

February 21, 2002

COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0002

TITLE: REVISION OF GASEOUS DIFFUSION PLANT
RECERTIFICATION STANDARD REVIEW PLAN
CHAPTER ON FOREIGN OWNERSHIP AND
FINANCIAL REQUIREMENTS

The Commission (with all Commissioners agreeing) approved Option 2 of the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 21, 2002.

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

Annette L. 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-02-0002

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. MESERVE	X					1/31/02
COMR. DICUS	X					2/4/02
COMR. DIAZ	X					2/7/02
COMR. McGAFFIGAN	X					2/8/02
COMR. MERRIFIELD	X					1/29/02

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved Option 2 - Financial Aspects of Health and Safety Review, 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 February 21, 2002.

Commissioner Comments on SECY-02-0002

Chairman Meserve

SECY-02-0002 provides options for revising the Standard Review Plan (SRP) for recertification of Gaseous Diffusion Plants (GDPs) as a means of fulfilling our obligations under §193(f) of the Atomic Energy Act of 1954, as amended.¹ All the options provided by the staff appropriately incorporate the threshold for a “reliable and economical” review (i.e., at the time of change of ownership) that was specified by the Commission in its letter to Congressman Bliley on September 11, 2000. At issue is whether and to what extent the NRC will conduct a financial review at the time of certificate transfer.

The Commission has expressed views on the nature of the obligation arising from §193(f) in the letter to Congressman Bliley. But, in my view, the letter to Congressman Bliley is not constraining. The letter did observe that the statutory requirement for the Commission to consider the maintenance of a reliable and economical domestic source of enrichment services was “principally directed” to the possibility of foreign entities gaining control of domestic enrichment services.² This construction of the statutory obligation might suggest that economic considerations can be ignored in the event of a certificate transfer so long as an ownership review is undertaken.

The letter to Congressman Bliley went on to state, however, that, even if the reliable and economical assessment were construed more broadly, there was little that the Commission could do to ensure financial viability in the context then presented. The letter observed that an NRC action to suspend or revoke an existing certificate on the basis of deteriorating financial conditions would aggravate the economic circumstances, which would not serve the postulated statutory purpose. This second argument, although justifying the refusal to consider USEC’s financial circumstances at the time of the letter to Congressman Bliley, would not justify ignoring financial considerations at the time of a certificate transfer. The reason is that, in the context of a certificate transfer, the Commission can condition a transfer on the existence of adequate financial resources to maintain the safety and security of the facility.

I conclude that the letter to Congressman Bliley does not require the conclusion that financial considerations should be entirely disregarded in a transfer context. Indeed, I believe the wiser course is to consider such matters. I note that the Commission routinely considers financial information in the context of license transfers of reactors in recognition of the fact that financial capacity does bear to some degree on continuing safe performance. See 10 C.F.R. § 50.80(b). We also consider financial qualifications in the context of part 70 license applications. See 10 C.F.R. § 70.23(a)(5). It would be anomalous to consider financial matters in the context of transfers of reactor licenses or licenses for special nuclear material, but not to consider them in the context of transfers of certificates for GDPs.

¹ Under §193(f)(2)(B) NRC is to consider whether issuance of a certificate of compliance for GDPs “would be inimical to . . . [t]he maintenance of a reliable and economical domestic source of enrichment services” before issuing a certificate

² This view was reiterated in the November 14, 2001, Commission decision in U.S. Enrichment Corp. (Paducah, Kentucky), CLI-01-23.

I also would note that, when the SRP was originally drafted and when the staff conducted its initial review of the privatization of USEC, it was commonly accepted that some level of financial scrutiny was required. I am not aware of any objections from USEC, the other Federal agencies involved, or Congress to this approach. Nor am I aware of any subsequent information that would lead me to conclude that some level of review is not warranted at the time of certificate transfer or change in ownership. Based on these considerations, I believe that some level of financial review should be retained in the SRP in the context of certificate transfers of GDPs.

I do not believe that the level of specificity and detail in the existing SRP is necessary for this task (Option 1). Accordingly, I approve Option 2 in SECY-02-0002; this would require a review at a level comparable to those required under 10 C.F.R. Part 70. The financial review would remain an adjunct to the reviews of foreign ownership and common defense and security that are now specified in the SRP.

Commissioner Dicus

I believe that from the perspective of regulating public health and safety and protection of the environment, Option 2 provides the most appropriate choice for initiating and conducting the reliable and economical reviews for changes in ownership or control. Option 2 would focus staff's review on the adequacy of the applicant's and/or licensee's financial qualifications from the perspective of ensuring that licensed activities could be implemented and conducted in accordance with 10 CFR Part 70 safety and health requirements, further ensuring that the U.S. domestic enrichment capability would not be undermined. Since future uranium enrichment licensing activities will be conducted in accordance with the regulations contained in 10 CFR Part 70, including review of the applicants financial qualifications, I believe that Option 2 would integrate and incorporate this consistency into the 10 CFR Part 76 standard review plan guidance.

Commissioner Diaz

Approved with comment. I approve option 2. It appears to represent an efficient approach to making the "reliable and economic" determination and to be most consistent with the Commission's traditional and fundamental responsibility to provide reasonable assurance of public health and safety.

Commissioner McGaffigan

I vote to approve Option 2, with a slight modification: the financial qualifications review described in Option 2 should be incorporated into a separate chapter of the standard review plan that will be applied only upon transfer of a certificate, and should not be included in Chapter 16, as currently described in Option 2.

I agree with all other Commissioners' votes that it is desirable to do the Part 70-type financial qualifications review upon a certificate transfer. However, we can do this review in the Part 76 context for the same reasons that it is done under Part 70: as part of our health and safety oversight, and as implementation of our authority to approve the transfer. It does not

seem necessary or helpful to tie this “health and safety” financial qualifications review to the section 193(f) “inimical to the maintenance of a reliable and economical domestic source of enrichment services.”

If we were to adopt the financial qualifications review under the rubric of section 193(f), we might still be vulnerable to questions about when the review should be performed. The statute requires USEC to apply for a certificate of compliance at least every 5 years, and section 193(f) says that no certificate may be issued to USEC if the Commission determines any of the section 193(f) criteria to have been met. Therefore it might appear that this financial qualifications test would have to be applied to USEC itself upon certificate renewal.

Furthermore, without some further explanation or rationale, tying the “reliable and economical” criterion to any sort of financial review could be seen as essentially abandoning our interpretation that the legislative history indicates that the provision “is principally directed to the possibility of foreign entities gaining control and undermining U.S. domestic enrichment capabilities in the privatized USEC.” However, if the financial qualifications review is placed elsewhere in the SRP, then consistent with our earlier interpretation, section 16.4.3 of the SRP, Reliable and Economical Source of Enrichment Services, could indicate that the foreign ownership, control or domination review also satisfies this criterion.

Commissioner Merrifield

I approve option 2 as described in SECY-02-0002 concerning revising the standard review plan chapter on foreign ownership and financial requirements for the gaseous diffusion plants. A foreign ownership and financial review should be done only under conditions of a change in ownership or control and should be done consistent with the manner such reviews are done for larger material licensees.