

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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AFFIRMATION SESSION

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PUBLIC MEETING

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Nuclear Regulatory Commission
Commission Hearing Room
11555 Rockville Pike
Rockville, Maryland
October 7, 2004

The Commission met in open session, pursuant to notice, at 2:35pm, Nils J. Diaz, Chairman, presiding.

COMMISSIONERS PRESENT:

NILS J. DIAZ, Chairman

EDWARD MCGAFFIGAN, JR., Member of the Commission

JEFFREY S. MERRIFIELD, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

ANNETTE L. VIETTI-COOK, Secretary of the Commission

KAREN D. CYR, General Counsel

DISCLAIMER

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The transcript is intended solely for general information purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determination or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of, or addressed to, any statement or argument contained herein, except as the Commission may authorize.

[2:35pm]

P R O C E E D I N G S

CHAIRMAN DIAZ: I believe you have some items for affirmation for us.

MS. VIETTI-COOK: Yes. The Commission is being asked to act on a final rule adding a new section 50.69 to 10 CFR Part 50 that provides an alternative set of requirements for treatment of structures, systems, and components (SSCs). The alternative requirements use a risk-informed categorization process to determine the safety significance of the structures, systems, and components. These requirements can be voluntarily adopted by light-water reactor licensees and applicants.

A majority of the Commission has voted to approve the publication and implementation of this final rule subject to the following changes to 10 CFR 50.69(d)(2) which refers to the treatment of low safety significant structures, systems, and components in the risk-informed safety class 3 (RISC-3):

In that particular section the licensee or applicant shall ensure, with reasonable confidence, that the risk informed safety class-3 structures, systems, and components remain capable of performing their safety-related functions under design basis conditions, including seismic conditions and environmental conditions and effects throughout their service life. The treatment of risk-informed

safety class-3 structures, systems, and components must be consistent with the categorization process. Inspection and testing, and corrective action shall be provided for the risk-informed safety class-3 structures, systems, and components.

(i) In inspection and testing, periodic inspection and testing activities must be conducted to determine that risk-informed safety class-3 structures, systems, and components will remain capable of performing their safety-related functions under design basis conditions; and

(ii) *Corrective Action.* Conditions that would prevent a risk-informed safety class-3 structures, systems, and components from performing its safety-related functions under design basis conditions must be corrected in a timely manner. For significant conditions adverse to quality, measures must be taken to provide reasonable confidence that the cause of the condition is determined and corrective action taken to preclude repetition.

The rulemaking package, including *Federal Register* Notice and public comment responses, should be modified to reflect these changes, including a discussion of "reasonable confidence".

Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

MS. ANNETTE VIETTI-COOK: The Commission is being asked to act on a Memorandum and Order responding to an appeal by the Alaska Department of Transportation (ADOT) and the NRC staff of the Atomic Safety and Licensing Board's decision in LBP-04-16 which granted Mr. Farmer's petition for hearing and admitted one of his contentions.

The Commission has voted to approve a Memorandum and Order which reverses the Board's majority decision to grant Mr. Farmer a hearing and terminates the proceeding.

Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

MS. VIETTI-COOK: Third item. The Commission is being asked to act on a Memorandum and Order addressing two issues concerning the financial assurance given by the applicant, Private Fuel Storage, L.L.C. (PFS), in this licensing proceeding. The first issue is whether, prior to beginning operations, Private Fuel Storage should be required to have service contracts in place with prices set in a specific amount as determined at the evidentiary hearing. The second is how many units must the service contracts cover prior to the start of operations.

The Commission has voted to approve a Memorandum and Order which finds that Private Fuel Storage can demonstrate reasonable financial assurance so long as its license is subject to the condition that it use its model service agreement to cover all inventory accepted at the site and reverses the Board's order requiring fixed prices in the service contracts and requiring Private Fuel Storage have contracts covering a certain number of units prior to the start of operations.

Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

MS. VIETTI-COOK: The next item. The Commission is being asked to act on a Memorandum and Order responding to a Motion by Citizen's Awareness Network (CAN) that the Yankee Rowe License Termination Proceeding be dismissed or re-noticed.

The Commission has voted to approve a Memorandum and Order which denies the Citizen's Awareness Network's motion.

Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye

MS. VIETTI-COOK: The Commission is being asked to act on a Memorandum and Order responding to a Licensing Board referral of a ruling in LBP-04-21 in which the Board made a "need-to-know" determination allowing the intervenor, Blue Ridge Environmental Defense League (BREDL), to obtain two classified NRC staff documents during pre-hearing discovery.

The Commission has voted to approve a Memorandum and Order which accepts the Board's referral, clarifies the need-to-know standard for discovery, and reverses the Board's decision in LBP-04-21 to provide the Blue Ridge Environmental Defense League access to the documents it requested.

Please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye

MS. VIETTI-COOK: The Commission is being asked to act on a Notice and Order concerning the receipt of an application submitted on August 23, 2004, by United States Enrichment Corporation, Inc. (USEC) for a license to possess and use source, byproduct, and special nuclear material and to enrich uranium by the gas centrifuge process.

The Commission has voted to approve a Notice and Order which provides Notice of Receipt of Application; Notice of Availability of Applicant's Environmental Report; Notice of Consideration of Issuance of License; Notice of Hearing; and directs the Atomic Safety Licensing Board to certify to the Commission on an interlocutory basis novel legal or policy issues that would benefit from Commission consideration should such issues arise in the proceeding. The Order also sets a hearing schedule.

Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye

MS. VIETTI-COOK: That's all I have.

CHAIRMAN DIAZ: Do any fellow Commissioners have any comment?

COMMISSIONER MERRIFIELD: Mr. Chairman, I think it's noteworthy, at least in the time that I have been here as a Commissioner, that this is the largest number of affirmations that we have ever had at least in my six years here and I think we ought to commend our Secretary for a lot of hard work this afternoon.

MS. VIETTI-COOK: The Chairman says he's going to give us Monday off.

CHAIRMAN DIAZ: Monday off. Absolutely.

COMMISSIONER MERRIFIELD: The Chairman is a generous man.

CHAIRMAN DIAZ: We're adjourned.

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Affirmation Session

(PUBLIC MEETING)

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING:

October 7, 2004

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company.

Transcriber: NANCY GREATHEAD

Reporter: (TAPE RECORDING)