

August 3, 2001

COMMISSION VOTING RECORD

DECISION ITEM: SECY-01-0083

TITLE: PROPOSED RULE TO STANDARDIZE THE
PROCESS FOR ALLOWING A LICENSEE TO
RELEASE PART OF ITS REACTOR FACILITY
OR SITE FOR UNRESTRICTED USE BEFORE
NRC HAS APPROVED ITS LICENSE
TERMINATION PLAN

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 3, 2001.

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 McGaffigan
 Commissioner Merrifield
 OGC
 EDO
 PDR

VOTING SUMMARY - SECY-01-0083

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	6/15/01
COMR. DICUS	X					6/25/01
COMR. McGAFFIGAN	X				X	7/18/01
COMR. MERRIFIELD	X				X	6/22/01

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 August 3, 2001.

Commissioner Comments on SECY-01-0083

Chairman Meserve

I approve publication in the Federal Register of the proposed rulemaking to allow a power licensee to release part of its reactor facility or site for unrestricted use before the NRC has approved the licensee's license termination plan. The proposed rule addresses a circumstance that was not envisioned when the NRC's current regulations were developed.

In light of the facts that there have not been requests for partial site releases by other types of licensees and that there may be technical issues in connection with such releases at certain material sites, I support a rulemaking limited to power reactors at this time. The Commission should be prepared to revisit the issue for other types of licenses if an interest in partial site releases should arise.

I suggest some editorial changes to the Federal Register notice.

Commissioner McGaffigan

I approve the publication in the *Federal Register* of the notice of proposed rulemaking and acknowledge that this rule, if adopted, will not have a significant impact on a substantial number of small entities and satisfies the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b). I also generally agree with the changes proposed by Commissioner Merrifield in his vote.

Clearly, this rulemaking attempts to address circumstances never contemplated when any of the currently licensed Part 50 reactor facilities were initially licensed. I commend the staff for its efforts thus far in developing a rule to standardize the process for allowing partial site release. However, there does appear to be some ambiguity concerning how the staff would consider a partial site release involving non-impacted land for an operating Part 50 reactor licensee with an Independent Spent Fuel Storage Installation (ISFSI), specifically regarding the requirements for the ISFSI controlled area pursuant to §72.106(b). Even a licensee without a current ISFSI but with the potential need for an ISFSI in the future may need to consider future ISFSI physical protection requirements in making partial site release proposals.

In a separate rulemaking (SECY-01-0101), the staff proposes to make changes to Part 72 and Part 73 regarding physical protection requirements for spent fuel in order to achieve greater consistency between security requirements for generally and specifically licensed ISFSI (i.e., both types of licensees would fall under §73.51). In SECY-01-0101, the staff also states that it is currently examining §73.51 and the physical protection requirements of dry cask storage and will forward its recommendations to the Commission in a separate policy paper. Because this draft rule addresses a voluntary activity for the licensee, rather than a required activity, I encourage the staff to work with stakeholders in developing clear-cut, articulate regulatory guidance and acceptance criteria for reviewing Part 50 partial site release requests involving a co-located ISFSI.

The proposed rule contains some ambiguous wording that can be readily clarified by making the following changes.

1. The proposed wording for 50.83(a)(1)(vi) should be modified to read “All other applicable **statutory** and regulatory requirements continue to be met.”
2. The definition for impacted areas should be changed to specify that impacted areas “mean the areas with some **reasonable** potential for residual radioactivity...”
3. The proposed wording for 50.83 should be modified to add the following identified in bold italics: “(a) **Prior written** NRC approval is required to release part of a facility or site for unrestricted use...”
4. A statement should be added to the proposed wording for 50.83 to reference the fact that 50.75 contains record keeping requirements associated with this rule.
5. The proposed wording for 50.83(c)(1) and (e)(1) should be changed from “Determine whether the licensee’s proposed release of the property meets all other applicable regulatory requirements” to “**Determine whether the licensee has adequately evaluated the effect of releasing the property as required by (a)(1).**”

A mark-up of the proposed rule with other minor edits and suggested editorial changes to the *Federal Register* notice are attached.

Commissioner Merrifield

I approve the publication of this rulemaking and I commend the staff for its effort to ensure that each partial release is protective of public health and safety. I support the ability of the reactor facilities to request approval to release portions of a site or facility once they meet the release criteria but before the operating license has been terminated. As a general matter, as long as health and safety can be adequately protected, reducing the scope of property encumbered by reactor licenses makes sense to permit excess land to be used in more economically prosperous ways. It will encourage early clean-up and permit communities that may ultimately face economic slowdown as a result of reactor facilities closing to initiate redevelopment projects using land that would otherwise have been encumbered until after license termination is complete. This action is consistent with the recent brownfield initiatives that have received bipartisan support in the U.S. House and Senate and support from President Bush. While our primary mission is protection of public health and safety, as an agency we must also be mindful of how actions such as this can impact the communities surrounding the facilities we license. Additionally, I suggest the following changes to the rulemaking package and Federal Register notice.

Section 50.75(g)(4) proposes 4 new record keeping requirements for licensees. It requires licensees to keep records of: i) the original site boundary; ii) any acquisition, or use of property outside of the original boundary; iii) the licensed activities carried out on the property; and iv) documents associated with a partial site release (site assessment, surveys, etc.). Only the last, iv appears to be associated with partial site release. It is therefore, not clear from the rulemaking package, which licensees the staff believe should meet these regulations. The proposed rule wording as written would apply to all licensees. However, the regulatory analysis associated with the rule appears to indicate that these record keeping requirements are only required for those licensees that request the release of a portion of their facility prior to NRC approval of their License Termination Plan. If it is staff’s intention that 50.75(g) apply to all licensees, then the

regulatory analysis should make this clear and include a description of the associated impacts for all licensees to develop and maintain all records under the various provisions in 50.75(g)(i) - (iv). If the new record keeping requirements are intended to only apply to the subset of licensees requesting partial site release, the staff needs to explain why those licensees are subject to additional record keeping beyond those pertaining to partial site release, e.g. acquisition and use of property.

Section 50.75(g)(4) also proposes that the record keeping requirements become effective one year after the rule becomes effective. According to the staff, there has never been a partial site release at a power reactor facility which was performed outside of the License Termination Plan. If this is true, and if the above record keeping requirements only apply to facilities that have released a portion of their property, then there would be no reason a facility would need a year to establish the appropriate records. This section should be modified to make the record keeping requirements effective when the rule becomes effective if it applies only to partial site release facilities.