



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 2, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0170

TITLE: PROPOSED AGREEMENT BETWEEN THE STATE OF MINNESOTA AND THE COMMISSION PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 2, 2005.

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

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
EDO  
PDR

SECY NOTE: THIS VOTING RECORD WILL BE RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE GOVERNOR AND PUBLICATION OF THE *FEDERAL REGISTER* NOTICE.

VOTING SUMMARY - SECY-05-0170

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	10/18/05
COMR. McGAFFIGAN	X				X	10/26/05
COMR. MERRIFIELD	X				X	10/17/05
COMR. JACZKO	X				X	10/24/05
COMR. LYONS	X				X	10/12/05

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 November 2, 2005.

SECY NOTE: THIS VOTING RECORD WILL BE RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE GOVERNOR AND PUBLICATION OF THE *FEDERAL REGISTER* NOTICE.

NOTATION VOTE  
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: CHAIRMAN DIAZ  
SUBJECT: **SECY-05-0170 - PROPOSED AGREEMENT  
BETWEEN THE STATE OF MINNESOTA AND  
THE COMMISSION PURSUANT TO SECTION  
274 OF THE ATOMIC ENERGY ACT OF 1954,  
AS AMENDED**

Approved  *LD* Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_  
with comment  
Not Participating \_\_\_\_\_

COMMENTS:

*hiffelid*  
\_\_\_\_\_  
SIGNATURE  
*10-18-05*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

## Chairman Diaz's Comments on SECY-05-0170

I approve the staff's recommendation to proceed with processing the State of Minnesota agreement application pursuant to Section 274 (b) of the Atomic Energy Act of 1954, as amended. While I understand the concerns expressed by the Team Leader, I believe that the staff's recommendation is sound and appropriate. In addition, I support Commissioner Merrifield in requesting that the General Counsel prepare an options paper for the Commission's consideration on possible approaches to the handling of preemption issues.

NOTATION VOTE

RESPONSE SHEET

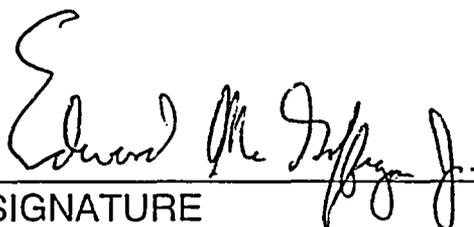
TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MCGAFFIGAN  
SUBJECT: **SECY-05-0170 - PROPOSED AGREEMENT  
BETWEEN THE STATE OF MINNESOTA AND  
THE COMMISSION PURSUANT TO SECTION  
274 OF THE ATOMIC ENERGY ACT OF 1954,  
AS AMENDED**

Approved   X  <sup>w/comments</sup> Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

  
\_\_\_\_\_  
SIGNATURE  
October 26, 2003  
\_\_\_\_\_  
DATE

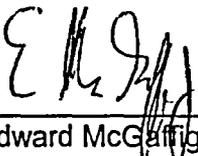
Entered on "STARS" Yes   X   No \_\_\_\_\_

Commissioner McGaffigan's Comments on SECY-05-0170

Somewhat reluctantly, I approve the staff's recommendation to complete processing of the Minnesota Agreement application. I am concerned with the preemption issues that were included in this paper and I commend the Team Leader for raising them. I believe these concerns were insightful and significant enough to be raised. I also want to commend the staff for putting together a paper which included the Team Leader's concerns. This allows the Commission to make informed decisions on these important issues.

I agree with Commissioner Jaczko that NRC's authority is clear, and I too am a strong believer in preserving our authority. NRC has spent significant resources over the last few years ensuring that other agencies do not encroach into our jurisdiction and attempt to apply inappropriate security requirements on our licensees. In the decommissioning area, we have expended a great deal of time and effort working with EPA to reduce dual regulation. This case should not be any different.

