

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIRMATION SESSION

PUBLIC MEETING

Nuclear Regulatory Commission
Commission Hearing Room
11555 Rockville Pike
Rockville, Maryland
July 24, 2007

The Commission met in open session, pursuant to notice, at 1:55pm,

Dale E. Klein, Chairman, presiding.

COMMISSIONERS PRESENT:

DALE E. KLEIN, Chairman of the Commission

EDWARD MCGAFFIGAN, JR., 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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[1:55 p.m.]

P R O C E E D I N G S

CHAIRMAN KLEIN: I think that you might have been told that we have a minor item of business to go through first and then we'll come to the Palo Verde. Madam Secretary, I believe we have an affirmation. Would you like to proceed?

ANNETTE VIETTI-COOK: This is a request for Request for Reconsideration of the Wording of 10 CFR § 26.205(d)(4) as affirmed on April 17, 2007. On April 17, 2007, the Commission approved a final rule which amended 10 CFR Part 26 governing the domestic licensing of production and utilization facilities to revise, reorganize, and clarify drug and alcohol testing programs and establishing requirements for managing worker fatigue at operating nuclear power plants. Subsequently, the Chairman submitted a Request for Reconsideration to modify the final rule by restoring the words "working on outage activities" in place of "solely performing outage activities" in the first sentence of 10 CFR § 26.205(d)(4) and any other sections related to this specific matter. The Commission has voted to reconsider this one provision of the rule and approves the final rule as affirmed on April 17, 2007, with this modification. Commissioner Jaczko disapproved the request for reconsideration and disapproved the revised rule with the modification. Would you please affirm your votes?

CHAIRMAN KLEIN: Aye.

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER JACZKO: Aye.

COMMISSIONER LYONS: Aye.

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

CHAIRMAN KLEIN: Thank you Madam Secretary. Now we'll continue with Palo Verde.

COMMISSIONER JACZKO: Mr. Chairman, actually if I could just make some comments about this. I did want to say a few words. I think that sometimes it's a little bit confusing since we all come down here and say "aye" but as the Secretary mentioned, I did not support this particular change and I think there certainly was more information I think that we could have benefitted from making our decision about this. As I understood the change when we made it - the change was intended really to clarify the intent of the original proposed final rule which was that if you are working on an outage you have the opportunity to get an exemption from the work hour provisions in the rule. That then seemed to be misconstrued I think based on the language that I think we reverted back to to mean that you could get into a situation where if you have a site wide outage or if one unit was in an outage the other the work hour exceptions that you got in the outage unit would apply to the entire site. So, the Commission clarified that with the use of the word "solely". In going back in reviewing the documents, the statements of consideration, everything seems to be consistent with that interpretation. So, I was a little bit disappointed when we did make a change based on several letters, I'm not sure the reasons for the change, but we certainly did receive several letters indicating some concern with that provision. One of the issues that was raised in there was a statement that the cost could potentially be about 190 million dollars a year but I think at a minimum we should have waited for the staff to get some information about that cost and we do have preliminary assessments from the staff about the cost and they are significantly less than 190 million dollars a year - I think closer, I think what the staff is estimating now, and again, this is a preliminary estimate, is closer to 50 to 75 million dollars. So, it's something that's significantly less than 190 million dollars. I certainly think that this is a very important rule and I think it's good that we're ultimately moving forward but I think this was an issue where we certainly could have waited at least to get this information from the staff to have that involved in our decision and we only got

it, I guess it was just sent up yesterday, but we could certainly have waited I think at least until then, so as I said I didn't support this change and I think it's not something that was necessary and I don't think that it was anything - the change we made I don't think was inconsistent with the intent of the rule all along. Thank you.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I understand Commissioner Jaczko's position. I came down the other side. I do think that what I learned from this episode was that I think this is Item 15 of the attachment to the SRM and when we make changes in the final rule which you may have thought - I think you were the proponent in your vote - were minor sometimes we run afoul and there was some chance that we would have to resubmit the rule to the public for comment if we kept that in there we'd have to deal with this issue of whether it's 190 million or 75 million and staff always underestimates and I think NEI overestimates so truth may be somewhere in between. But we're going to end up in the end in the guidance process we often times leave many things to guidance, Part 52 as an example, with something like the word predominately and I think that means that the outage plants will be not entirely walled off from the plants that are not in outage but that the plants that are operating will not have any adverse safety effects so I supported this and I think it's been so long, I also as I told Commissioner Jaczko on a couple of occasions is motivated by the fact that this started before I was here and I'm the longest serving Commissioner in NRC history and I'd sort of like to see it finished within a finite period of time without renoticing. So thank you.

