



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 27, 2007

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0081

TITLE: REGULATORY OPTIONS FOR LICENSING FACILITIES
ASSOCIATED WITH THE GLOBAL NUCLEAR ENERGY
PARTNERSHIP

The Commission (with Chairman Klein and Commissioners Merrifield and Jaczko approving, Commissioner McGaffigan disapproving, and Commissioner Lyons approving in part and disapproving in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 27, 2007.

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 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-07-0081

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	5/30/07
COMR. McGAFFIGAN		X			X	6/7/07
COMR. MERRIFIELD	X				X	5/21/07
COMR. JACZKO	X				X	6/15/07
COMR. LYONS	X	X			X	5/31/07

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners Merrifield , Jaczko, and Lyons approved the staff's recommendation to proceed with Option 1, but only approved initiation of Phase I of Option 1. Commissioner McGaffigan disapproved the staff's recommendation. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 27, 2007.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN

SUBJECT: SECY-07-0081 - REGULATORY OPTIONS FOR
LICENSING FACILITIES ASSOCIATED WITH THE
GLOBAL NUCLEAR ENERGY PARTNERSHIP

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

5/30/07

DATE

Entered on "STARS" Yes ✓ No

Chairman Klein's Comments on SECY-07-0081

I approve the staff's recommended Option 1, subject to the following comments.

I agree, for the most part, with Commissioner Merrifield's comments regarding this paper. The staff should proceed with Phase 1 of proposed Option 1 and then submit another SECY paper prior to initiating Phase 2. By the time staff is ready for Phase 2, we should have a better understanding of DOE's schedule and approach, as well as Congress' views on this program. In this next SECY paper, staff should clearly identify how they propose to accomplish implementation of the proposed regulatory structure within the organization.

PK
5/30/07

NOTATION VOTE

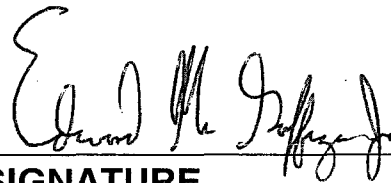
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: SECY-07-0081 - REGULATORY OPTIONS FOR
LICENSING FACILITIES ASSOCIATED WITH THE
GLOBAL NUCLEAR ENERGY PARTNERSHIP

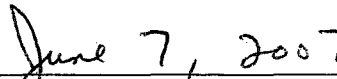
Approved _____ Disapproved Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE



DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-07-0081

I disapprove the staff's recommendation to proceed with Option 1, in which the staff proposes to reprogram 6 FTE this year, and seek supplemental appropriations for another 12.8 FTE and \$1,000,000 next year, to focus in the near term on developing a technical basis to support rulemaking for Consolidated Fuel Treatment Centers (CFTCs) and complete a gap analysis for Advanced Burner Reactors (ABRs). One year ago, in my vote on SECY-06-0066, I agreed with my fellow Commissioners that we should apply a reasonable amount of resources to develop a notional framework for how NRC would license GNEP facilities. As this SECY paper shows, we are devoting 1.0 FTE and \$150,000 in contract dollars in FY 2007. As this SECY paper also notes, OMB did not approve any funding in NRC's FY 2008 request for NRC regulatory infrastructure development related to GNEP. Since last year's paper, the Department of Energy's (DOE's) GNEP preferred approach has sharply changed to a focus on near-term use of allegedly commercially available technologies. The Secretary of Energy is supposed to make a decision in June 2008.

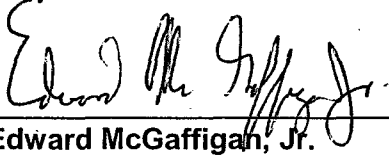
For GNEP to succeed as DOE envisions, the demanding budget for such a long-term program must survive multiple Presidents and numerous future Congresses. Today GNEP appears to lack the level of Congressional support needed to keep it on the schedule that DOE had hoped to sustain. On June 6, 2007, the House Appropriations Committee passed an FY 2008 Energy and Water Appropriation bill which struck the President's proposed GNEP budget from \$405 million to \$120 million. And I suspect the Senate Appropriations Committee will take a similar view, in light of the non-enthusiasm for the program expressed by the Senate Energy Committee in its February letter to the Senate Budget Committee. My personal view is that, while the U.S. may someday want to close the fuel cycle, the technologies are not ready today and there is no need for and great technical risk in the sort of crash program DOE wants to pursue.

I have no objection to the staff continuing to pursue the reimbursable agreement with DOE, which allows interactions with DOE and industry to learn about evolving GNEP technology. But that agreement is likely to produce little, if any, funding in FY 2008. I have no objection to very modest NRC funds being reprogrammed in FY 2008 consistent with the normal budget process. I don't foresee a license application for a burner reactor/fuel fabrication/reprocessing facility complex arriving at NRC before the second quarter of this century, much less 2010. And then only if a strong bipartisan consensus has emerged in favor of doing so, buttressed by support from reports from the National Academy of Sciences and similar groups. So, the regulatory development activities described by the staff should follow the normal budget process.

