



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 9, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0020

TITLE: PRIVATE FUEL STORAGE, L.L.C. - THE ADVISORY
COUNCIL ON HISTORIC PRESERVATION'S COMMENT(S)
ON TERMINATION OF CONSULTATION PROCESS

The Commission (with Chairman Diaz and Commissioners McGaffigan, Merrifield and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 9, 2006. Commissioner Jaczko approved in part and disapproved in part.

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

A handwritten signature in black ink, appearing to read "Andrew L. Bates", written over a horizontal line.

Andrew L. Bates
Acting Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

SECY NOTE: THIS COMMISSION VOTING RECORD TO BE MADE AVAILABLE TO
THE PUBLIC UPON PUBLICATION OF THE *FEDERAL REGISTER*
NOTICE

VOTING SUMMARY - SECY-06-0020

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	2/8/06
COMR. McGAFFIGAN	X				X	2/3/06
COMR. MERRIFIELD	X				X	2/7/06
COMR. JACZKO	X	X			X	2/6/06
COMR. LYONS	X				X	2/6/06

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioners McGaffigan, Merrifield and Lyons approved the staff's recommendation. Commissioner Jaczko approved in part and disapproved in part. All Commissioners provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on February 9, 2006.

NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-06-0020 - PRIVATE FUEL STORAGE, L.L.C. -
THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION'S COMMENT(S) ON TERMINATION
OF CONSULTATION PROCESS**

Approved ^{w/comments} xx AD Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:
See attached comments.

Adrian Diaz
SIGNATURE
Feb 8, 06
DATE

Entered on "STARS" Yes No _____

Chairman Diaz' comments on SECY-06-0020

First, I would like to commend the staff for its diligent efforts in resolving this matter. I approve the staff's recommendation to issue the proposed letter to ACHP Chairman Nau, with copies of the letter to be transmitted to all consulting parties. I believe the letter fully documents the staff's rationale for issuance of the license, and evidences careful consideration of the ACHP's comments. I further approve the staff's plan to issue the license to PFS, following transmittal of the letter to the ACHP. Finally, I approve the staff's proposed *Federal Register* notice, notifying the public of issuance of the license, and noting that the record is available for public inspection via the ADAMS system.

A handwritten signature in black ink, appearing to be 'LD', is written below the end of the text.

NOTATION VOTE

RESPONSE SHEET

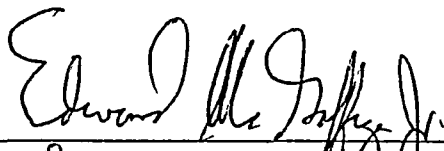
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0020 - PRIVATE FUEL STORAGE, L.L.C. -
THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION'S COMMENT(S) ON TERMINATION
OF CONSULTATION PROCESS**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE
Feb 3, 2006

DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-06-0020

I approve the staff's recommendations for the NRC Chairman to sign and issue the letter to the Chairman John Nau of the Advisory Council on Historic Preservation copying all consulting parties, to issue the license to Private Fuel Storage (PFS) in accordance with the Commission's Memorandum and Order (CLI-05-19), and to issue a Federal Register Notice informing the public that: (1) the Commission has approved the issuance of a license to PFS, (2) that the National Historic Preservation Act (NHPA) process is concluded, and (2) that the record is available for public inspection in the NRC's ADAMS document collection. This action will constitute full compliance with our consultation responsibilities under the NHPA as described in the implementing regulations at 36 CFR 800.7.

I urge my fellow Commissioners to act quickly on this matter. In the November 15, 2005, SRM for SECY-05-0198, we asked the staff to "prepare a notation paper relaying the staff's analysis of the comments as well as a recommendation for resolution of any outstanding issues prior to proceeding with any additional action." The Commission is already familiar with Mr. Nau's January 9, 2006, response, in which he finds that NRC's proposed actions to include the license condition requiring implementation of certain procedures for protection of historic and cultural resources are "reasonable and appropriate," and he raises no new issues that would require further NRC action. Predictably, the staff's analysis of Mr. Nau's findings does not raise any new policy questions that would need to be addressed by the Commission prior to issuance of the license to PFS. Therefore, there is no reason to further delay issuance of the license to PFS.