The staff should work with Minnesota, and any other State where we are aware of preemption issues, and try to resolve the issues. I look forward to the options paper requested from OGC by Commissioner Merrifield on possible methods to address this issue.

  
Edward McGaffigan, Jr.                      10/26/05  
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MERRIFIELD  
SUBJECT: **SECY-05-0170 - PROPOSED AGREEMENT  
BETWEEN THE STATE OF MINNESOTA AND  
THE COMMISSION PURSUANT TO SECTION  
274 OF THE ATOMIC ENERGY ACT OF 1954,  
AS AMENDED**

Approved  Disapproved  Abstain

Not Participating

COMMENTS:

*See attached comments and minor edits.*

  
\_\_\_\_\_  
SIGNATURE

*10/17/05*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

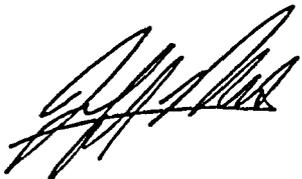
Commissioner Merrifield's comments on SECY-05-0170:

I approve the staff's recommendation to proceed with the processing of the proposed Agreement with the State of Minnesota pursuant to Section 274b. of the Atomic Energy Act of 1954, as amended, subject to the following comments:

It is anticipated that NRC will be issuing orders to certain Minnesota licensees on increasing control of sources prior to Minnesota becoming an Agreement State. The paper is silent on Minnesota's ability and willingness to inspect and enforce the requirements that implement these additional controls if Minnesota is to become an Agreement State. The staff should seek assurances from Minnesota similar to those requested of the other Agreement States prior to finalizing this Agreement.

I understand the concern raised by the Team Leader. While I do not believe that this issue affects the proposed Agreement with the State of Minnesota, I would like to see the Commission take a more aggressive posture in challenging State actions on preemption issues. I also agree with the Office of the Inspector General that a formal written policy on how the agency will address possible preemption issues is necessary. To this end, I would request that the General Counsel prepare an options paper for the Commission's consideration on possible approaches to the handling of preemption issues, including the resource implications for the implementation of any new agency policy.

I offer the attached minor edits to the Draft Staff Assessment.

 10/17/05

- 3. Uniformity of Radiation Standards.** It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Minnesota, by statute, must promulgate and enforce rules for the regulation of byproduct, source, and special nuclear material that are in accordance with Section 274 of the Act, as amended. The State has adopted a rule compatible with 10 CFR Part 20. The staff review verified that the Minnesota rules' technical definitions and terminology; units of measurement and dose; and permissible doses, levels of radiation and concentrations of radioactivity are consistent with those in NRC regulations.

Minnesota has applied a 0.054 millirem/year radiation dose standard to the Prairie Island ISFSI facility, which is discussed in the staff's analysis of Criterion 2, above. For the reasons stated there, the NRC staff is satisfied that this radiation dose standard will not affect regulation of material under the proposed Agreement.

In addition, the staff review further noted that Mn. Stat. 116C.71 contains definitions different from the NRC definitions with respect to the terms "Byproduct Material," "Disposal," "High Level Waste," "Radiation," and "Radioactive Waste." However, the statute states that these definitions are applicable only for the purposes of sections 116C.71 to 116C.74 of the Minnesota Statutes, which do not relate to the MDH, the State agency responsible for carrying out the proposed Agreement, or to the regulation of materials under which Minnesota is seeking authority under this Agreement. MDH's regulations, which do apply to agreement material, contain definitions of these terms compatible with those of the Commission. In addition, RCU has in writing assured the staff that it will not apply the definitions in Mn. St. 116C.71 to the regulation of agreement material, and will inform other Minnesota State agencies of the need to conform the statutory definitions to the NRC definitions. Therefore, the staff is satisfied that the Minnesota Program provides for the uniformity of radiation standards and definitions.

Therefore, the staff concludes that this criterion is satisfied.

