



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

March 14, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0035

TITLE: PROCESS FOR RELEASING NON-IMPACTED AREAS OF
THE WESTERN NEW YORK SERVICE CENTER BEFORE
THE COMPLETION OF SITE DECOMMISSIONING

The Commission (with Chairman Diaz and Commissioners Merrifield and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of March 14, 2006. Commissioners McGaffigan and Jaczko disapproved this paper.

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", written over a horizontal line.

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

VOTING SUMMARY - SECY-06-0035

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X					2/27/06
COMR. McGAFFIGAN		X			X	2/28/06
COMR. MERRIFIELD	X				X	2/16/06
COMR. JACZKO		X			X	3/6/06
COMR. LYONS	X				X	3/2/06


COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioners Merrifield and Lyons approved the subject paper. Commissioners McGaffigan and Jaczko disapproved the paper. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on March 14, 2006.


NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-06-0035 - PROCESS FOR RELEASING
NON-IMPACTED AREAS OF THE WESTERN
NEW YORK SERVICE CENTER BEFORE THE
COMPLETION OF SITE DECOMMISSIONING**

Approved xx  Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:



SIGNATURE


DATE *

Entered on "STARS" Yes ___ No ___

* I originally voted by telecon on 2/27/06.

NOTATION VOTE

RESPONSE SHEET

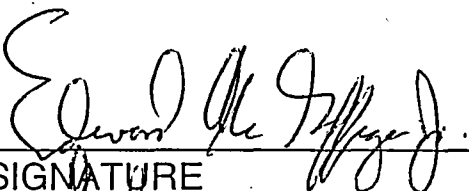
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0035 - PROCESS FOR RELEASING
NON-IMPACTED AREAS OF THE WESTERN
NEW YORK SERVICE CENTER BEFORE THE
COMPLETION OF SITE DECOMMISSIONING**

Approved _____ Disapproved ^{w/comments} Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE
February 28, 2006

DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-06-0035

I believe that this paper and the voting record on it needs to be made public. Nothing in it is sensitive as far as I am concerned.

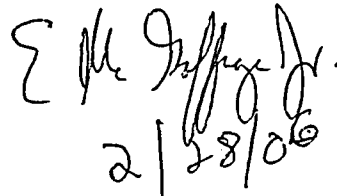
I am troubled that the staff has apparently not discussed this matter publicly in the vicinity of the West Valley site. I recognize that 10 CFR 50.83 does provide for public comment on the release approval request and for a public meeting in the vicinity of the site before acting on that request. But expanding the scope of 10 CFR 50.83 for non-impacted areas from power reactor licensee sites to include the West Valley site is something the public in the area of West Valley should have been given a chance to consider.

I suspect that the public may welcome the action, especially once they understand how rigorously we will ensure that non-impacted areas are truly non-impacted. The staff goes so far as to state that they do not plan to consider the release of "non-impacted areas in proximity to sources of radiation that might (emphasis added) be required to serve as a buffer zone for any residual radioactive material that remains onsite." That commitment coupled with the public notice and public comment provisions in 10 CFR 50.83 should reassure the public. That combined with NYSERDA's desire to pursue economic development opportunities in the truly non-impacted outlying regions of the site could well win broad public acceptance of this approach.

But because the staff has not gone through that process, I can not approve the staff's recommendation at this time. I hope to be able to approve it promptly after the staff holds a public meeting.

I have long ago learned that nothing at the West Valley site proceeds rapidly. It is, as ACNW recently noted, the most complex site in the NRC inventory of licensed sites (and by a large margin). We will best regulate this site by constantly adhering to the openness goal in our strategic plan. We need public confidence over a very long time frame at this site. Responding to NYSERDA's March 31, 2005, letter can wait for a few months until the staff returns to the Commission with the results of the public interaction on its proposal.

One final note. We only completed the 10 CFR 50.83 rulemaking three years ago. I am disappointed that we did not consider the West Valley issue at that time. NMSS should have been able to identify the potential need for early release of truly non-impacted portions of the West Valley site to NRR at that time. The rule could easily have accommodated that addition. I recognize now that it is not an efficient use of resources now to amend the rule for a single site, but it would have been much more efficient to deal with the issue then.


2/28/06

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0035 - PROCESS FOR RELEASING
NON-IMPACTED AREAS OF THE WESTERN
NEW YORK SERVICE CENTER BEFORE THE
COMPLETION OF SITE DECOMMISSIONING**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.



