EIS & admission of late contention on NEPA/terrorism issue	Denied	06-0245 (12/27/06)	12/19/06 (date of NRC's & SG's decision on how to address <u>Mothers for Peace</u> cert. petition)	8	Average

Decision Number/Cite/Date/Attorney	Case Name	Type of Proceeding	Decision Being Challenged	Relief Sought	Commission Action	SECY Number/Date	Last Salient Document Date	Turn around Time	Complexity Level
CLI-07-___, 65 NRC ___ (1/ /07) (SS)	System Energy Resources, Inc. (Grand Gulf)	Early Site Permit	none	Admission of contention on NEPA/terrorism (issue taken from Board in CLI-06-28)	Contention not admitted	06-0246 (12/27/06)	12/19/06 (date of NRC's & SG's decision on how to address <u>Mothers for Peace</u> cert. petition)	8	Average