I also disagree with the staff's proposed allocation of responsibilities among the major program offices as first raised by Commissioner Merrifield. I agree that the Office of Nuclear Material Safety & Safeguards (NMSS) should take the lead on regulatory development for the CFTCs. But I believe that any ABR concept should be licensed by the reactor offices in close partnership with NMSS. In the coming years, the staff should ensure that the Offices of New Reactors, Nuclear Reactor Regulation and Nuclear Regulatory Research receive appropriate resources in future budget proposals to take the lead on examining those issues, commensurate with any progress DOE makes on development of the ABR. The Advisory Committee for Reactor Safeguards should be the lead advisory committee for the burner

reactor and reprocessing facility and I would point the staff to the discussions the Commission had today with ACRS about the potential difficulties in coming up with a framework for licensing co-located closed fuel cycle facilities.

I do thank the staff for the tremendous amount of work that went into this paper. They have identified many important issues which would be urgent if GNEP technologies were mature and the GNEP effort were likely to proceed on a fast track. But neither of these assumptions is valid. NRC can afford to focus on other much higher priorities in the years ahead.

 6/7/07
Edward McGaffigan, Jr. (Date)

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: SECY-07-0081 - REGULATORY OPTIONS FOR
LICENSING FACILITIES ASSOCIATED WITH THE
GLOBAL NUCLEAR ENERGY PARTNERSHIP

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

5/21/06

DATE

Entered on "STARS" Yes No

Comments from Commissioner Merrifield on SECY-07-0081:

I approve the staff recommendations with significant revisions discussed in the following paragraphs for SECY-07-0081 involving NRC participation in the Department of Energy's (DOE's) Global Nuclear Energy Partnership (GNEP). The total staff recommendation consists of two phases.

The first phase involves the development of a regulatory framework by preparing the technical basis documentation to support potential rulemaking for 10 CFR Part 70 and potential rulemaking for the Advanced Burner Reactor (ABR). I agree that this work should be done. However, there are several issues that will need to be clearly resolved before this effort can commence. Although not discussed in the paper, as part of phase 1 staff will need to clearly define lead areas of responsibility for this review within the Agency. The review will clearly involve materials facilities, storage facilities, transportation issues, reactor issues, and security. From the resource estimates in the paper, it is evident that NMSS is requesting lead responsibilities for all aspects of GNEP activities. I agree that NMSS should have the lead on the materials issues, but the reactor review should be conducted by NRO in concert with Research. In any event, it is a Commission decision if reactors should be licensed by three organizations (NRR, NRO and NMSS). In addition, there will be security concerns to be addressed in this effort. Therefore as part of phase 1, staff should clearly recommend with appropriate justification how the review should be coordinated within the NRC organization. Resource commitments for phase 1 will be discussed in another paragraph.

The second phase will only commence after the DOE makes fundamental decisions about the GNEP and will be based on the best recommended path forward (i.e., specific rulemaking and/or orders as appropriate) to support the program. The staff will need to submit a new SECY paper with specific recommendations when it is time to initiate phase 2. This paper should also address issues such as the applicability of the technology neutral regulations for new reactors being developed by Research.

I fully understand that the GNEP is a vital program to the Administration and is thus a priority with DOE. However, GNEP is a massive, complex concept which DOE is attempting to implement in a fairly short period. DOE claims the project can be implemented in the next decade. Given DOE's long and spotty track record for accurately predicting how long major projects will take to complete, I highly doubt this estimate. Further, there are significant conflicts in statements made by DOE. For example, DOE wants to only use mature technologies, but DOE admits that a number of the technologies needed for GNEP have only been demonstrated at the laboratory or bench scale. Initially, DOE desired to conduct small-scale demonstration tests, but apparently that process would take too long. So now DOE wants to go directly to demonstrating GNEP technologies on a commercial-scale in facilities that meet NRC requirements. In addition, DOE is assuming a total of 3 years for the NRC review and hearing process, which is an overly optimistic assumption for the first of a kind new facility or facilities which will possibly require multiple licenses. I agree that it is possible to develop such a program in the relatively short period of a decade, if that project is your highest priority and you are willing to spend massive amounts of money. The relatively short period of time over which the nuclear powered submarine was developed and then outfitted with missiles which could be launched under water is a tremendous testimony of what can be accomplished by the United States. The DOE, if it so chooses, can devote considerable effort to GNEP, even to the detriment of other programs sponsored by DOE to meet the GNEP schedules.

