

December 21, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-168

TITLE: IMPROVING DECOMMISSIONING REGULATIONS FOR NUCLEAR POWER PLANTS

The Commission (with Chairman Meserve and Commissioners Diaz, McGaffigan, and Merrifield agreeing in part and disagreeing in part; and Commissioner Dicus agreeing) approved in part and disapproved in part the subject paper as recorded in the Staff Requirements Memorandum (SRM) of December 21, 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 December 21, 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 Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO

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VOTING SUMMARY - SECY-99-168

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X	X			X	11/22/99
COMR. DICUS	X				X	11/9/99
COMR. DIAZ	X	X			X	7/13/99
COMR. McGAFFIGAN	X	X			X	11/24/99
COMR. MERRIFIELD	X	X			X	10/21/99

COMMENT RESOLUTION

In their vote sheets, the Chairman and Commissioners Diaz, McGaffigan, and Merrifield approved in part and disapproved in part the staff's recommendation; Commissioner Dicus approved the staff's recommendation. The Commission approved the staff's recommendation for Option 2 of the initiative for improving nuclear power plant decommissioning regulations, but disapproved moving beyond phase 1 until further inputs can be obtained. Commissioner Diaz disapproved the staff's plan and schedule for the completion of the spent fuel pool risk assessment because he believed this issue, and the zirconium fire scenario in particular, has been studied for years, and sufficient technical data exists to support making regulatory decisions now. Further, he indicated that the staff's preliminary generic analyses rely on unrealistic assumptions to develop bounding cases of risk and spent fuel heat up. All Commissioners provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on December 21, 1999.

Chairman Meserve

I approve in part, and disapprove in part, the staff's proposal as discussed below:

1. I approve the plan for completion of the spent fuel risk assessment. Based upon the staff's presentation during the November 8, 1999 Commission meeting and staff comments in the development of the associated SRM, I understand that the staff intends to complete the draft report on this risk assessment and develop risk objectives for decommissioning by January 2000. The staff should submit the draft study and objectives to the Commission and to the public for comment at that time. ACRS should review the draft study and risk objectives, as well as the public comments received, and provide their views to the staff and Commission. The staff should consider the views of the ACRS in the development of the final report, scheduled for release in April 2000.
2. I approve the development of a single, integrated, risk-informed decommissioning rule for emergency preparedness, insurance, safeguards, operator training and staffing, and backfit. The staff should take into account comments from our stakeholders during the November 8 meeting and ensure that all realistic scenarios for offsite consequences are appropriately considered during the rulemaking process. Additionally, the staff should ensure that the agency's regulatory activities in the area of safeguards and threat analysis are fully integrated and considered in the rulemaking plan and schedule.
3. I approve Option 2 of the decommissioning regulatory improvement initiative. However, I believe it is too early to select an alternative within Option 2. Upon completion of Phase 1, the staff should recommend a course of action to the Commission, considering stakeholder views.
4. The staff should proceed expeditiously with these activities, adhering closely to the proposed deadlines or, if possible, beating them. The staff should notify the Commission immediately of any unexpected obstacles.

