



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

SECRETARY

August 30, 2012

COMMISSION VOTING RECORD

DECISION ITEM: SECY-11-0163

TITLE: REPROCESSING RULEMAKING: DRAFT REGULATORY
BASIS AND PATH FORWARD

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 30, 2012.

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

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Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-11-0163

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIP | COMMENTS | DATE |
|-------------------|-------|----------|---------|-----------------|----------|---------|
| CHRM. MACFARLANE | X | X | | | X | 8/14/12 |
| COMR. SVINICKI | X | X | | | X | 4/16/12 |
| COMR. APOSTOLAKIS | X | X | | | X | 4/4/12 |
| COMR. MAGWOOD | X | X | | | X | 1/12/12 |
| COMR. OSTENDORFF | X | X | | | X | 2/29/12 |

NOTATION VOTE

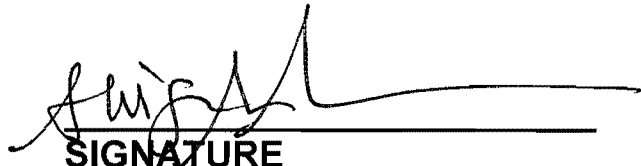
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Allison Macfarlane
SUBJECT: SECY-11-0163 – REPROCESSING RULEMAKING:
DRAFT REGULATORY BASIS AND PATH FORWARD

Approved X Disapproved X Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

8/14/12

DATE

Entered on "STARS" Yes X No

**Chairman Macfarlane's Comments on SECY-11-0163,
"Reprocessing Rulemaking: Draft Regulatory Basis and Path Forward"**

I approve in part and disapprove in part the staff's proposed path forward for the development of a regulatory framework for licensing and regulating a reprocessing facility. I thank Commissioner Magwood for recognizing the substantial policy decisions presented in SECY-11-0163 and for bringing this important issue to a vote. I agree with my fellow Commissioners that the staff should provide the Commission with a notation vote paper before action is completed on the regulatory basis and development of a reprocessing regulatory framework is pursued.

In reading through this paper and its attachment, it appears that there are numerous policy issues that the staff is contemplating, and in some cases the staff has formulated at least initial recommendations on how these policy issues should be resolved. It also appears to me that the staff has significant work yet to do to thoroughly analyze several important aspects of a facility, such as decommissioning funding, waste incidental to reprocessing, and land contamination as mentioned by Commissioner Ostendorff, but also including waste characterization, reprocessing-specific security issues, and nonproliferation issues. To provide enough information for the Commission to make an informed decision, the staff's paper should include an assessment of the current state of DOE and industry plans regarding reprocessing, the staff's proposed resolutions for the identified gaps and other issues identified as Commission policy decisions, and the staff should identify the resources and schedules for unresolved issue resolution. Further, I believe that this paper should be provided to the Commission prior to any further action is completed on the regulatory basis, so that the Commission will have the opportunity to provide direction and, as Commissioner Svinicki stated in her vote, "to avoid ... use of NRC's limited resources in this area on approaches the Commission is unlikely to support."

When the time is right – when we are confident we will receive an application to review – the agency will need to develop our regulatory infrastructure to be able to effectively complete such reviews, and we should be communicating with all of our stakeholders to determine the appropriate timeframe for such a resource-intensive effort. Current budget realities do not leave very much room for NRC to pursue large initiatives such as this. We should only embark on this effort if we are confident we will receive an application to review. This allows us to provide more predictability to the applicants as a whole, better resource planning for our staff, and ultimately more public confidence for those on whose behalf we regulate. As the Blue Ribbon Commission on America's Nuclear Future, along with many other experts, have stated, whether or not reprocessing of spent nuclear fuel is ever attempted in this country is an uncertain proposition. In any case, given the current economics of the nuclear fuel cycle, I do not believe reprocessing is imminent. Any effort on the part of the NRC to advance a rulemaking with so many open questions, solely for the purpose of putting in place a framework that would allow reprocessing would seem to me to be getting ahead of Congress and the Administration, and would not be an efficient and effective way to spend NRC's resources at this time. The staff should not expend any resources until we have a clearer vision of the direction of national policy on the disposition of fuel, and hopefully, the ability to expand rulemaking resources.


Allison M. Macfarlane
8/14/12
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-11-0163 – REPROCESSING RULEMAKING:
DRAFT REGULATORY BASIS AND PATH FORWARD

Approved XX In part Disapproved XX In part Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___


SIGNATURE

04/16 /12
DATE

Entered on "STARS" Yes No _____

**Commissioner Svinicki's Comments on SECY-11-0163 Reprocessing Rulemaking:
Draft Regulatory Basis and Path Forward**

I approve in part and disapprove in part the staff's proposed path forward for the development of a regulatory framework as contained in SECY-11-0163. I approve Commissioner Magwood's proposal that the staff be directed to provide the Commission with a notation vote paper that provides: (1) the staff's assessment of the current state of activity and industry plans regarding processing; (2) a recommendation regarding the need for continued effort to develop a rule; and, (3) the anticipated schedule and resources required to complete a rule.