References: Letter dated July 6, 2004, from Governor Pawlenty to Chairman Diaz, request for an Agreement, Section 4.1.1 and Section 4.1.2, and additional related correspondence between the NRC and the State (ADAMS: ML041960496, ML041960499, ML052440344, ML050130375, ML050140452, ML051330043, ML051740384, ML051650073, ML0522004240), and the Section 4.1.1 reference to Internet site: <http://www.revisor.leg.state.mn.us/stats>. (At this Internet site see the following Mn. Stats. 115.069, 116C.705 through 116C.83, 216B.1691, 216B.243, 216B.2421 through 216B.2423, and Minnesota Regulations 4410.4300 and 4410.4400) and history of law at: <http://www.leg.state.mn.us/rl/issues/prairieisland.asp>.) In addition, see Minnesota documents at: <http://www.me3.org/issues/nuclear/eqbnukes1.html> <http://www.me3.org/issues/nuclear/eqbnukes2.html>

adequate and compatible set of radiation protection regulations which apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass.

Minnesota does have additional statutes, identified in the staff's review, which are not part of its program for the regulation of agreement materials but which potentially intrude upon areas reserved to the NRC. Whether or not these Minnesota statutes are preempted by Federal law, they concern areas over which Minnesota is not seeking authority as part of this Agreement, and the staff is satisfied that these statutes will not affect Minnesota's regulation of agreement material. The staff view is that these statutes are outside the scope of the Agreement and therefore, not within the scope of inquiry as to this criterion.

The staff has, however, considered these statutes and program elements in making its determination as to this criterion. For example, a radiation dose standard of 0.054 millirem/year for the Prairie Island Nuclear Power Plant (Prairie Island) independent spent fuel storage installation (ISFSI) appears to have been agreed upon as the result of a negotiation between the State of Minnesota and the licensee and was memorialized in an order by the Minnesota Public Utility Commission (MPUC). In December 2004, NRC initiated discussions with the MDH regarding the radiation dose standard at the Prairie Island ISFSI and a potential similar radiation dose standard at the proposed Monticello Nuclear Power Plant (Monticello) ISFSI. When the MDH became aware of NRC's concerns with respect to the proposed Monticello ISFSI, they interacted with the Minnesota Environmental Quality Board (MEQB). MDH informed the MEQB that radiation dose standards at the proposed Monticello ISFSI would be reserved to the NRC. Based on this information, the MEQB revised the Environmental Impact Statement Scoping Decision to reflect NRC's jurisdiction at the ISFSI. The Monticello Decision provides that Federal regulations preempt State regulation of radiological health and safety standards applicable to nuclear power plants and ISFSIs. This effort by the MDH iterates a proactive approach with respect to assuring that preemption issues are dealt with in an acceptable manner. Therefore, the staff is satisfied that Minnesota will not regulate in areas reserved to the NRC in matters concerning or affecting the proposed Agreement or materials regulated under the Agreement.

Therefore, the staff concludes that this criterion is satisfied.

References: Letter dated July 6, 2004, from Governor Pawlenty to Chairman Diaz, request for an Agreement, Section 4.1.1 and Section 4.1.2, and additional related correspondence between the NRC and the State (ADAMS: ML041960496, ML041960499, ML052440344, ML050130375, ML050140452, ML051330043, ML051740384, ML051650073, ML0522004240), and the Section 4.1.1 reference to Internet site: <http://www.revisor.leg.state.mn.us/stats> . (At this Internet site see the following Mn. Stats.115.069,116C.705 through 116C.83, 216B.1691, 216B.243, 216B.2421 through 216B.2423, and Minnesota Regulations 4410.4300 and 4410.4400) and history of law at: <http://www.leg.state.mn.us/lrl/issues/prairieisland.asp>.) In addition, see Minnesota documents at: <http://www.me3.org/issues/nuclear/eqbnukes1.html>  
<http://www.me3.org/issues/nuclear/eqbnukes2.html>  
<http://www.me3.org/issues/nuclear/eqbnukes3.html>  
<http://www.leg.state.mn.us/lrl/issues/prairieisland.asp>  
<http://www.puc.state.mn.us/docs/orders/04-0001.pdf>  
<http://www.house.leg.state.mn.us/hrd/pubs/nucwaste.pdf>  
[http://www.puc.state.mn.us/docs/briefing\\_papers/b05-0022.pdf](http://www.puc.state.mn.us/docs/briefing_papers/b05-0022.pdf)

