



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

April 17, 2007

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0030

TITLE: FINAL RULEMAKING ON LIMITED WORK
AUTHORIZATIONS

The Commission (with Chairman Klein and Commissioners McGaffigan, Merrifield, and Lyons agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of April 17, 2007. Commissioner Jaczko disapproved the final rule.

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", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-07-0030

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIP | COMMENTS | DATE |
|------------------|-------|----------|---------|-----------------|----------|---------|
| CHRM. KLEIN | X | | | | X | 4/2/07 |
| COMR. McGAFFIGAN | X | | | | X | 4/5/07 |
| COMR. MERRIFIELD | X | | | | X | 3/22/07 |
| COMR. JACZKO | | X | | | X | 4/5/07 |
| COMR. LYONS | X | | | | X | 4/1X/07 |

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners McGaffigan, Merrifield, and Lyons approved the final rule. Commissioner Jaczko disapproved the final rule. Subsequently, the Commission approved the final rule in an Affirmation Session as reflected in the SRM issued on April 17, 2007.

NOTATION VOTE
RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: **SECY-07-0030 - FINAL RULEMAKING ON LIMITED WORK AUTHORIZATIONS**

Approved xx Disapproved Abstain

Not Participating

COMMENTS: Below xx Attached None

I approve publication of the final rule for limited work authorizations. This ^{is} an important update to our current regulations, along with the broader pending final rule on Part 52, that should lead to effective and efficient regulation and processes for the many new reactor licensing applications that we are anticipating. In particular, I believe that the final rule provisions reflect appropriate consideration and clarification of the construction activities that require authorization under a Limited Work Authorization. I commend the staff and OGC for their efforts in developing and completing the final rule proposal and in addressing stakeholder comments and concerns.



SIGNATURE
7/2/07

DATE

Entered on "STARS" Yes No

NOTATION VOTE

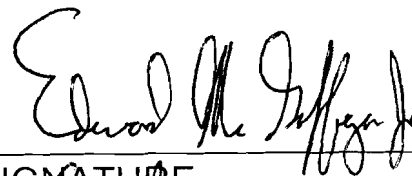
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-07-0030 - FINAL RULEMAKING ON LIMITED WORK AUTHORIZATIONS**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

DATE

April 5, 2007

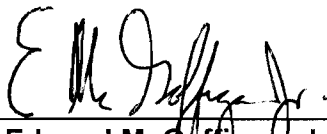
Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-07-0030

I approve the final rule amending the regulations applicable to limited work authorizations (LWAs), allowing certain construction activities on production and utilization facilities prior to issuance of a construction permit (CP) or combined license.

I approve of the staff's inclusion of clarifying rule text noting that the final LWA rule does **not** require any change to ESP applications filed before the effective date of the rule. Without question, ESP applications under consideration as of the effective date of the final LWA rule need not comply with the "content of application" requirements in the final rule.

Conforming changes should be made following final resolution of the SRM on the Final Rule for Part 52.


Edward McGaffigan, Jr. 4/5/07
(Date)


NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-07-0030 - FINAL RULEMAKING ON LIMITED WORK AUTHORIZATIONS**

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

DATE 3/22/07

Entered on "STARS" Yes No

Commissioner Merrifield's Comments on SECY-07-0030
"Final Rulemaking on Limited Work Authorizations "

I approve the publication of the final rule revising the Commission requirements for limited work authorizations and site preparation activities subject to the attached comments.

I would like to commend the staff for their efforts to codify the requirements governing limited work authorizations so that the agency may more effectively and efficiently implement the licensing and approval processes for future nuclear power plants under Part 52. I would like to commend OGC and the staff for the forward-thinking approach to the licensing of new reactors that is embodied in this final rule package. This rule is responsive to the Commission direction resulting from the memorandum authored by Chairman Diaz and myself, and, logically extends the guidance one step further in order to reduce unnecessary burden on the NRC and potential applicants. The rule will be effective in meeting some of the industry needs for reduced construction periods by reducing the scope of activities that require NRC approval while maintaining appropriate consideration of environmental effects pursuant to NEPA.

I endorse the position that an applicant should be allowed to conduct some excavation activities without prior NRC approval. In keeping with some of the comments received on the proposed rule, I would suggest that Section 50.10 (a) (2) (v) be revised to state that the term "excavation" includes excavation for any structure, system or component otherwise included in the term 'construction,' provided the excavations are geologically mapped and the NRC staff is notified of the schedule for excavation to permit the NRC the opportunity to observe or inspect." This will allow NRC to obtain soil structure information at an early stage.

