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

SECRETARY

November 29, 2004

COMMISSION VOTING RECORD

DECISION ITEM: SECY-04-0175

TITLE: OPTIONS FOR ADDRESSING THE SURRY INDEPENDENT SPENT FUEL STORAGE INSTALLATION LICENSE-RENEWAL PERIOD EXEMPTION REQUEST

The Commission (with Commissioners McGaffigan and Merrifield agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 29, 2004. Chairman Diaz disapproved the staff's recommended option.

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 Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO

VOTING SUMMARY - SECY-04-0175

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ		X			X	11/22/04
COMR. McGAFFIGAN	X				X	11/23/04
COMR. MERRIFIELD	X				X	10/6/04

COMMENT RESOLUTION

In their vote sheets, Commissioners McGaffigan and Merrifield approved the staff's recommendation and provided some additional comments. Chairman Diaz disapproved the staff's recommendation. Subsequently, the comments of a majority of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 29, 2004.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-04-0175 - OPTIONS FOR ADDRESSING THE SURRY INDEPENDENT SPENT FUEL STORAGE INSTALLATION LICENSE-RENEWAL PERIOD EXEMPTION REQUEST**

Approved ✓ Disapproved XX Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

SIGNATURE

11/22/04

DATE

Entered on "STARS" Yes ✓ No ___

CHAIRMAN DIAZ'S COMMENTS ON SECY-04-0175, OPTIONS FOR ADDRESSING THE SURRY INDEPENDENT SPENT FUEL STORAGE INSTALLATION LICENSE RENEWAL PERIOD EXEMPTION REQUEST

I disapprove Option 4, and approve Option 2, which would deny the applicant's exemption request for a 40 year term on its renewed license for the Surry Independent Spent Fuel Storage Installation (ISFSI), and would direct the staff to begin developing a technical basis to support rulemaking to extend the term of ISFSI licenses under 10 CFR Part 72.

There are a number of factors that bear on the licensee's exemption request, including: the national spent fuel storage and disposal issues that have caused the licensee to request a longer license term; the Commission's previous decisions to keep the ISFSI license term at 20 years, which were based on the principle that dry storage has been considered an interim measure, and; the Commission's finding in its 1990 Waste Confidence Decision that spent fuel could be safely stored without significant environmental impact for at least 100 years. These factors apply across the nuclear power generation industry, and the Surry ISFSI request for exemption from the 20-year license term is the first of possibly many such requests that could be submitted in coming years. In general, I believe that the preferred regulatory approach would be to prevent the wide use of exemptions.

It is likely that the robust design and passive features of spent fuel storage casks would provide for adequate protection of public health and safety and of the environment over a license period of 40 or more years. Nevertheless, in SECY-04-0175, the staff states that there is relatively limited technical data available on the long-term material degradation issues associated with dry spent fuel storage casks. It is this lack of a firm technical basis to support the exemption request, combined with the absence of an operational exigency that would necessitate granting the exemption, that makes me reluctant to approve the licensee's request. Therefore, I believe that the most prudent course of action is to deny the exemption request and begin developing the technical basis for future rulemaking to revise the ISFSI license period to be 40 years, or longer if technically feasible.

The staff should provide a rulemaking assessment to the Commission describing the technical factors needing further development, estimates of the short- and long-term costs of revising the ISFSI license term versus leaving it at 20 years, the effect this rulemaking would have on other agency initiatives, and the perspectives of NRC stakeholders on the desire or need to pursue such a rulemaking.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: **SECY-04-0175 - OPTIONS FOR ADDRESSING THE SURRY INDEPENDENT SPENT FUEL STORAGE INSTALLATION LICENSE-RENEWAL PERIOD EXEMPTION REQUEST**

Approved X w/comments Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

Edward McGaffigan Jr.
SIGNATURE

November 23, 2004
DATE

Entered on "STARS" Yes X No ___

Commissioner McGaffigan's Comments on SECY-04-0175

I agree with Commissioner Merrifield and approve the staff's recommended Option 4. This option would grant Surry's request for a 40-year license renewal period and would initiate a program to review the technical basis for future rulemaking. I also approve the staff applying the same exemption to H.B. Robinson.

I approve this exemption and the rulemaking because I believe that this adds stability to the licensing process. These are extremely robust casks and a 40-year (or possibly longer) licensing period appears entirely appropriate. With Surry's Aging Management Review Program in place, I believe that granting this exemption and pursuing the subsequent rulemaking will save NRC and the licensees significant resources while maintaining a high degree of safety.

EMG

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

SUBJECT: **SECY-04-0175 - OPTIONS FOR ADDRESSING THE SURRY INDEPENDENT SPENT FUEL STORAGE INSTALLATION LICENSE-RENEWAL PERIOD EXEMPTION REQUEST**

Approved ✓ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

SIGNATURE

10/6/04

DATE

Entered on "STARS" Yes ✓ No ___

Comments from Commissioner Merrifield on SECY-04-0175:

I approve the staff recommended option 4 in SECY-04-0175. Specifically, the staff should grant the Surry 40 year ISFSI license-renewal period with appropriate license conditions to manage aging, and initiate a program to review the technical basis for future rulemaking. As part of this review, I expect the staff to also provide recommendations on the life time of the Part 72 certificates of compliance for the casks to be used in the ISFSI. In addition, staff should apply the Commission approved guidance regarding the disposition of the Surry exemption to future exemption requests without additional Commission approval.

I fully realize that previous Commissions purposely limited the ISFSI license to a maximum duration of 20 years, with a provision for issuing a renewed license which had the same limitation. There are no limitations to the number of times a license can be renewed. This was a policy decision which was not based on a technical limitation for the ISFSI facility itself. Rather, the decision was based on increasing the public's confidence that the ISFSI was only for interim storage and the final repository would be the ultimate disposition of the spent fuel. To some degree, the 20 year license limitation was based on an optimistic assumption that a final repository would be constructed in the near future. I firmly and fully support the decision that ISFSIs should be considered only for interim storage and that the spent fuel should eventually either go to a repository or be properly reprocessed, if the nation should choose this alternate pathway. However, it is uncertain when a repository will be licensed or ready to receive spent fuel. The Commission has already addressed this issue in its revised Waste Confidence Decision by determining that spent fuel could be safely stored without significant environmental impact for at least 100 years. Therefore, providing there are no other technical issues of concern, I believe it is appropriate to consider a maximum term for an ISFSI license equivalent to the life of the facility license. In my opinion, once a repository is licensed and approved for receiving spent fuel, all affected licensees will be motivated to transfer spent fuel to the repository as soon as possible, based solely on financial and liability considerations.

10/6/04