

February 12, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98-253

TITLE: APPLICABILITY OF PLANT-SPECIFIC BACKFIT REQUIREMENTS TO PLANTS UNDERGOING DECOMMISSIONING

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 12, 1999. Commissioner Diaz also disapproved in part.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of February 12, 1999.

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Annette Vietti-Cook  
Secretary of the Commission

Attachments: 1. Voting Summary  
2. Commissioner Vote Sheets  
3. Final SRM

cc: Chairman Jackson  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR  
DCS

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VOTING SUMMARY - SECY-98-253

RECORDED VOTES

	<b>APRVD</b>	<b>DISAPRVD</b>	<b>ABSTAIN</b>	<b>NOT PARTICIP</b>	<b>COMMENTS</b>	<b>DATE</b>
CHRM. JACKSON	X					1/29/99
COMR. DICUS	X				X	12/3/98
COMR. DIAZ	X	X			X	12/16/98
COMR. McGAFFIGAN	X				X	12/10/98
COMR. MERRIFIELD	X					11/23/98

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Commissioner Diaz disagreed in part. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on February 12, 1999.

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Commissioner Comments on [SECY-98-253](#)

**Commissioner Dicus' Comments on SECY-98-253**

While I approve the applicability of interim backfit to decommissioning as recommended by the staff in SECY-98-253, I do not believe the development of the related rule on applying backfits to power plants in a decommissioning status rises to the significance appropriate to utilization of resources to conduct a series of workshops for rule development. Staff should proceed with development of a proposed rule consistent with other competing priorities and should not displace any high priority rulemaking activities to pursue this rulemaking effort.

**Commissioner Diaz's Comments on SECY-98-253**

While I fully support application of the backfit rule to decommissioning plants, the staff has not made a compelling case for developing a new backfit rule or a modification of 10 FR 50.109 with specific applicability to plants undergoing decommissioning. Such a rulemaking would appear to be of limited utility. Departure from the general terms of the current backfit rule has not been justified from the standpoint of providing adequate protection or the perspective of how to justify extra-adequate protection. It is also pertinent that this rulemaking is not budgeted, and substantial resources must be devoted to the key rulemaking and guidance efforts pertaining to the requirements that should apply at permanently shutdown plants. Therefore, I disapprove initiating rulemaking for this matter.

In my view, the situation can best be addressed by the Commission's declaration that 10 CFR 50.109 will be applied to decommissioning plants, including its test of a "substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit." I do not believe it is necessary or desirable that the Commission provide the ambiguous direction that the staff requests, i.e., that the staff would apply the current backfit rule on an interim basis "to the extent practical." In 10 CFR 50.109(c), the current rule already provides that the Commission will consider the various specified factors "*as may be appropriate* and other information relevant and material to the proposed backfit." (Emphasis added). In conjunction with the ongoing efforts under DSI-24, the staff should proceed with its development of guidance associated with applying the current backfit rule to plants undergoing decommissioning.

**Commissioner McGaffigan's Comments on SECY-98-253**

I approve the staff's proposal to apply the existing backfit rule on an interim basis to the decommissioning of power plants. I also approve the staff's proposal to develop a new backfit rule, or a new provision in the existing rule, that would apply permanently to plants undergoing decommissioning.

However, I agree with Commissioner Dicus that the development of the related rule does not call for a *series* of workshops. The new backfit provisions should not be difficult to write, especially if knowledgeable persons from the relevant parties work together efficiently. If, as I expect, the new rule will be reasonably straightforward and not resource intensive to draft, we should be able to proceed promptly to propose it.

More important than having a new backfit rule is resolving the issue of how to make judgments on how quickly to reduce various requirements at a permanently shutdown plant. As I said in my vote on SECY-98-258 (DSI-24), this issue is central to various rulemakings planned or under way. We are facing backfit difficulties in decommissioning mainly because this central issue is not yet resolved.