SIGNATURE

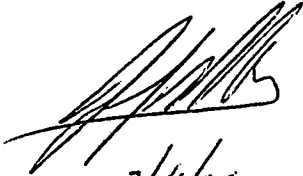
DATE

2/16/06

Entered on "STARS" Yes No

Comments from Commissioner Merrifield on SECY-06-0035:

I approve the staff recommended option 1 as described in SECY-06-0035. I am a strong proponent of returning our former sites to productive use as early as possible as long as such an action can occur in a manner which properly protects public health and safety. The process proposed by the staff not only achieves this objective but also does it in a manner which seeks appropriate public input.



2/16/06

NOTATION VOTE

RESPONSE SHEET

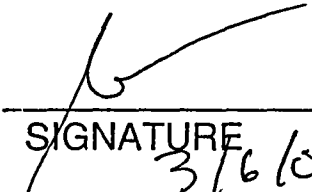
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: **SECY-06-0035 - PROCESS FOR RELEASING
NON-IMPACTED AREAS OF THE WESTERN
NEW YORK SERVICE CENTER BEFORE THE
COMPLETION OF SITE DECOMMISSIONING**

Approved _____ Disapproved x Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE
3/6/06

DATE

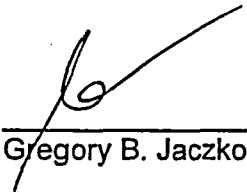
Entered on "STARS" Yes x No _____

**Commissioner Jaczko's Comments on SECY-06-0035
Process for Releasing Non-impacted Areas of the Western New York Service
Center Before Completion of Site Decommissioning**

I disapprove the staff recommendation for the Commission to approve the use of the 10 CFR 50.83 process to consider future requests for the release of non-impacted portions of the Western New York Nuclear Service Center during the period of DOE cleanup activities. I disapprove for the following two reasons: the staff has not provided a meaningful opportunity to engage the public in this process (as Commissioner McGaffigan noted in his vote), and the current licensee, the New York State Energy Research and Development Authority (NYSERDA), has not indicated which portions of the licensee land will be released.

The Commission will be involved in decommissioning this facility for many years. To be successful, the Commission should engage stakeholders about possible efforts to release portions of the site using 10 CFR 50.83, especially since 10 CFR 50.83 was not envisioned, during the recent rulemaking effort, to cover non-power reactor part 50 licensees. Because NYSERDA has not made the Commission aware of any specific plans for site development activities, I see no need to decide this issue without the benefit of stakeholder feedback. In the meantime, if NYSERDA requests the release of *specific* portions of the West Valley site, the Commission could consider reviewing each case separately.

In addition, the Commission should make this paper publicly available.



Gregory B. Jaczko

3/6/06

Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-06-0035 - PROCESS FOR RELEASING
NON-IMPACTED AREAS OF THE WESTERN
NEW YORK SERVICE CENTER BEFORE THE
COMPLETION OF SITE DECOMMISSIONING**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:



SIGNATURE
 3/2/06

DATE

Entered on "STARS" Yes Y No _____

Commissioner Lyons Comments on SECY-06-0035

I approve the Staff's recommendation to use the 10 CFR 50.83 process as described in Option 1 to consider future requests for the release of non-impacted portions of the Western New York Nuclear Service Center (Center) during the period of DOE cleanup activities. While I appreciate Commissioner McGaffigan's preference to publicly discuss the use of the 50.83 process before proceeding, I believe the Staff's recommendation is in keeping with NRC's goal of openness. In this respect, part of the recommendation specifies that the NRC would conduct a public meeting in the vicinity of the site in order to obtain public comment on the release of the property. Certainly, at that time, should the public identify unique concerns regarding the Center that cannot be adequately resolved using the 50.83 process alone, the staff will consider whether that process should be supplemented, if necessary.

Although 10 CFR 50.83 applies to licensees of operating and decommissioning power reactor plants, and not to a former reprocessing facility, such as the Center, I approve its use with respect to future release requests since no approved NRC process currently exists for releasing a portion of the Center prior to completion of the decommissioning process. By allowing the use of the process outlined in 10 CFR 50.83 for determinations on release of portions of the Center, the NRC can consider such requests pursuant to an established process. It seems from the SECY that the alternative would be to deny such requests until after the completion of decommissioning, and such a delay, which could take 5 to 10 years, does not appear to me to be merited, particularly where a process exists for its consideration.

Although the unique statutory and regulatory framework for decommissioning the Center might preclude release without NRC approval in this case, the 50.83 process may be enhanced as necessary, and it at least provides a means of determining the acceptability of release requests without waiting until the completion of decommissioning activities. Therefore, the 50.83 process may be supplemented, as necessary.

Peter Lyons
3/2/06