It is my understanding based on discussions with OGC, that issuance of the Federal Register Notice (Attachment 4) informing the public that the Commission has issued a license to PFS, has concluded the NHPA consultation process and is making the record available for public inspection in the NRC's ADAMS document collection, constitutes compliance with the requirement of 36 CFR 800.7(c)(4)(iii).

E. McGaffigan
2/3/06

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0020 - PRIVATE FUEL STORAGE, L.L.C. -
THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION'S COMMENT(S) ON TERMINATION
OF CONSULTATION PROCESS**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

Approve subject to the attached edits.



SIGNATURE

2/7/05

DATE

Entered on "STARS" Yes No _____

DRAFT
Letter to ACHP

Honorable John L. Nau, III
Chairman
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, N.W. Suite 809
Washington, D.C. 20004

**SUBJECT: PRIVATE FUEL STORAGE, L.L.C. - CONSIDERATION OF COMMENTS
PROVIDED BY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
ON TERMINATION OF CONSULTATION**

Dear Chairman Nau:

On behalf of the U.S. Nuclear Regulatory Commission (NRC),

1 I am responding to your letter dated January 9, 2006, concerning the letter from Jack R. Strosnider, ~~U.S. Nuclear Regulatory Commission (NRC)~~ to John Fowler, Advisory Council on Historic Preservation (ACHP), dated November 22, 2005. In the NRC's letter of November 22, 2005, Mr. Strosnider informed the ACHP that, for reasons stated therein, and in accordance with the provisions of 36 C.F.R. § 800.7, the NRC had decided to terminate its participation in the consultation process established under Section 106 of the National Historic Preservation Act (NHPA), regarding the application of Private Fuel Storage, L.L.C. (PFS) for a license to construct and operate an Independent Spent Fuel Storage Installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians, located in Tooele County, UT.

In your letter of January 9, 2006, you provided the ACHP's comments on the NRC's termination of the NHPA consultation process, which the NRC is required to consider in reaching a final decision on the PFS license application. The NRC has considered the ACHP's comments, and has reached a final decision in this matter. Consistent with our obligations under the Atomic Energy Act of 1954, as amended, and in accordance with our regulations in 10 C.F.R. Part 72, the NRC has determined to grant the PFS license application and to issue a Materials License to PFS for its proposed ISFSI.

As required in 36 C.F.R. § 800.7(c)(4)(i), a summary of the NRC's decision, together with supporting rationale and evidence of our consideration of the ACHP comments, is provided below. In accordance with § 800.7(c)(4)(ii)-(iii), a copy of this summary is being provided to all consulting parties, and notice of the NRC's determination is being published in the *Federal Register*.

Background

On June 20, 1997, PFS submitted an application to the NRC for a license to construct and operate its proposed ISFSI. The published a "Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the PFSF in the Federal Register on July 31, 1997 (62 FR 41099). The NRC then commenced its review of the safety and environmental effects of the proposed PFS Facility (PFSF).

Additional ACHP Observations

After providing comments on the NRC's termination letter, the ACHP acknowledged "the diligent and thorough manner in which your agency [NRC] has addressed its responsibilities under the National Historic Preservation Act for this undertaking." We appreciate your remarks, and look forward to further cooperation with the ACHP with respect to future NRC licensing actions.

With respect to the NHPA Section 110 obligations noted in your letter, a copy of this letter is being provided to all consulting parties and other members of the public that have an interest in the PFS licensing action. In addition, consistent with NRC's practice of publishing a "Notice of Issuance" in the *Federal Register* when a materials license is issued for an ISFSI, the NRC will provide notice to the public when the PFS license is issued. Documents upon which the NRC based its decision to license the PFS Facility, including the Safety Evaluation Report and FEIS, are available electronically from NRC's Electronic Reading Room at <http://www.nrc.gov/reading-room/adams.html>. From this site, the public can access NRC's Agencywide Documents Access and Management System (ADAMS) which provides text and image files of NRC's public documents. Information concerning document availability will be included in our "Notice of Issuance" for the PFS Facility license.

Finally, I sincerely want to thank you and your staff at the Advisory Council on Historic Preservation for your timely consideration of this matter, for the highly professional assistance rendered by your staff in our licensing process, and for your thoughtful comments in response to our letter of November 22, 2005.

