

May 20, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-107

TITLE: POTENTIAL MODIFICATION OF THE DOE/NRC MOU DUE TO CHANGES IN THE HANFORD TANK WASTE REMEDIATION SYSTEM PRIVATIZATION

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 20, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of May 20, 1999.

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

VOTING SUMMARY - SECY-99-107

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	4/28/99
COMR. DICUS	X					4/23/99
COMR. DIAZ	X				X	5/3/99
COMR. McGAFFIGAN	X				X	5/4/99
COMR. MERRIFIELD	X					4/16/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 20, 1999.

Commissioner Comments on SECY-99-107

Chairman Jackson

In light of the change in the DOE strategy for the Hanford Tank Waste Remediation System-Project (TWRS-P), I approve the staff proposal to enter into negotiations with the DOE to refine the existing MOU. The staff should also seek input from the appropriate Congressional committees to ensure that agreements reached by the DOE and NRC staffs are consistent with the desires of the Congress with respect to external regulation of DOE facilities.

Commissioner Diaz

I commend the staff for its efforts to date in the TWRS program, and I approve the recommendations provided in SECY-99-107. In negotiating draft modifications to the MOU with DOE, the staff should strive for ways to maintain the NRC's independence and, therefore, credibility, and should strive to establish a clear date for transition to NRC regulation. Also, as long as the NRC remains in a consultative role, the staff should ensure that DOE is aware of any issues that may impact eventual NRC licensing and regulation of the TWRS facility.

Commissioner McGaffigan

I firmly believe that the Commission would have benefitted from making the subject paper public, soliciting comment from the appropriate Congressional Committees, and considering those comments prior to making a decision on it. However, since a majority of the Commission has voted on the paper, prior to making a Commission decision on my request to release it, I do not want to inadvertently delay informing Congress of the implications of the Department of Energy's (DOE **EXIT**) changed approach at Hanford's Tank Waste Remediation System (TWRS) facility for NRC by not voting on the modest staff proposal before us. Therefore, I approve the staff's plan to negotiate potential modifications on the memorandum of understanding (MOU) with DOE on the TWRS project and offer the following comments for the staff's consideration.

I would have liked to have been informed immediately of DOE's decision in August 1998 to fundamentally alter its approach to the Phase I facility and of how those changes would affect NRC's role. We are currently spending about \$2 million per year, about half of our General Fund appropriation, on preparing to regulate the privatized vitrification facility at Hanford. At our March 19 public meeting on DOE external regulation, I spoke in favor of seeking Congressional clarification this year on our role at Hanford, just as Congress had clarified our role last year on the mixed-oxide fuel facility.

The essence of the staff's paper is that any transition to NRC regulation at the TWRS facility has now likely been put off to 2015, and that there is now a significant probability that DOE's Phase I design, construction, and operational decisions will affect NRC's ability to ever license the facility. I am not sure whether any serious consideration has ever been given to moving up the NRC regulation of the privatized TWRS facility so that NRC would make the 2001 construction authorization decision for the Phase I facility. It may be too late to consider that option although the attached February 4, 1999 issue paper seems to indicate that much of the regulatory framework (draft Standard Review Plan, etc.) has been developed. I suspect the alternative to immediate NRC regulation of Phase I is never to have NRC regulation of any phase of this facility. As for our current budget request, this paper implies that we almost surely have the wrong amount budgeted for NRC's role at the TWRS facility. We may have too little if Congress wishes the Phase I facility to be regulated by NRC or too much if Congress wants to reduce our role to technical consultant to DOE as it self-regulates the facility. It will be up to Congress to advise both agencies which course to take and I would recommend the staff of both agencies consult closely with the appropriate Congressional Committees before detailed negotiations begin on the modified MOU. The staff should keep the Commission fully and currently informed on these matters.