The NRC, on the other hand, cannot afford to let GNEP become our highest priority. The NRC needs to appropriately work with DOE on this effort, but NRC staff should not overreact to every public statement or expressed interest by DOE. NRC's principal responsibility is to protect public health and safety and common defense and security for civilian uses of nuclear energy. Clearly, the activities we will conduct related to potential new combined operating license applications are of greater importance to our nation's future than GNEP. The NRC cannot allow participation in GNEP to degrade our principal authority for the other areas we regulate. Therefore, staff will need to be very careful and diligent in determining what existing actions are delayed as staff is reassigned to support GNEP. This paper only states that the potential activities to be delayed are "low priority, but that does not mean GNEP is to be our highest priority either. I also believe the staff is somewhat over optimistic, both in resources and schedule, in their projections of resources necessary to develop all of the regulatory guidance to support this program within the time frame outlined by DOE. In addition, the NRC is required to charge fees to our licensees to support our budget. Fairness and equity issues require that we make every effort to obtain money from the general fund to supplement GNEP activities, and such funds were specifically zeroed out of our 2008 budget. If Congress will not provide appropriate funds to support this effort, we can only have, at best, a very limited role in this effort, even if it is a priority with DOE. For FY07, staff resources should be limited to only the resources necessary to support initiation of phase 1 as described above. If we do not receive supplemental appropriations for FY08, staff resources for GNEP may have to be even lower than the FY07 values.



5/21/07

NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: SECY-07-0081 - REGULATORY OPTIONS FOR
LICENSING FACILITIES ASSOCIATED WITH THE
GLOBAL NUCLEAR ENERGY PARTNERSHIP

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

6/14/07

DATE

Entered on "STARS" Yes No

**Commissioner Jaczko's Comments on SECY-07-0081
Regulatory Options for Licensing Facilities Associated with
the Global Nuclear Energy Partnership**

I approve of the staff's recommendation to proceed with Option 1 to develop a technical basis for a potential rulemaking for a consolidated fuel treatment center and an advanced burner reactor. At this time I do not support the staff's proposal to shift to option 3 next year and develop a regulation covering Global Nuclear Energy Partnership (GNEP) facilities and associated special nuclear material.

While I support initial activities to be prepared to undertake our role regulating potential GNEP facilities, I do not believe the Commission has a full and clear picture of what would need to be done. It would not be an efficient use of resources to move beyond the development of a technical basis for a potential rulemaking when the uncertainty surrounding the program – including whether industry will commit to building GNEP facilities, the availability of proliferation resistant technologies, and the level of Congressional support – continues to challenge the Department of Energy's proposal to develop and commercialize GNEP facilities.



Gregory B. Jaczko

6/14/07

Date

NOTATION VOTE

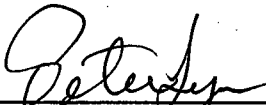
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-07-0081 - REGULATORY OPTIONS FOR
LICENSING FACILITIES ASSOCIATED WITH THE
GLOBAL NUCLEAR ENERGY PARTNERSHIP

Approved X (in part) Disapproved X (in part) Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

5/31/07

DATE

Entered on "STARS" Yes X No _____

Commissioner Lyons' Comments on SECY-07-0081

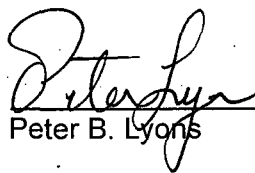
I approve in part and disapprove in part. I approve only Phase I of the staff's recommendation to complete a gap analysis and then to prepare the technical bases document for the Consolidated Fuel Treatment Center and the Advanced Burner Reactor. Staff should provide the gap analysis and the technical bases document with recommended options on a path forward and an associated rulemaking plan, if appropriate, in a separate Commission paper after the DOE Secretary provides his June 2008 decision for the Global Nuclear Energy Partnership (GNEP) program and Congress determines the FY 2009 appropriations for GNEP.

I share the concerns of Commissioner Merrifield regarding the need to expend limited NRC rulemaking resources on the GNEP program, given its high degree of uncertainty, current lack of a rulemaking plan, and uncertain Congressional support.

I believe the staff's vision of one regulation integrating the requirements for all GNEP facilities, including the requirement to assess the risk for co-located facilities, has merit that should be explored further, once the gap analysis is completed. Such a rulemaking could ensure a stable and predictable regulatory process. Multiple NRC offices will need to be involved in such rulemaking.

Given the uniqueness of these facilities and the licensing and communication challenges they will present, staff should establish, with State and Tribal input, specific guidance on how local community views are to be considered/solicited.

Separate from the rulemaking efforts, I support the Office of Regulatory Research's efforts in long-term research to develop and maintain technical expertise relevant to facilities of the type envisioned in GNEP, also commensurate with DOE activities.


Peter B. Lyons 3/31/07
Date