Commissioner Dicus

1. I am pleased that the staff has decided to risk-inform the technical bases for its decommissioning regulations. I also recognize and support the staff's approach of releasing a draft report to obtain early public review and comment. The staff should ensure that it is clear to stakeholders how their input was considered in our processes so that their participation is maintained. In future efforts to risk-inform our regulations, the staff should incorporate lessons learned from the development of the spent fuel pool risk study on the most appropriate way to characterize and communicate to stakeholders any potentially conservative assumptions in its draft reports.
2. I believe that the schedule proposed by the staff is not aggressive enough in improving our decommissioning regulations, given the amount of information available from previous studies. For example, I do not believe it is sufficient for the staff to merely publish a technical document assessing the risks from spent fuel pools, without sharpening the discussion by identifying potential regulatory issues. Therefore, in parallel with the completion of the technical study, the staff should develop draft regulatory positions on the key issues and assumptions identified by the study. For example, the staff could propose that it would be acceptable for licensees to use a checklist to address the seismic characteristics of their plants, or to use a checklist to address the configuration and instrumentation of their plants to ensure that the assumptions and analyses in the technical study remain valid. I believe that the staff should publish these draft regulatory positions when the technical report is issued for public comment in January 2000.
3. I believe that the ACRS should review the technical document and stakeholder comments, and provide its views to the Commission. In addition, the staff should ensure that feedback received from stakeholders is provided to the Commission when the final technical report is issued.
4. I approve the development of a single, integrated, risk-informed decommissioning rule for emergency preparedness, insurance, safeguards, operator training and staffing, and backfit.
5. I also approve Option 2 of the paper to perform a comprehensive regulatory review of Title 10, and to identify appropriate regulatory modifications to properly reflect the differences between operating and decommissioning nuclear power plants. I believe that it is too early to select from the alternatives within Option 2, and the staff should provide its recommendation as part of the rulemaking plan.

Commissioner Diaz

I approve in part, and disapprove in part, the staff's proposal as discussed below:

1. I disapprove the staff's plan and schedule for the completion of the spent fuel pool risk assessment. This issue, and the zirconium fire scenario in particular, has been studied for years, and I believe that sufficient technical data exists to support making regulatory decisions now. As a matter of prudent public policy, additional delays in bringing this matter to closure are unacceptable. Further, at a briefing I received on this topic, I indicated that I found that the staff's preliminary generic analyses rely on unrealistic assumptions to develop bounding cases of risk and spent fuel heat up. Therefore, the ACRS, whose main purpose is to perform technical reviews of hazards of reactor facilities, should perform a technical review of the validity of the staff's preliminary generic analyses and provide a recommendation to the Commission within 30 days.
2. I approve the staff's proposal to develop an integrated rulemaking for decommissioning. However, since sufficient technical basis already exists to begin rulemaking, the rulemaking plan should be submitted to the Commission by the end of October, 1999.
3. I approve Option 2 of the initiative for improving nuclear power plant decommissioning regulations including the decommissioning regulatory review, i.e., phase 1 of the staff's plan. However, I believe it is premature to select which of the three alternatives presented would be the best approach for restructuring decommissioning requirements. Therefore, after completion of phase 1, the staff should obtain inputs from our stakeholders and present the Commission with a clearer plan of action that identifies the costs and benefits of the recommended course of action, and provides a comprehensive summary of the legal ramifications of the recommendation so that the Commission can make a fully informed decision in this matter.

Commissioner McGaffigan

I approve, in part, and disapprove, in part, the staff's recommendations in SECY-99-168, as discussed below:

1. I approve the staff's plan and schedule for the completion of the spent fuel pool risk assessment. In my view, there is much work to be done. While I support the role of appropriate conservatism and margins in ensuring public health and safety, unnecessary conservatism creates unreasonable burdens which can divert resources from more safety important activities and can also erode agency credibility. One potential example of the latter was the terming of a loss of offsite power as one of several "credible initiators." Such a power loss would need to last a week and fail to be mitigated by establishing temporary power or even by simply pouring more water into the spent fuel pool from any number of potential sources. Public meetings between the staff and stakeholders after SECY-99-168 was submitted to the Commission reinforced my concerns in these areas. Nonetheless, I commend the staff for their willingness to meet with stakeholders and their apparent flexibility to solicit information to make their analyses more realistic.
2. I approve the development of a single, integrated, risk-informed decommissioning rule for emergency preparedness, insurance, safeguards, operator training and staffing, and backfit. The staff should take into account comments from our stakeholders during the November 8 Commission meeting and ensure that all realistic scenarios for offsite consequences are appropriately considered during the rulemaking process. At that same Commission meeting, the issue of whether the proposed integrated decommissioning rule would be voluntary (and therefore not subject to backfit) or mandatory (and subject to backfit) came up. This issue needs to be thoroughly discussed with stakeholders and resolved prior to the submission of the rulemaking plan next May. Additionally, the staff should ensure that the agency's regulatory activities in the area of safeguards and threat analysis are fully integrated and considered in the rulemaking plan and schedule.
3. I approve Option 2 of the decommissioning regulatory improvements initiative. However, it may be too early to select an alternative within Option 2, although I would lean toward the staff's preferred Alternative 2. Upon completion of Phase 1, the staff should recommend a course of action to the Commission, considering stakeholder views. I remind the staff that, through a drafting error in a previous rulemaking, there are no fitness for duty requirements for permanently shutdown plants. I would hope early consideration will be given to whether there is any need for scaled-back fitness for duty rules for decommissioning plants.
4. The staff should proceed expeditiously with these activities, adhering closely to the proposed deadlines or, if possible, beating them. The staff should notify the Commission immediately of any unexpected obstacles or delays.

