



OFFICE OF THE
SECRETARY

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

September 10, 2002

COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0122

TITLE: STAFF REVIEW GUIDANCE FOR GASEOUS
DIFFUSION PLANT CHANGES IN OWNERSHIP
OR CONTROL

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of September 10, 2002.

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 "Annette L. Vietti-Cook".

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-02-0122

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	8/15/02
COMR. DICUS	X				X	8/26/02
COMR. DIAZ	X					9/3/02
COMR. McGAFFIGAN	X				X	9/4/02
COMR. MERRIFIELD	X					9/3/02

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on September 10, 2002.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN MESERVE

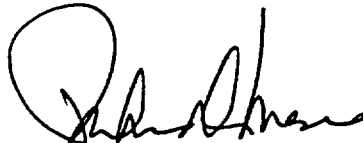
SUBJECT: **SECY-02-0122 - STAFF REVIEW GUIDANCE FOR GASEOUS
DIFFUSION PLANT CHANGES IN OWNERSHIP OR
CONTROL**

Approved X w/_{edits} Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attachment.



SIGNATURE

August 15, 2002

DATE

Entered on "STARS" Yes X No _____

STAFF REVIEWS OF GASEOUS DIFFUSION PLANT TRANSFERS OF OWNERSHIP OR CONTROL

1. Purpose

The purpose of this directive is to provide instructions for staff reviews of transfers of ownership or control of gaseous diffusion plants.

2. Background

In February 1999, staff issued Draft "Standard Review Plan for the Recertification of the Gaseous Diffusion Plants," NUREG-1671. Chapter 16 of Draft NUREG-1671 provides staff guidance applicable to foreign ownership and "reliable and economical" reviews that would be undertaken for routine recertifications; for changes to the previous review basis; for changes in ownership or control; and for changes applicable to certificate conditions on foreign ownership. Detailed financial and business characteristics analyses would be performed if a certificate holder, or other entities taking ownership or control, do not have investment-grade corporate bond ratings.

In November 2001, the Commission in the Memorandum and Order (CLI-01-23) of the June 14, 2001 Directors's Decision concerning the application of section 193 (f) of the Atomic Energy Act of 1954, as amended, held that the "reliable and economical" reviews are not required for recertification. Rather, the "reliable and economical" review is only required for a change in ownership or control. As to the scope of the "reliable and economical" review, the Commission held that the following test applies: 1) is the certificate holder to be owned, controlled, or dominated by a foreign entity, and 2) if the certificate holder is not to be owned, controlled, or dominated by a foreign entity, is the certificate holder likely to be subject to influence by an entity, principally a foreign entity, that would be inimical to a) the common defense and security, or b) maintaining a domestic enrichment capability.

3. Guidance

Based on the Commission's decision in CLI-01-23 and Commission guidance in the Staff Requirements Memorandum dated February 21, 2002, the staff is revising the guidance in Draft Chapter 16 of the NUREG-1671 as an Office of Nuclear Material Safety and Safeguards Policy and Guidance Directive that would be applicable only in cases of a transfer of ownership or control of the gaseous diffusion plants. In accordance with the Commission's instructions, staff revised the guidance to reflect that the foreign ownership, control, or domination review satisfies the criteria for a "reliable and economical" domestic source of enrichment services. The guidance applicable to foreign ownership reviews is attached in Enclosure 1.

In addition, staff added a new guidance document for performing financial qualification reviews oriented to ensuring that entities have financial resources sufficient to conduct the required health and safety programs. This financial qualification review will be part of the public health and safety review of an application for transfer of ownership or control. This is modeled from the staff adapted financial qualifications guidance from NUREG-1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility," and NUREG-1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility." This guidance also applies only in cases of a transfer of ownership or control of the

Review

no

1-2?

Facility. ~~This guidance also applies only in cases of a transfer of ownership or control of the~~ g
gaseous diffusion plants. The guidance applicable to financial qualifications reviews is attached
in Enclosure 2.

