

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

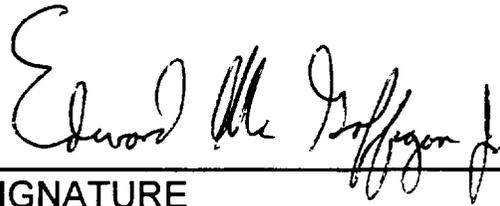
SUBJECT: **SECY-99-223 - MILLSTONE INDEPENDENT REVIEW TEAM  
MARCH 12, 1999, REPORT ON ALLEGATIONS OF  
DISCRIMINATION IN NRC OFFICE OF INVESTIGATION  
CASES NDA: 1-96-002, 1-96-007, AND 1-97-007, AND  
ASSOCIATED LESSONS LEARNED- RECOMMENDATION  
NO. 6**

Approved \_\_\_\_\_ Disapproved  X  Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.



SIGNATURE

September 28, 1999

DATE

9910150193 991013  
PDR COMMS NRCC  
CORRESPONDENCE PDR

Entered on "AS" Yes  X  No \_\_\_\_\_

*Commissioner McGaffigan's Comments on SECY 99-223:*

I agree with Commissioner Merrifield that we need another approach, and I concur in the one he proposes. The recommendation that licensees retain all relevant documentary information regarding all employees affected in reorganization or downsizing has had an insufficient basis thus far, and this SECY paper does not make it sufficient. As Commissioner Merrifield points out, neither in 1-96-007-- the case that prompted the Millstone Independent Review Team (MIRT) to make its recommendation -- nor in any of the other cases the MIRT examined was it necessary to "analyze the circumstances based on disparate treatment". Thus the main strength of the MIRT's recommendation rests not on any case in which such information was in fact useful, but rather on hypothetical cases in which it *might* be useful. Perhaps such cases are possible, but neither the MIRT report nor this SECY paper says just how, and how often, such information might be useful. The paper does say that history suggests on average one larger layoff or reorganization a year that results in a complaint of discrimination, but that's not the same thing as saying that, in each of those cases, the records the MIRT wants retained would be either necessary or sufficient for finding whether there had been discrimination. If we're going to require licensees to retain possibly extensive records, we need to have a clearer idea of their usefulness.

There may be a good case to be made for retention, and Commissioner Merrifield's approach leaves the way clear for such a case to be made. In looking ahead, it is especially important, both for the issue raised by the MIRT recommendation, and for any issue of recordkeeping or reporting, that the staff and interested persons understand that backfit standards generally do not apply to recordkeeping or reporting requirements. Commissioner Merrifield points to Commission policy stated in the recent revision of Part 72. The same policy is reiterated even more recently in the statement of considerations for the proposed rules on reporting of reactor events. See 64 Fed. Reg. 36291, 36303 ( July 6, 1999).

