

January 17, 2001

COMMISSION VOTING RECORD

DECISION SECY-00-0210

ITEM:

TITLE: DENIAL OF PETITION (PRM 51-7) FOR RULEMAKING TO DELETE THE REQUIREMENT FROM 10 CFR PART 51 TO CONSIDER SEVERE ACCIDENT MITIGATION ALTERNATIVES IN OPERATING LICENSE RENEWAL REVIEWS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum ([SRM](#)) of January 17, 2001.

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

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

VOTING SUMMARY - SECY-00-0210

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	1/2/01
COMR. DICUS	X					12/12/00
COMR. DIAZ	X				X	12/20/00
COMR. McGAFFIGAN	X				X	10/31/00
COMR. MERRIFIELD	X					12/26/00

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 January 17, 2001.

Commissioner Comments on SECY-00-0210

Chairman Meserve

I approve the staff's recommendation to deny the petition for rulemaking, subject to the attached edits to the Federal Register notice and subject to the editorial suggestions proposed by Commissioners Diaz and McGaffigan.

The staff's analysis may serve to conflate two separable arguments that are advanced by the petitioner. First, the petitioner cites a line of federal cases holding that there is no need to evaluate environmental impacts if the proposed federal action

does not change the *status quo*. The notice serves to distinguish these cases on the basis that license renewal in fact represents a change of the *status quo* in the sense that, if granted, license renewal will allow the perpetuation of the environmental impacts of operation for an additional period. The staff's analysis is supported by the case law. See *Confederated Tribes and Bands of the Yakima Indian Nation v. FERC*, 746 F.2d 466, 476-77 (9th Cir. 1984), cert. denied, 471 U.S. 1116 (1985).

Second, the petitioner emphasizes that the substantive decision to be made under Part 54 does not include evaluation of Severe Accident Mitigation Alternatives (SAMAs) and that, as a result, the scope of the NEPA review should be similarly limited. However, neither the petitioner nor the staff cite any federal cases that specifically address whether a federal agency's decision criteria can circumscribe the scope of the impacts that must be evaluated in the EIS. Staff does note that EISs customarily encompass environmental impacts that extend far beyond the substantive decision criteria. And this approach seems consistent with the philosophy that EISs should provide a thorough review of environmental consequences and should facilitate broad dissemination of environmental information, but do not require particular results. See, e.g., *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348-51 (1989). A narrowing of the scope of an EIS to just those substantive matters that are encompassed by the decision criteria would arguably confine the environmental analysis too narrowly. See *Limerick Ecology Action v. NRC*, 869 F.2d 719, 730-31 (3d Cir. 1989).

The staff observes that, although the potential for a severe accident is quite low, we cannot conclude at this time that the risk is so remote and speculative as to provide a foundation for a generic decision to eliminate SAMAs from consideration under NEPA. The staff reports that, while the Commission has undertaken significant research in the area of severe accidents for individual plants (the IPE and IPEEE program), additional resources would be necessary to extrapolate the insights we have gained to provide a foundation for such a generic determination. While I accept the staff's conclusion, I believe the staff should look for ways to use the information it has already gathered through the IPE and IPEEE program, as well as other risk-informed activities, to streamline and expedite the plant-specific consideration of SAMAs. Further, if new information indicates that a generic determination concerning SAMAs is feasible, the staff should promptly notify the Commission.

Commissioner Diaz

I approve the staff's recommendation to publish the Notice of Denial of Rulemaking Petition in the *Federal Register* and to issue the letter of denial to the petitioner.

Severe accident mitigation alternatives (SAMAs) are not specifically addressed in [10 CFR 54](#) (Requirements for Renewal of Operating Licenses for Nuclear Power Plants); however, I believe it is prudent for the Commission to fulfill its responsibility under the National Environmental Policy Act (NEPA) and consider the potential environmental impacts resulting from the continued operation of a nuclear power plant. Since we can not conclude generically that all severe accidents are remote and speculative, SAMAs should be considered as required in 51.53(c)(3)(ii)(L). I agree with the staff's analysis and reasons for denying the petition. I also note that in its letter dated November 15, 2000, "License Renewal Guidance Documents," the ACRS recommended that "[t]he Severe Accident Management guidelines should be identified as a potential source of information...to confirm that equipment important to safety has not been omitted inadvertently in the scoping process."

I recommend the following insertion at the end of the first full paragraph on page 19 of the draft *Federal Register* notice to prevent or minimize potential misunderstanding of the conclusions regarding consideration of remote and speculative impacts: "This position does not alter the conclusion that, in light of margins of safety and defense-in-depth, the likelihood of radiological offsite consequences is small."

Consistent with NRC's risk-informed regulatory initiatives, I encourage the staff to complete its review of IPEEE submittals on a timely basis and to assess if new information would make it feasible to reclassify severe accidents as a Category 1 issue. Results from this assessment should be forwarded to the Commission for consideration of possible rulemaking activity.

Commissioner McGaffigan

I support the staff recommendation to deny this petition for rulemaking, subject to the attached edits to the Federal Register notice. I find the legal analysis in the Federal Register notice compelling. But I also note that the Severe Accident Mitigation Alternative (SAMA) reviews for both the Calvert Cliffs and Arkansas Nuclear One Unit 1 plants have identified several cost-beneficial enhancements for the licensee to pursue. In the Calvert Cliffs case the licensee has committed to pursuing enhancements to reduce its core damage frequency.

I do not believe that severe accidents are a "remote and speculative risk" and thus qualify for elimination from NRC's NEPA reviews. Licensees have used probabilistic risk assessment methodologies to calculate core damage frequencies and large early release frequencies for the 103 operating reactors. While I regard these numbers as approximations with wide uncertainties, the calculated numbers do not lend themselves to a conclusion that severe accidents are remote and speculative. We have had one such accident (Three Mile Island Unit 2) in about 2400 reactor years of commercial light water reactor operation in this country. While NRC has certainly improved its regulatory framework since then and industry by almost every measure has improved its safety performance since then, we can hardly claim to have eliminated the risk. We take the small risk of such an accident very seriously and both we and industry strive to prevent it. Our best chance of preventing another severe accident in this country is never to regard such an accident as an "incredible" event. When regulators and their regulated industry begin to believe accidents are incredible, history teaches that they become more likely.

Perhaps one day we will have nuclear reactor designs so safe that severe accidents will be remote and speculative and their

consequences nihil, but that is not the case we have today in renewing the licenses of the current generation of reactors.