- b. Does the organization own 10 percent or more of any foreign interest?
 - c. Do any foreign interests have management positions such as directors, officers, or executive personnel in the organization?
 - d. Does any foreign interest control or influence, or is any foreign interest in a position to control or influence, the election, appointment, or tenure of any of the directors, officers, or executive personnel?
 - e. Does the organization have any contracts, binding agreements, understandings, or arrangements with a foreign interest(s), that cumulatively represent 10 percent or more of your organization's gross income?
 - f. Is the organization indebted to foreign interests?
 - g. During the last fiscal year, did the organization derive 5 percent or more of its total revenues or net income, from any single foreign interest, or in the aggregate, 30 percent or more of its revenues or net income from foreign interests?
 - h. Is 5 percent or more of any class of the organization's securities held in "nominee shares", in "street names," or in some other method that does not disclose beneficial owner of equitable title?
 - i. Does the organization have interlocking directors/officers with foreign interests?
 - j. Are there any citizens of foreign countries employed by the organization or who may visit offices or facilities in a capacity that may permit them to have access to classified information or a significant quantity of special nuclear material?
 - k. Does the organization have foreign involvement not otherwise covered in the answers to the above questions?
2. The reviewer obtains a foreign intelligence ~~threat~~ assessment. This assessment is conducted through the intelligence community and others, and is coordinated by the Department of Energy (DOE). The reviewer obtains the assessment by contacting the DOE representative to the Enrichment Oversight Committee.
3. If the applicant submits any affirmative information listed in Section 16.5.1 or Steps 1.a through 1.k above, or the foreign intelligence threat assessment contains information that the applicant may be foreign owned, controlled, or dominated, the reviewer determines:
- a. The nature and extent of foreign ownership, control, or domination, to include whether a foreign interest occupies a controlling or dominant minority position;

4.2 Evaluation

After determining that the financial qualifications are acceptable for review in accordance with Section 4.1, the primary reviewer should perform an evaluation against the acceptance criteria described in Section 5. On the basis of its review, the staff may request that the applicant provide additional information or modify the application to meet the acceptance criteria in Section 5.

5 Acceptance Criteria

5.1 Regulatory Requirements

The regulation applicable to the area of financial qualifications review is 10 CFR 76.33(a)(3). *76.33 (a) will*

5.2 Regulatory Guidance

There are no regulatory guides that apply to financial qualifications for a gaseous diffusion plant certificate.

5.3 Regulatory Acceptance Criteria

The application is acceptable if the description of the applicant's financial qualifications demonstrates that the applicant's current and continuing access to the financial resources is sufficient to engage in the proposed activity.

The reviewer should find the applicant's financial qualifications acceptable if the following acceptance criteria are met:

1. Projected Costs of Operation

The applicant's costs of operation do not appear to be underestimated given the size and scope of the proposed actions and any significant new corporate projects.

2. Sources of Funds

The applicant's sources of funds (including the applicant's funding plan(s) and debt, equity and revenue levels, and planned or existing source(s) of funding commitments) are consistent with the estimated operating costs of the proposed action and any significant new corporate projects.

3. Contingency Funds

The applicant's contingency funds are appropriate for unforeseen operating contingencies. The applicant indicates its plans for the case where cost overruns are much higher than anticipated (e.g., in excess of 30 percent).

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DICUS

SUBJECT: **SECY-02-0122 - STAFF REVIEW GUIDANCE FOR GASEOUS
DIFFUSION PLANT CHANGES IN OWNERSHIP OR
CONTROL**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.

Aneta Jay Dicus
SIGNATURE

August 26, 2002
DATE

Entered on "STARS" Yes No

Comments of Commissioner Dicus on SECY 02-0122

I approve staff's revisions to Chapter 16 of, and the addition of Chapter 17 to, NUREG-1671, "Standard Review Plan for the Recertification of the Gaseous Diffusion Plants," as well as the issuance of these revisions by way of a Policy and Guidance Directive. However, for clarification purposes, I offer the following revisions:

1. Attachment 1, Page 16-3, Item 2. and Enclosure 1, Page 3, Item 2. - Revise to read as follows:
 - "The reviewer obtains foreign intelligence threat assessment information on the applicant's foreign ownership, control, and/or domination history. This information is obtained through the DOE representative to the Enrichment Oversight Committee;" and
2. Enclosure 1, Page 7, Reliable and Economical Source of Domestic Enrichment Services. In the first sentence, add the word "**enrichment**" following "domestic," so it reads "domestic **enrichment** services."

gnd

8-26-02


NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER DIAZ

SUBJECT: **SECY-02-0122 - STAFF REVIEW GUIDANCE FOR GASEOUS
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CONTROL**

Approved XX  Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:



SIGNATURE

Sept 3, 02

DATE

Entered on "STARS" Yes X No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-02-0122 - STAFF REVIEW GUIDANCE FOR GASEOUS
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CONTROL**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: *I concur in the Chairman's and Commissioner
Jesse's comments.*

Edward M. McGaffigan Jr.

SIGNATURE

September 4, 2002

DATE

Entered on "STARS" Yes X No _____

NOTATION VOTE

RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-02-0122 - STAFF REVIEW GUIDANCE FOR GASEOUS
DIFFUSION PLANT CHANGES IN OWNERSHIP OR
CONTROL**

Approved Disapproved Abstain

Not Participating

COMMENTS:

No additional comments.



SIGNATURE

9/3/02

DATE

Entered on "STARS" Yes No