Should you or any members of your staff have any questions related to this matter please do not hesitate to contact NRC's Project Manager for the PFS licensing action, Mr. Stewart Brown. Mr. Brown can be reached at by telephone at (301) 415-8531 or by E-mail at swb1@nrc.gov.

Sincerely,

Nils J. Diaz, Chairman
U.S. Nuclear Regulatory Commission

Since this is going to be the chairman of the ACHP, the contact should be Jack Strosnider.



NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

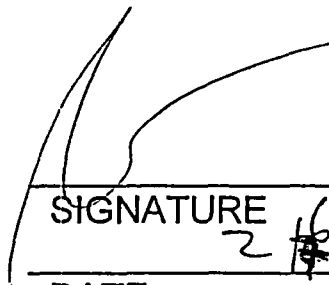
FROM: COMMISSIONER JACZKO

SUBJECT: **SECY-06-0020 - PRIVATE FUEL STORAGE, L.L.C. -
THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION'S COMMENT(S) ON TERMINATION
OF CONSULTATION PROCESS**

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: See attached comments.



SIGNATURE
2/16/06

DATE

Entered on "STARS" Yes X No _____


**Commissioner Jaczko's Comments on SECY-06-0020
Private Fuel Storage, L.L.C. - The Advisory Council on Historic
Preservation's Comment(s) on Termination of Consultation Process**

I approve and disapprove of the staff's recommendations to proceed with issuance of the items attached to this Commission paper. I approve of the staff's proposed letter to John Nau, III, Chairman of the Advisory Council on Historic Preservation (ACHP), to the extent it documents the agency's consideration of the ACHP's comments and of the staff's commitment to condition the PFS license on the "Environmental Conditions" specified in Section 9.4.2 of the Final Environmental Impact Statement. As I mentioned in my earlier vote on this matter, following the regulatory process in this clear and open manner was the best way to ensure a thorough and transparent dialogue and thus, a well-reasoned ultimate decision on this matter.

I continue to disapprove of issuance of the PFS license and thus of the *Federal Register* Notice announcing the agency's intention to do so. My disapproval is not in anyway related to the staff's handling of this historic preservation issue, but instead is based on my concern, detailed in my dissenting opinion, that the necessary consequence analysis regarding an F-16 aircraft hazard was not performed. (See, *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), CLI-05-19, 62 NRC 403 (2005).

Recognizing, however, that a majority of the Commission approved issuance of the license to PFS in CLI-05-19, the staff should proceed carefully with the timing of the issuance of the attachments to this paper. Specifically, the staff should ensure that the letter advising the ACHP of the agency's decision to issue the license precedes the actual issuance of the license such that the ACHP is appropriately advised *prior to* approval of the undertaking, as required by the National Historic Preservation Act's implementing regulations. (See 36 C.F.R. § 800.7(c)(4)(i)).

Finally, the staff's third and final recommendation in the paper includes making the "record" of the Commission's approval of the issuance of the license to PFS publicly available in ADAMS. Moreover, the draft *Federal Register* Notice indicates that, in addition to the correspondence between the NRC and the ACHP, "other related documents" would also be made publicly available. While it is not clear from the paper what additional items the staff intends to add to the record, I support including this SECY paper and the Commission's corresponding voting record among the additional items to be publicly released.



Gregory B. Jaczko



Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-06-0020 - PRIVATE FUEL STORAGE, L.L.C. -
THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION'S COMMENT(S) ON TERMINATION
OF CONSULTATION PROCESS**

Approved *x* Disapproved Abstain

Not Participating

COMMENTS: *w/ comments attached*



SIGNATURE
2/6/06


DATE

Entered on "STARS" Yes *✓* No

Commissioner Lyons' Comments on SECY-06-0020

I approve the staff's recommendation to respond to the January 9, 2006 letter from the Advisory Council on Historic Preservation (ACHP), in which the ACHP provided comments on the NRC's letter that terminated NRC's participation in the consultation process under Section 106 of the National Historic Preservation Act regarding Private Fuel Storage, L.L.C. (PFS). The draft letter to the chairman of the ACHP documents the NRC's consideration of the ACHP's comments and is acceptable.

I approve the Staff's plan to issue the license to PFS once the subject letter has been provided to the ACHP. In addition, I approve the *Federal Register* Notice, informing the public that the Commission has approved the issuance of a license to PFS and informing the public of the conclusion of the National Historic Preservation Act process.


2/6/06