#### Commissioner Merrifield

I approve in part, and disapprove in part, the staff's proposal as discussed below:

1. With significant apprehension, I approve the plan and schedule for completion of the spent fuel pool risk assessment. At this late stage of the process, I believe it would be counterproductive to not finish the assessment and subsequent report. The NRC has been dealing with this issue for several years. It is clear to me that our past efforts associated with the preliminary generic analysis relied on unrealistic assumptions. While I am hopeful that the Technical Working Group (TWG) will improve on our previous efforts and provide a sound and realistic technical basis on spent fuel pool accident risk, I believe the Commission could benefit from an independent technical review of the report. Thus, I believe the ACRS should review and comment on the draft TWG report prior to its release in January 2000 and on the final report prior to its release in April 2000. I am particularly interested in the ACRS's perspective on the assumptions used in the staff's analysis.
2. I approve the staff's proposal to develop an integrated, risk-informed rulemaking for decommissioning. However, I believe that the staff can improve upon its schedule associated with the rulemaking plan and the subsequent rulemaking activities. Currently, the staff intends to submit an integrated rulemaking **plan** by May 31, 2000. I find it difficult to understand why such a plan cannot be rolled out with the final technical report in April. I have heard the argument that there is no urgency associated with this rulemaking given the lack of new plants projected to enter the decommissioning arena in the coming years. I find this argument less than satisfying as it reflects a willingness to accept a regulatory framework that lacks clarity, predictability, and discipline. I am not willing to accept such a framework. Thus, I believe the staff should establish a more aggressive schedule for the integrated rulemaking and not be constrained by its current "series" approach.
3. I approve Option 2 of the initiative for improving nuclear power plant decommissioning regulations including the comprehensive decommissioning regulatory review (Phase 1). I join Commissioner Diaz in believing it is premature to select which of the three alternatives presented would be the best approach for "restructuring" decommissioning requirements. After the staff completes the comprehensive decommissioning regulatory review, it should solicit feedback from stakeholders on potential alternatives. The staff should then provide the Commission with a proposal which clearly lays out the advantages and disadvantages of the alternatives considered, the resources that would be needed to carry out the alternatives, and the projected schedules.

I am looking forward to the upcoming Commission meeting on improving decommissioning regulations. I believe it will serve as an excellent forum to discuss current stakeholder concerns pertaining to the staff's ongoing risk assessment as well as issues with broader policy implications. Since SECY-99-168 simply lays out a **process** by which our decommissioning regulations can be improved, I was not inclined to hold my vote until after the meeting. I am confident that stakeholder insights from that meeting can be effectively utilized by the staff regardless of the **process** approved by the Commission in SECY-99-168.

The area of decommissioning regulations is clearly one which warrants extensive communication and interaction with a wide range of stakeholders, good coordination between NRR and NMSS, and close oversight by the Commission. As the staff proceeds with its efforts in this area, they should keep the Commission informed of matters which may warrant our attention.