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: **SECY-05-0170 - PROPOSED AGREEMENT  
BETWEEN THE STATE OF MINNESOTA AND  
THE COMMISSION PURSUANT TO SECTION  
274 OF THE ATOMIC ENERGY ACT OF 1954,  
AS AMENDED**

Approved  Disapproved  Abstain

Not Participating

COMMENTS: SEE ATTACHED COMMENTS

  
\_\_\_\_\_  
SIGNATURE  
10/24/05  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

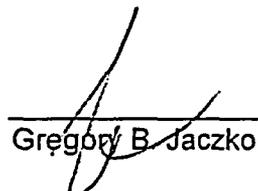
Commissioner Jaczko's Comments on SECY-05-0170  
Proposed Agreement Between the State of Minnesota and the Commission  
Pursuant to Section 274 of the Atomic Energy Act of 1954, as amended

I approve of the staff recommendation to complete processing of the Minnesota Agreement application in accordance with Section 274(b) of the Atomic Energy Act (AEA) of 1954, as amended.

Only the NRC has the authority and responsibility under the AEA to regulate nuclear power reactor operations, and I am a firm believer in preserving the authorities of the agency. Therefore, the State of Minnesota should not be setting standards for exposure levels at independent spent fuel storage installations located at nuclear power facilities. I applaud the staff for bringing this difficult issue to the attention of the Commission because of the potential policy questions it raises.

The Agency's mission, however, is to protect the public health and safety. Minnesota's actions to create a more restrictive standard in no way threatens that mission. The NRC has set the precedent that when a democratically elected state government decides its citizens demand additional preventive measures be taken against radiological hazards, and the involved parties do not object, the NRC does not pro-actively work to undermine that effort.

Therefore, my concerns about the State's actions do not rise to a level that would prevent me from endorsing Minnesota's request for agreement state status.

  
\_\_\_\_\_  
Gregory B. Jaczko

1/3/2005  
\_\_\_\_\_  
Date

NOTATION VOTE  
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER LYONS  
SUBJECT: **SECY-05-0170 - PROPOSED AGREEMENT  
BETWEEN THE STATE OF MINNESOTA AND  
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AS AMENDED**

Approved   X   Disapproved        Abstain       

Not Participating       

COMMENTS:

See attached comments.

  
\_\_\_\_\_  
SIGNATURE  
  
10/12/05  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes   ✓   No

Comments From Commissioner Lyons on SECY-05-0170

I approve the staff recommendations in SECY-05-0170 concerning the proposed agreement between the State of Minnesota and the Commission pursuant to Section 274 of the Atomic Energy Act of 1954, as amended.

I agree with the staff that the Minnesota request is consistent with the provisions of the Atomic Energy Act and meets NRC criteria for entering into an agreement with NRC. The staff has determined that there are no safety, security or compatibility issues or concerns presented by the Minnesota statutes and regulations.

I am aware that Minnesota may have statutes and regulations that could potentially intrude into areas reserved to the Commission. These state statutes and regulations, however, do not concern areas over which Minnesota is seeking authority as part of the agreement with NRC. In this regard, I believe that the staff is correct that a finding of compatibility of a State's program with NRC's program is a matter separate from possible Federal preemption issues. In addition, nothing in the proposed agreement with Minnesota precludes the staff from addressing possible preemption issues should it wish to do so in the future.

  
10/12/05