



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

SECRETARY

June 19, 2008

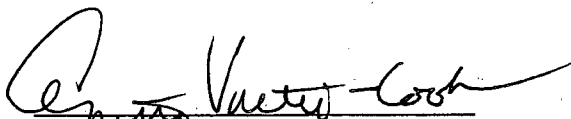
COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0036

TITLE: DENIAL OF TWO PETITIONS FOR RULEMAKING
CONCERNING THE ENVIRONMENTAL IMPACTS OF HIGH-
DENSITY STORAGE OF SPENT NUCLEAR FUEL IN SPENT
FUEL POOLS (PRM-51-10 AND PRM-51-12)

The Commission (with Chairman Klein and Commissioners Lyons and Svinicki agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 19, 2008. Commissioner Jaczko disapproved the paper.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.


Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

SECY NOTE: THIS VOTING RECORD TO MADE PUBLICLY AVAILABLE 5 WORKING
DAYS AFTER DISPATCH OF THE LETTERS TO THE PETITIONERS

VOTING SUMMARY - SECY-08-0036

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	4/29/08
COMR. JACZKO		X			X	5/19/08
COMR. LYONS	X					4/10/08
COMR. SVINICKI	X				X	4/15/08

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners Lyons and Svinicki approved the staff's recommendation and Chairman Klein and Commissioner Svinicki provided some additional comments. Commissioner Jaczko disapproved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 19, 2008.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: SECY-08-0036 – DENIAL OF TWO PETITIONS
FOR RULEMAKING CONCERNING THE
ENVIRONMENTAL IMPACTS OF HIGH-DENSITY
STORAGE OF SPENT NUCLEAR FUEL IN SPENT
FUEL POOLS (PRM-51-10 AND PRM-51-12)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



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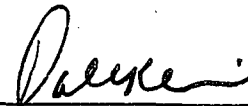
4/29/2008

DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments on SECY-08-0036, Denial of Two Petitions for Rulemaking Concerning the Environmental Impacts of High-Density Storage of Spent Nuclear Fuel in Spent Fuel Pools (PRM-51-10 and PRM-51-12)

Fundamentally, the staff's recommendation to deny these two petitions is rooted, as it should be, in sound science that informs our policies and enables the agency to make determinations of adequate protection of public health and safety. In this case, the staff has reaffirmed the NRC's original conclusion that the environmental impacts of spent fuel storage, including high-density storage, are insignificant for the renewal of nuclear power plant licenses. I approve the staff's recommendation for disposition of these two petitions. In addition, I concur with the edit proposed by Commissioner Svinicki.



Dale E. Klein

4/29/2008

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: SECY-08-0036 – DENIAL OF TWO PETITIONS
FOR RULEMAKING CONCERNING THE
ENVIRONMENTAL IMPACTS OF HIGH-DENSITY
STORAGE OF SPENT NUCLEAR FUEL IN SPENT
FUEL POOLS (PRM-51-10 AND PRM-51-12)

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

5/19/08

DATE

Entered on "STARS" Yes X No _____

**Commissioner Jaczko's Comments on SECY-08-0036
Denial of Two Petitions for Rulemaking Concerning the Environmental Impacts
Of High-Density Storage of spent Nuclear Fuel in Spent Fuel Pools**

I disapprove of the denial of the petition, as written. In general, I approve of the staff's decision not to initiate a new rulemaking to resolve the petitioners' concerns; but because the information in support of the petition will be considered when the staff undertakes the rulemaking to update the Generic Environmental Impact Statement for license renewal, I believe that the decision should be expressed as a partial granting of the petition rather than as a denial.

I find it unfortunate that the agency appears to limit its responses to petitions based upon the vocabulary that has been established surrounding this program. Currently, when the agency discusses these petitions, we discuss them in the context of "granting" or "denying" the rulemaking petitions. We then appear to be less inclined to "grant" unless we are committing to the precise actions requested in the petition. But these petitions are, by their very definition, requests for rulemakings; which means, even if we do "grant" a petition for rulemaking, we can not guarantee a particular outcome for the final rule. The final rulemaking is the result of staff's technical work regarding the rule, public comments on the rule, and resolution of those comments. It is a rare petition for rulemaking where a decision to grant the petition would also be a decision to do precisely what the petitioner requests. More often, the decision to undertake a rulemaking is simply a recognition of a valid issue and a commitment to explore that issue in a public discussion.

