

AF-94-8
PDR

AFFIRMATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER DIAZ
SUBJECT: SECY-99-130 - FINAL RULE - REVISIONS TO
REQUIREMENTS OF 10 CFR PARTS 50 AND 72
CONCERNING CHANGES, TESTS, AND EXPERIMENTS

Approved X in part *LD* Disapproved X in part Abstain _____
Not Participating _____

COMMENTS:

See attached comments *LD*

hig Diaz

SIGNATURE

June 17, '99

DATE

Entered on "AS" Yes X No _____

COMMISSIONER DIAZ' COMMENTS ON SECY-99-130

I am pleased to see that we are approaching the end of this long standing rulemaking activity through an arduous but open road. When I first arrived at the NRC, the "zero", "less than zero", or "negligible" criterion was negating the effective use of the 50.59 process for facility changes not significant for public health and safety. This practice was neither safety-focused nor realistic. I am gratified that the revised rule will eliminate the "zero" criterion for licensees' proposed changes while maintaining the level of safety at the licensed facilities. Therefore, I approve publication of the enclosed *Federal Register* notice and propose the following comments and changes to the rule language.

I believe it is necessary for the NRC to define and use the term "minimal" in this rule. Codifying the term "minimal" is another necessary step for the Commission to define "adequate protection of public health and safety." At both the policy and the implementation level, there are requirements subordinate to "adequate protection", expressed as "safety-related", "important to safety", and "safety and/or risk significant" that have yet to be defined. The proper use of "minimal" will allow for regulatory acceptance of small variations that fall within the adequate protection envelope.

To achieve internal consistency of the rule and to clearly express its intent, the staff should revise 50.59(c)(2)(viii) to read: "[r]esults in more than a minimal departure from a method of evaluation..." This would reduce potential misinterpretations of the methods of evaluation as well as backfit controversy.

The regulatory guide can also benefit from having better examples on how to determine "more than a minimal increase in the frequency of occurrence of an accident." The staff should consider using the "10% change in frequency" as a guide for determining whether a licensee proposed change results in a minimal increase in frequency. In addition, licensee changes that do not result in a different event classification should be considered not more than a minimal increase in frequency. I agree with the guidance on "minimal increase in consequences" contained in the Statements of Consideration.

I also agree with the staff recommendation to allow early implementation of 50.59. For almost two years, the proposed 50.59 rulemaking and the industry guidance NEI 96-07 have been the subject of extensive public discussions and comments. I believe optional early implementation by licensees can contribute to a better final implementation guidance. Licensees that choose to use the new 50.59 process early should benefit from the reduced regulatory burden. However, to establish a demarcation for those licensees who choose early implementation from those who do not, as well as acquiring information to be used in the development of the final regulatory guidance, the staff should recommend how they plan to identify the dates of the voluntary licensee early implementation. The draft final regulatory guidance should be submitted for Commission approval.

Regarding the enforcement policy related to 50.59 and 72.48, I disapprove the staff proposed "substantial review" criterion. The staff proposes to use this criterion to elevate infractions to Severity Level III violation. This "substantial review" criterion is overly subjective and does not



address the safety significance of a violation.

Contingent on the adoption of the above comments, I authorize the EDO to sign the attached letter with the approved *Federal register* notice and forward to Ms. Shillinglaw to close out the action on the petition PRM-72-3.

A handwritten signature in black ink, appearing to be the initials 'LWJ'.