

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIRMATION SESSION

PUBLIC MEETING

Nuclear Regulatory Commission
Commission Hearing Room
11555 Rockville Pike
Rockville, Maryland
April 17, 2007

The Commission met in open session, pursuant to notice, at 12:55 p.m.,

Dale E. Klein, Chairman, presiding.

COMMISSIONERS PRESENT:

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

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

KAREN CYR, General Counsel

ANNETTE L. VIETTI-COOK, Secretary of the Commission

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[12:55 p.m.]

P R O C E E D I N G S

CHAIRMAN KLEIN: Well, before we start our research briefing we have an affirmation. Any comments before we start the affirmation?

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I might have a comment just after we finish.

CHAIRMAN KLEIN: Okay. Madam Secretary, would you begin.

ANNETTE VIETTI-COOK: The first item is on the final rule on fitness for duty program. The Commission is being asked to act on a final rule amending 10 CFR Part 26 governing the domestic licensing of production and utilization facilities to revise, reorganize, and clarify drug and alcohol testing programs; establishes requirements for managing worker fatigue at operating nuclear power plants; and partially grants two petitions for rulemaking. The Commission has voted to approve the publication and implementation of this final rule subject to the comments and changes provided in the attachment.

Would you please affirm your votes?

CHAIRMAN KLEIN: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

COMMISSIONER LYONS: Aye.

ANNETTE VIETTI-COOK: The second item is on the final rulemaking on limited work authorizations. The Commission is being asked to act on a final rule amending 10 CFR Parts 2 and 50 to revise the requirements for limited work authorizations and preparation activities at the prospective site of a nuclear power plant. The Commission has voted to approve the

publication and implementation of this final rule subject to the attached comments.

Commissioner Jaczko disapproved this final rule. Would you please affirm your votes?

CHAIRMAN KLEIN: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

COMMISSIONER LYONS: Aye.

ANNETTE VIETTI-COOK: The third item is on Southern Nuclear Operating Company Early Site Permit for Vogtle Site. This is a certified question. The Commission is being asked to act on a Memorandum and Order responding to a certified question from the Atomic Safety and Licensing Board in LBP-07-03 which requested authority to go forward with merits litigation for Southern Nuclear Operating Company on the Early Site Permit for the Vogtle Site on admitted environmental contentions prior to issuance of the final environmental impact statement. The Commission has voted to approve a Memorandum and Order which does not authorize or require a merits hearing on the admitted environmental contentions prior to the issuance of the final environmental impact statement. Would you please affirm your votes?

CHAIRMAN KLEIN: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

COMMISSIONER LYONS: Aye.

ANNETTE VIETTI-COOK: That's all I have. Thank you.

COMMISSIONER MCGAFFIGAN: I just will say I wasn't sure I was going to outlive the Part 26 rulemaking approach. I'm glad that I did. I think this is a substantial improvement,

particularly on work hours compared to the previous way we handled work hours. I recognize that there is some contention with regard to how maintenance work hours were resolved - I voted as Commissioner Jaczko did for the staff proposal but the result was different but I think that's the result of a normal legislative process and the operators and the security personnel and others of that sort are clearly different from maintenance people and I understand the compromise and I accept it. With regard to the limited work authorization rule I didn't want to comment this morning because I didn't - it wasn't final. But I will say that I think that the result of this rule will be fewer limited work authorization hearings or even applications than more because we have essentially, thanks to the initiative of Commissioner Merrifield and former Chairman Diaz, we have essentially changed the definitions, I think entirely appropriately, so the problem discussed at great length this morning I think is a absolutely theoretical one. We have actually reduced as a result of this rule the probability of having any limited work authorization hearings because they will not need to apply to do things that are rational to do at the site. So with that I concede the floor.

CHAIRMAN KLEIN: Do you have a comment?

COMMISSIONER MERRIFIELD: Mr. Chairman, I, part of what I am going to say is going to be an echo. I was uncertain that I would still be on the Commission when Part 26 was going to be adopted and like Commissioner McGaffigan, I am glad to have been proven wrong. I want to credit the staff, I know it has been - they've been tearing out their hair as much as we have over the years and a lot of people put a lot of time into making Part 26 final and I want to credit a lot of hard work that went into that over these years. I do think we do need to take a look at the process that we used to get there as a lessons learned. I don't think anyone in the agency would postulate this is how we ought to do a rulemaking and I think it represents more what the old NRC used to be not the newer one which we have all come to expect from a

standpoint of efficiency, timeliness. But nonetheless, it is done, that is a good thing, it helps us to move forward and I herald the fact that we have completed it. As a release to limited work authorization, my comments are similar. I do think that the changes that we have made will make it less likely we will have issues come before us. It does increase the definition of what can be done at the site. I think it's a very logical way of doing business, I think it's long overdue and I think that it's a very positive change that we have made in the light of potential receipt of combined operating license applications and potential construction activities down the road, so again, I complement the staff, I know a lot of hard work went into making that happen relatively quickly and I appreciate it.

CHAIRMAN KLEIN: Thank you.

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Affirmation Session
(PUBLIC MEETING)

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: April 17, 2007

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company.

Transcriber: NANCY GREATHEAD

Reporter: (TAPE RECORDING)