CHAIRMAN KLEIN: Thanks. Commissioner Lyons?

COMMISSIONER LYONS: Well, I too understand Commissioner Jaczko's concern. I also agree Mr. Chairman with your proposal and I appreciate and agree with the points that Commissioner McGaffigan just made. I guess of greatest importance in my mind in looking at this change, I would certainly agree with Ed's comment that there's a lesson here about quick

changes in language that has already been thoroughly vetted. And, I am quite comfortable with the proposal you made Mr. Chairman because it returns to the language that was subject to public comment and it was that language which had been the beneficiary of public comment that we changed at the last minute and that led to the various uncertainties that we're now correcting. I join with Commissioner McGaffigan in hoping in guidance we end up with a clear understanding that while the word "solely" is not there a word like "predominately" is effectively there. But thank you very much.

CHAIRMAN KLEIN: Thank you. Well, I'd like to thank the Commission for taking prompt action. As indicated, I did think that adding the word "solely" was - initially added value to clarification. It turned out that sometimes I make mistakes and it turns out that as Commissioner McGaffigan indicated there were unintended consequences - it may not be as difficult as NEI and the industry indicated but clearly there were unintended consequences that the cost were going to be greater and this as a change - a last minute change - to add the word "solely" from what we had published and had agreed to so I think in light of wrapping up this issue that's gone on for many years that this is the right thing to do and we can certainly as information is obtained it's not something here we will add guidance as appropriate to finish it. So..

COMMISSIONER JACZKO: Could I just make two points on those things. First of all I don't think these were unintended consequences. I went back and looked in the draft proposed reg analysis. At that time it said - the draft proposed reg analysis says that the NRC expects that licensees will occur incremental costs to be able to meet the day off provisions of the final rule during unit outages. This is a discussion applying to particularly this provision 26.205(d)(4). So again, I don't think - this was not unknown that there were going to be additional costs here. The inclusion of the word "solely" did not change the original intent of this provision which is

consistent with the addition of the word “solely”. So, very much, if you read through the reg analysis that was prepared at that time with the language without the word “solely” it is very similar to the analysis that the staff did with the inclusion of the word “solely” so again, I don’t think this was a new interpretation in really very many people’s mind about what this provision meant and I think it’s important to realize we had this information available at the time - it was there and the use of the word “solely” was to clarify the meaning of that provision to be sure that it was applied as intended. And intended in the original proposed final rule. The other comment I would make and then I don’t want to prolong this is that the language we’re reverting back to is not the language of the proposed rule. The language of the proposed rule if you will recall dealt with group work hours and was completely different from the language that we saw in the draft final rule. This was a compromise that was worked out over an extensive period of time through lots of stakeholder interactions but the proposed rule language dealt with the completely different paradigm which the Commission modified and changed because the concept of group work hours was considered to be unworkable and I supported that change and I believe that that was an appropriate change but this particular language that we’re referring to I do not believe was necessarily in this same form ever provided for public comment. The concepts were certainly discussed and the intent was ultimately that the language should reflect that if you were in an outage situation you would have the advantage of an exceptions to the general work hour requirements that apply to operating units including the word “solely” in that provision simply clarifies that existing intent that I think was there from the beginning so I just wanted to clarify I think those two statements that were made and I think all of that information is there in the record for people to see.

CHAIRMAN KLEIN: Well, since I was the one who had initially proposed the word “solely” I will clarify the intent was not to have unintended consequences and it would have had

potentially negative impact on the operating reactors as well as those during outage and so I think the Commission voted to do this and so we appreciate your comments but I think the records do stand as stated and the fact that I was the one that had initially proposed that for clarification I thank the Commission for supporting the reclarification today. Thank you.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I'm not trying to delay a final word but I do want comment on Commissioner Jaczko. There's so much that we're all on agreement on in this rule and it's such an improvement over what exists and moving away from group work hours as a result of public comments from all sides was one of the things we did between the proposed rule and the final rule so I think we were having a disagreement today but this is by every measure a much better Part 26 than the one that exists today and I hope the public whose probably not understanding this entire discussion understands that point. The staff labored on this for 13 years, it's been on the docket as something we're trying to do my entire time with the Commission and I hope that if there's somebody who breaks my record that he or she doesn't have a rulemaking that starts before they come and finishes towards the end of their term. They'd have to have three terms. And three term rulemaking efforts are not something that I'd encourage the NRC to engage in.

CHAIRMAN KLEIN: Thank you. Now we'll move on to Palo Verde.

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: June 28, 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 S. Greathead

Reporter: (TAPE RECORDING)