

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER DIAZ
SUBJECT: SECY-99-279 - FINAL RULE AMENDING THE FITNESS-
FOR-DUTY RULE

Approved w/c hw Disapproved w/c hw Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

--REC'D BY NJD--

3 DEC 99 9:57

hw
SIGNATURE

3.27.2000

DATE

Entered on "AS" Yes No _____

COMMISSIONER DIAZ'S COMMENTS ON SECY-99-279

I take second place to none in support of a nuclear power plant workplace that is drug-free. I further believe that experience should guide modifications to existing rules. However, this package fails to demonstrate that the current NRC fitness-for-duty (FFD) program is flawed and in need of revision. I believe that adoption of the "backfit" rule was a fundamental milestone of the 1980s and consider it to be important in that it prevents NRC focus on unnecessarily prescriptive requirements, rather than real safety. Thus, in considering this proposal, I have balanced the perceived need for an update of our requirements against the Commission's "backfit" rule, *i.e.*, the need for a substantial safety increase that justifies the direct and indirect costs of implementation, and have found the package wanting.

In the context of the entire package, it is not clear whether particular relaxations are in any way tied to the proposed additions to the current requirements. Inasmuch as the staff also has not been able to identify proposed rule changes that are needed from a health and safety perspective, I approve only those proposed rule changes that the staff can identify clearly as permissible reductions in burden consistent with the maintenance of public health and safety.

I am also concerned that it has been nearly four years since the agency obtained comments on the proposed rule. This raises questions about the adequacy of the data and assumptions regarding benefits and costs of proposed changes. I would not object if the staff decides that it is prudent to update this information by soliciting, yet again, public comments.