

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIRMATION SESSION

PUBLIC MEETING

Nuclear Regulatory Commission
Commission Hearing Room
11555 Rockville Pike
Rockville, Maryland
October 26, 2005

The Commission met in open session, pursuant to notice, at 1:20 p.m.,
Nils J. Diaz, Chairman, presiding.

COMMISSIONERS PRESENT:

NILS J. DIAZ, Chairman of the Commission

EDWARD MCGAFFIGAN, JR., Member of the Commission

JEFFREY S. MERRIFIELD, Member of the Commission

GREGORY B. JACZKO, Member of the Commission

PETER B. LYONS, Member of the Commission (VIA TELECON)

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

KAREN CYR, General Counsel

ANNETTE L. VIETTI-COOK, Secretary of the Commission

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[1:20 pm]

P R O C E E D I N G S

CHAIRMAN DIAZ: Madam Secretary?

MS. VIETTI-COOK: Our first item is on U.S. Army Jefferson Proving Ground Site Materials License amendment. The Commission is being asked to act on a Memorandum and Order responding to a referral from the Board of its ruling LBP-05-25 reinstating a conditionally dismissed prior proceeding concerning the U.S. Army's plan for decommissioning the Jefferson Proving Ground site in Indiana.

The Commission has voted to approve a Memorandum and Order affirming the decision to reinstate the earlier proceeding and remanding with instructions to use, for the remainder of this adjudication, the recently-revised rules of procedure for adjudications.

Would you please affirm your votes?

CHAIRMAN DIAZ: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

MS. VIETTI-COOK: Commissioner Lyons, would you please affirm your vote?

COMMISSIONER LYONS: Aye.

MS. VIETTI-COOK: The second item is Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3). The Commission is being asked to act on a Memorandum and Order responding to a certified question submitted by the Board to the Commission on whether to grant Suffolk County New York's request for an exemption from or waiver of the final sentence of 10 CFR Section 50.47(a)(1) providing that emergency planning

issues are not germane to license renewal determinations. In CLI-05-18, the Commission accepted review of the certified question and provided three additional questions to the parties. The Commission has voted to approve a Memorandum and Order which denies Suffolk County's request for an exemption from or waiver of 10 CFR Section 50.47(a)(1). The Commission finds that the balance of late-filing factors weighs against considering Suffolk County's petition to intervene and that Suffolk County's three emergency planning contentions fall outside the scope of, and are immaterial to this proceeding, and that those contentions are therefore inadmissible. Based on the preceding conclusions, the Commission terminates this adjudicatory proceeding. Commissioner Jaczko approved of this Order's discussion regarding the certified question, but did not approve of the detailed level of discussion on the remaining issues. Would you please affirm your votes?

CHAIRMAN DIAZ: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

MS. VIETTI-COOK: Commissioner Lyons, would you please affirm your vote?

COMMISSIONER LYONS: Aye.

MS. VIETTI-COOK: The third item is AmerGen Energy Co. (Three Mile Island Nuclear Station, Unit 1). The Commission is being asked to act on a Memorandum and Order responding to petitioner Eric Epstein, who is requesting that NRC publish a notice of opportunity for hearing, and also grant his petition to intervene and request for a hearing, regarding any license transfers associated with the pending merger of Public Service Enterprise Group, Inc. (PSEG) into Exelon Corp., the indirect parent of licensee AmerGen Energy Company LLC (AmerGen), insofar as that merger affects Unit 1 of the Three Mile Island Station (TMI-1).

The Commission has voted to approve a Memorandum and Order denying all of Mr. Epstein's requests.

Would you please affirm your votes?

CHAIRMAN DIAZ: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

MS. VIETTI-COOK: Commissioner Lyons, would you please affirm your vote?

COMMISSIONER LYONS: Aye.

MS. VIETTI-COOK: The fourth item and last item is Exelon Generation Company, (Peach Bottom Atomic Power Station, Units 2 and 3). This proceeding involves the proposed merger of the corporate parents of Exelon Generation Company, and Public Service Enterprise Group, and the consequent transfers of the 50-percent non-operating interests in Units 2 and Units 3 of the Peach Bottom facility. To accomplish these goals, the companies need, and have requested, a license transfer authorization. The Commission is being asked to act on a Memorandum and Order responding to petitioner Eric Epstein, who argues that the license transfers raise issues involving financial and technical qualifications as well as the possible extent of foreign ownership.

The Commission has voted to approve a Memorandum and Order which rejects Mr. Epstein's claim of standing and consequently dismisses this proceeding. The Commission also directs the NRC Staff to consider Mr. Epstein's contentions and Supplemental Filing as they were "written comments" under 10 CFR § 2.1305. Would you please affirm your votes?

CHAIRMAN DIAZ: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

MS. VIETTI-COOK: Commissioner Lyons, would you please affirm your vote?

COMMISSIONER LYONS: Aye.

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

CHAIRMAN DIAZ: Thank you, Madam Secretary. I would like to thank Commissioner Lyons for being with us on the phone under difficult circumstances. If my fellow Commissioners have no other comments. We are adjourned.