To the extent possible, the notation vote paper should address the staff's proposed resolutions of the identified gaps and other issues identified by the staff as Commission policy decisions. For those issues that are not sufficiently developed for inclusion in the notation vote paper, the staff should identify the resources needed and the timeframes for presentation of those issues to the Commission prior to the commencement of the reprocessing rulemaking, to avoid – the extent possible – use of NRC's limited resources in this area on approaches the Commission is unlikely to support. In this vein, I would note that I do not believe that pursuit of reprocessing license application reviews under the existing 10 CFR Part 50 framework will prove efficient. Finally, I agree with Commissioner Ostendorff that the notation vote paper should highlight and provide the rationale for recommendations that depart from existing Commission policy or agency precedent.



Kristine L. Svinicki 04/16/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-11-0163 – REPROCESSING RULEMAKING:
DRAFT REGULATORY BASIS AND PATH FORWARD

Approved X Disapproved X Abstain

Not Participating

COMMENTS: Below X Attached None

I agree with Commissioner Magwood's recommendation that the staff provide the Commission with a notational vote paper before action is completed on the regulatory basis and development of a reprocessing regulatory framework is pursued.



SIGNATURE

4/4/12

DATE

Entered on "STARS" Yes x No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MAGWOOD
SUBJECT: SECY-11-0163 – REPROCESSING RULEMAKING:
DRAFT REGULATORY BASIS AND PATH FORWARD

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

12 January 2012

DATE

Entered on "STARS" Yes No

Commissioner Magwood's Comments on SECY-11-0163
"Reprocessing Rulemaking: Draft Regulatory Basis and Path Forward"

I commend the staff for the significant progress it has made in developing positions on many of the regulatory gaps that would need to be addressed if we are to establish a regulatory framework for spent fuel reprocessing. The genesis for developing such a framework dates back to 2006 when U.S. Department of Energy (DOE) altered its Global Nuclear Energy Partnership (GNEP) from a focus on technology demonstrations to an industry-based approach aimed at the deployment of spent nuclear fuel reprocessing, fuel fabrication, and advanced burner reactor facilities. In responding to DOE's plans, the Commission directed the staff to proceed with a regulatory gap analysis and identify changes in regulatory requirements that would be necessary to license these advanced fuel cycle facilities.

In the years since this work began, the situation has changed quite substantively. DOE has terminated GNEP and has now shifted its attention to very long-term, science-based research and has no plans to demonstrate recycling technologies until the 2040 time frame. Nevertheless, commercial entities such as AREVA and GE Hitachi are evaluating the establishment of commercial fuel recycling facilities and have indicated a strong desire for clarity in the regulatory framework under which a license application would be reviewed and approved. While this desire is reasonable and appropriate, we must weigh this interest against the other pressing priorities facing the agency. Finally, the Administration's Blue Ribbon Commission is scheduled to submit its final report by the end of January, 2012.

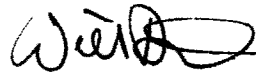
It is, therefore, an appropriate juncture for the Commission to provide direction on the fundamental question of whether to proceed with a reprocessing rulemaking. To facilitate this, I recommend that staff provide the Commission with a notation vote paper that provides staff's assessment of the current state of activity and industry plans regarding reprocessing, its recommendations regarding the need for continued effort to develop a rule, the anticipated schedule and resources required to complete the rule, as well as an appropriate range of options. This voting paper should also provide the Commission with its understanding of the resources and time that would be needed to complete a reprocessing license application review using the current framework in 10 CFR Part 50.

As staff considers the potential development of a reprocessing regulatory framework and rulemaking, the proposed paper should address the following:

- Staff's assessment and recommendation regarding whether a PRA-based or qualitative risk assessment methodology should be applied;
- For those related issues that staff believes are agency decisions (such as the definition of WIR), provide an analysis of the pros and cons of various approaches along with the staff's recommendation;

- Prioritize those gaps that are not ripe for Commission decision and provide staff's plan to seek Commission direction for each gap when appropriate; and
- Identify which gaps would be evaluated in FY 12 and identify the resources needed to complete the analysis as well as the development of proposed rule if Commission approved to proceed to rulemaking.

This paper should be provided to the Commission in time to inform the Chairman's FY 2014 budget proposal.

A handwritten signature in black ink, appearing to read "W. Magwood, IV", written over a horizontal line.

1/12/12

William D. Magwood, IV

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-11-0163 – REPROCESSING RULEMAKING:
DRAFT REGULATORY BASIS AND PATH FORWARD

Approved X Disapproved X Abstain

Not Participating

COMMENTS: Below Attached X None

W. Ostendorff
SIGNATURE

2/29/12
DATE

Entered on "STARS" Yes X No

Commissioner Ostendorff's Comments on SECY-11-0163, "Reprocessing Rulemaking: Draft Regulatory Basis and Path Forward"

I appreciate Commissioner Magwood's initiative to convert the information provided in SECY 11-0163 to a matter for Commission voting. I join Commissioner Magwood in commending the staff for the significant progress made in evaluating the regulatory gaps associated with reprocessing.

After review of the draft regulatory basis, it appears that there are several significant policy issues (e.g. decommissioning funding, waste incidental to reprocessing, evaluation of land contamination) that need to be resolved before rulemaking is pursued. At this time, I have insufficient information to make a judgment on whether the staff's initial approaches provided in the SECY paper are appropriate. I therefore approve Commissioner Magwood's proposal for the staff to provide the Commission with a notation vote paper as described in his vote on SECY-11-0163.

In addition to the items suggested by Commissioner Magwood, the staff's paper should provide the rationale for any recommendations that differ from previous Commission policy or agency precedent. The staff's paper should also include how the staff's activities are being integrated with other federal government activities related to reprocessing.