The agency, however, appears to view its ability to respond to petitions in a more limited fashion – the ability to offer a rigid "yes" or an equally rigid "no", with little room for decisions that fall in-between. Rulemaking petitions are opportunities for our stakeholders to provide us with new ideas and approaches for how we regulate. By limiting our responses, we limit our review of the request, and thus, we risk missing many potential opportunities to improve the way we regulate. Therefore, as part of the staff's efforts to improve the rulemaking process currently underway in response to Commission direction in the staff requirements memorandum from SECY-07-0134, I believe the staff should review the current guidance and directives on reviews of petitions for rulemaking and add in mechanisms that provide the staff with an appropriate amount of flexibility when conducting its review to ensure that the process captures a broader spectrum of approaches. Because the terminology surrounding petitions has also added to this confusion, I support the efforts recently taken by the staff to change the terminology and more transparently capture the agency's review process for these petitions. I welcome these efforts and encourage the EDO to ensure the changes that come out of these efforts are applied consistently across the agency.

In this instance, the petitioners requested the agency review additional studies regarding spent fuel pool storage they believe would change the agency's current generic determination that the impacts of high-density pool storage are "small". I believe that the agency could commit to reviewing the information provided by the petitioners, along with any other new information, when the agency updates the Generic Environmental Impact Statement (GEIS) for License Renewal in the near future. Regardless of whether or not the information will change the GEIS' conclusions, at a minimum, the agency should be committing to ensure that this information is part of the analysis performed by the staff upon the next update of the GEIS. While we can not predict the outcome of the significance level that will ultimately be assigned to the spent fuel category in the GEIS, it seems an obvious commitment to ensure that the ultimate designation will be appropriately based upon all information available to the staff at the time. Thus, I believe this decision should be explained as a partial granting of the petition. It may not provide the

petitioners with everything they want, but it would more clearly state the obvious – that this information, and any other new information, will be reviewed by the agency and appropriately considered when the staff begins its update of the license renewal GEIS.

Finally, I also believe the next update of the GEIS should separate the assessments of the wet and dry fuel storage for a more accurate depiction of the environmental impacts of each. The generic assessment of environmental impacts of wet and dry storage are currently combined in the agency's GEIS, but I believe the two are distinct enough to make the separate analysis necessary and worthwhile.



Gregory B. Jaczko



Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-08-0036 – DENIAL OF TWO PETITIONS
FOR RULEMAKING CONCERNING THE
ENVIRONMENTAL IMPACTS OF HIGH-DENSITY
STORAGE OF SPENT NUCLEAR FUEL IN SPENT
FUEL POOLS (PRM-51-10 AND PRM-51-12)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached None X


Peter B. Lyons
SIGNATURE

4/ 10 /08
DATE

Entered on "STARS" Yes X No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-08-0036 – DENIAL OF TWO PETITIONS FOR RULEMAKING CONCERNING THE ENVIRONMENTAL IMPACTS OF HIGH-DENSITY STORAGE OF SPENT NUCLEAR FUEL IN SPENT FUEL POOLS (PRM-51-10 AND PRM-51-12)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached _____ None _____

Footnote 15 should be replaced with the following:

In the wake of the Ninth Circuit's *Mothers for Peace* decision, the Commission decided against applying that holding to all licensing proceedings nationwide. See, e.g., *Amergen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), CLI-07-8, 65 NRC 124, 128-29 (2007), *pet. for judicial review pending*, No. 07-2271 (3d Cir.). The Commission will, of course, adhere to the Ninth Circuit decision when considering licensing actions for facilities subject to the jurisdiction of that Circuit. See *id.* Thus, on remand in the *Mothers for Peace* case itself, the Commission is currently adjudicating intervenors' claim that the NRC Staff has not adequately assessed the environmental consequences of a terrorist attack on the Diablo Canyon Power Plant's proposed facility for storing spent nuclear fuel in dry casks. See, *Pacific Gas & Elec. Co.*, CLI-07-11, 65 NRC 148 (2007). The Commission's ultimate decision in that case will rest on the record developed in the adjudication.


SIGNATURE

4/15/08
DATE

Entered on "STARS" Yes No _____