

March 27, 2003

COMMISSION VOTING RECORD

DECISION ITEM: SECY-03-0036

TITLE: REPORT TO CONGRESS ON ABNORMAL
 OCCURRENCES FOR FISCAL YEAR 2002

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of March 27, 2003.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
 Commissioner Dicus
 Commissioner Diaz
 Commissioner McGaffigan
 Commissioner Merrifield
 OGC
 EDO
 PDR

VOTING SUMMARY - SECY-03-0036

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | PARTICIP | NOT COMMENTS | DATE |
|------------------|-------|----------|---------|----------|-----------------|---------|
| CHRM. MESERVE | X | | | | X | 3/24/03 |
| COMR. DICUS | X | | | | X | 3/21/03 |
| COMR. DIAZ | X | | | | X | 3/19/03 |
| COMR. McGAFFIGAN | X | | | | X | 3/20/03 |
| COMR. MERRIFIELD | X | | | | X | 3/25/03 |

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on March 27, 2003.

Commissioner Comments on SECY-03-0036

Chairman Meserve

I approve the proposed Abnormal Occurrences report to Congress, subject to the edits recommended by Cmr. Diaz. However, I do not concur with the recommendation that events 02-2 and 02-3 should be deleted from the list of Abnormal Occurrences (AOs).

As stated at the beginning of SECY-03-0036, the statute requiring that the NRC report AOs to Congress defines an AO simply as "an unscheduled incident or event which the Commission determines is significant from the standpoint of public health or safety." 42 U.S.C. § 5848. If this were the only requirement on which to base an evaluation, I would agree that neither event would likely be considered as an AO. However, as noted in the preface to the AO Report (p. xi), the Commission published a policy statement containing the much more specific criteria for determination of an AO that are included in Appendix A of the report. 62 *Fed. Reg.* 18,820 (1997). On the basis of the specific criteria cited by the staff -- criterion I.C.3 for the loss of the Millstone spent fuel rods and criterion I.C.4 for the accountability failure at NFS -- the staff's decision to include these events as AOs appears to me to be appropriate.

I believe that the Commission's published policy should govern the selection of events to be reported as AOs until and unless that policy is amended. Consequently, I recommend that events 02-2 and 02-3 be reported as AOs, and that the Commission consider separately the matter of revising the policy statement dealing with AO selection criteria.

Commissioner Dicus

Commissioner Diaz

Approved, subject to moving item 02-2, "Unaccounted for Fuel Pins at Millstone Unit One in Waterford, Connecticut" and item 02-3, "Accountability Failure at Nuclear Fuel Services in Erwin, Tennessee" from the AO section to Appendix C "Other Events of Interest." While I agree that these events meet the criteria for "consideration for reporting as AOs," as defined in Appendix A of the paper, they did *not* have any adverse affect on public health or safety for the following reasons. The staff concluded that "the current risk to human health from the unaccounted for fuel rods appears to be insignificant." The staff also indicated that the material at Nuclear Fuel Services remained at the site, inside secure storage at all times. Corresponding changes should also be made to the correspondence.

Attached are edits to the report.

Commissioner McGaffigan

I approve the proposed Abnormal Occurrence report contained in SECY-03-0036 subject to the edits of Commissioner Diaz. I completely agree with Commissioner Diaz that the report should be revised to remove two of the events from the list of Abnormal Occurrences. The Energy Reorganization Act defines an Abnormal Occurrence as an "...event which the Commission

determines is significant from the standpoint of public health or safety.” As pointed out by Commissioner Diaz, in the case of item 02-2 and 02-3, the staff has determined that these events were not significant from the standpoint of public health or safety. They are more appropriately listed in Appendix C.

Commissioner Merrifield