I support the staff position that permits site preparation activities to begin before the receipt of a combined license application. Further, I support the staff view that the NRC does not possess statutory authority to regulate activities that do not have an impact upon radiological health and safety or common defense and security, and that the NEPA does not provide independent statutory authority to exceed the agency's jurisdiction, solely for the purpose of assuring that adverse environmental impacts are considered and mitigated. As the staff properly notes, the preconstruction activities will be considered in the cumulative impacts analysis that will be developed during the review of the LWA environmental impact statement associated with the federal action authorizing LWA activities or with the combined license application, depending on the course selected by the applicant.

I support the staff modification of the scope of structures, systems, and components that are within the scope of the definition of construction. The emphasis on structures, systems, and components that are important to safety, important to fire protection, important to emergency preparedness, and, important to security better define the nature of construction work that have a reasonable nexus to radiological health and safety or to the common defense and security. I strongly support the staff position that the Commission should not require a site suitability finding to be made prior to the issuance of an LWA but leaves that option available to request from an applicant.

Because the draft rule defines a process that is very different from our current practices, the regulatory guidance that supports implementation of the rule is critical to establishing a predictable and stable process. The staff should work with external stakeholders to develop and publish the necessary implementation guidance as quickly as possible. As history has shown with previous rulemakings, the development of implementation guidance frequently

uncovers new policy or implementation questions. The staff should keep the Commission informed of progress in implementing this new process, and should forward to the Commission any substantive policy or implementation question for resolution.

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that are difficult to decipher as a specific name.

3/22/07

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: **COMMISSIONER JACZKO**
SUBJECT: **SECY-07-0030 - FINAL RULEMAKING ON
LIMITED WORK AUTHORIZATIONS**

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

4/5/07

DATE

Entered on "STARS" Yes X No _____

**Commissioner Jaczko's Comments on SECY-07-0030
Final Rulemaking On Limited Work Authorization**

I disapprove of the final rule regarding changes to the Limited Work Authorization (LWA) process. As I indicated in my disapproval of the prior memorandum initiating a portion of this rulemaking, and of the proposed rule, I do not believe this rule is necessary or supportive of our mission.

My prior votes have expressed my concern with some of the changes to the National Environmental Policy Act (NEPA) process envisioned in this final LWA rule. One of the most problematic, and the one I believe places this agency in the most jeopardy, is the issue of what the appropriate baseline is for the environmental reviews necessary once the increased activities allowed pursuant to these changes occur at a potential site. Without a proper consideration of baseline issues, the agency is in jeopardy of claims that we have improperly segmented our NEPA review. Allowing such potentially dramatic changes to the environmental landscape without having a sound process to ensure that all of those changes are accurately captured in NEPA seems to me to be a sure way to encourage additional and unnecessary NEPA litigation. Federal challenges and litigation regarding the NRC's NEPA interpretations in this area could easily erase any efficiencies gained elsewhere in this process.

Additionally, I believe this final rule regarding LWAs only increases the burdens placed upon the Atomic Safety and Licensing Board Panel (Panel) at a time when we do not have a good handle on the impacts of the current anticipated wave of new reactor applications. The Panel has expressed concern that they may not be adequately staffed to conduct timely adjudications for the new reactor applications anticipated to be processed in FY 2008, much less any additional work. And unfortunately, only recently has there been extensive dialogue between the staff and the Panel on the issue of the anticipated increased workload. Thus, with this limited and late dialogue, and with the current Panel concerns regarding resources, I can not support the changes envisioned in this final rule.

Given all of this, I do not believe it is worth the potential loss of public confidence in our environmental review process to proceed in this manner. Nor do I believe it is necessary to create additional ways in which the industry can accelerate the new reactor construction process when there is no indication that the industry is in any way prepared to actually speed-up construction on their end.


Gregory E. Jaczko 9/15/07
Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-07-0030 - FINAL RULEMAKING ON
LIMITED WORK AUTHORIZATIONS**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____


Peter B. Lyons

SIGNATURE
4/ 10 107

DATE

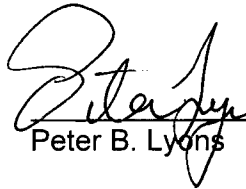
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Commissioner Lyons' Comments on SECY--07-0030

I approve publication of the final limited work authorization (LWA) rule. I appreciate the staff's and OGC's efforts in addressing issues raised by stakeholders and making appropriate changes to the final rule.

Commissioner Merrifield suggests that section 50.10(a)(2)(v) be revised to expand the term "excavation" to include excavation for any structure, system or component otherwise included in the term "construction" provided the excavations are geologically mapped and the staff is notified of the schedule for excavation to permit the NRC the opportunity to observe or inspect. I do not support such an expansion, because it may appear to undercut the legal basis for excluding the pre-construction impacts of excavation from consideration under the National Environmental Policy Act.

I agree with Commissioner Merrifield that the staff should work with external stakeholders to develop and publish guidance. This should be given a high priority. And I agree with Commissioner McGaffigan that any necessary conforming changes should be made following resolution of the final rule for Part 52.


Peter B. Lyons 4/10/07
Date