

October 1, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-220

TITLE: PROPOSED RULE -- CLARIFICATION OF REGULATIONS AND GUIDANCE TO EXPLICITLY LIMIT WHICH TYPES OF APPLICATIONS MUST INCLUDE ANTITRUST INFORMATION; DISPOSITION OF WOLF CREEK ANTITRUST LICENSE CONDITIONS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 1, 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 October 1, 1999.

Andrew L. Bates
Acting Secretary of the Commission

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

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

VOTING SUMMARY - SECY-99-220

RECORDED VOTES

Table with 7 columns: Name, APRVD, DISAPRVD, ABSTAIN, NOT PARTICIP, COMMENTS, DATE. Rows include COMR. DICUS, COMR. DIAZ, COMR. McGAFFIGAN, and COMR. MERRIFIELD.

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on October 1, 1999.

Commissioner Comments on SECY-99-220

Commissioner McGaffigan

This Federal Register notice makes a sometimes difficult subject clear, and makes a persuasive case for the Commission's position. I would add only two footnotes, to clarify the implications of the Commission's position for combined licenses issued under Part 52. I would also change slightly two related sentences in the draft SRP. They appear to have been written before the Energy Policy Act of 1992 established that the operating license issued with a

construction permit under Part 52 was a true operating license. Before that revision, the agency's legal position had been that the "authorization to operate" after construction was complete under the combined license was the "real" operating license. The SRP continues to speak in that vein, referring to an "OL stage" under Part 52. The second of the two sentences is, moreover, wrong to say that there will be more antitrust review at the "OL stage" under a combined license. My revisions of these sentences are attached.

Add to page 17 of the draft FRN, at the end of first, incomplete, paragraph, the following footnote:

"The same principle holds in the context of Part 52 of the Commission's regulations. Under that Part, the operating license is issued simultaneously with the construction permit in a combined license. The application for the combined license is subject to the agency's antitrust review, but antitrust reviews of post-combined license transfer applications are not authorized or, if authorized are not required and not warranted."

Add to page 17 of the draft FRN, at the end of 1st sentence of the first full paragraph, the following footnote:

"The paragraph speaks only to the historically typical case in which a construction permit (CP) is issued first, and then years later an operating license (OL). Under Part 52, the CP and OL are issued simultaneously, and the antitrust review is done before issuance. Thus, there could be no direct transfer of the facility CP before issuance of the initial OL."