

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-12-0062 – RENEWAL OF FULL-POWER
OPERATING LICENSE FOR PILGRIM NUCLEAR
POWER STATION

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE



DATE

Entered on "STARS" Yes X No _____

**Chairman Jaczko's Comments on SECY-12-0062,
"Renewal of Full-Power Operating License for Pilgrim"**

I disapprove the issuance of the renewed license for the Pilgrim Nuclear Power Station at this time. While I appreciate the need to have an appropriate procedure for bringing this process to completion, the current approach that my colleagues on the Commission support is unprecedented in license renewal proceedings and provides little basis for action. Furthermore, since the licensee is in timely renewal, no harm will come to the licensee as the issues are brought to conclusion.

The process for resolving license renewals and established in a number of proceedings in which I personally participated has been to allow the staff to move forward with a license renewal when Board action was complete and the only matters pending were *appeals of Board decision before the Commission*. That is simply not the case in this situation. In fact, the Commission itself has referred several petitions to the Atomic Safety and Licensing Board. Therefore, these matters are currently pending before the Board. This is an entirely new situation, one I never contemplated when I previously supported issuance of a renewed license while adjudicatory issues remained unresolved. The license renewal provisions of 10 C.F.R. § 54.31(c) explicitly reference a process for reinstating the previous license if the renewed license "is subsequently set aside upon further administrative or judicial *appeal*" [emphasis added]. While the Commission previously allowed licensees to move forward while issues were under consideration by Boards, those instances involved immediate effectiveness decisions while proceedings for initial issuance of operating licenses were pending.

The Commission, through its own action, has referred petitions raising questions about the adequacy of the staff's review of the Pilgrim license renewal application to the Board. But since it is the staff, rather than a participant in the hearing, that seeks immediate issuance of the license renewal the matter is treated as a simple SECY paper, implying that the action is not related to the ongoing administrative litigation. This hardly seems to be a fair process for the petitioners. Moreover, it appears to send a confusing message to the petitioners. On the one hand, by referring the petitions to the Board, the Commission appears to believe the petitions present at least some merit. On the other hand, by approving the staff's SECY paper the Commission appears to be saying there are no remaining initial matters of significance to resolve before the issuance of the license. If the Commission were so comfortable that the issues raised in the motion to reopen were trivial, the Commission could have simply dismissed them itself without referral to the Board.

The Commission has ample authority to take the reins of this hearing and move the process to a reasonable decision point. I would suggest this be done in the following way. First, the Commission should issue an order instructing that all final petitions seeking admission of new contentions be filed by a specified date. Next, staff should file a motion with the Commission expressing its interest in issuing the license. The Commission should then entertain briefs and issue a decision articulating its reasons based on the adjudicatory record relevant to the issues pending before the Board. The initial Commission order would make clear that subsequent motions filed would not be guaranteed to be reviewed. This process would be clear, transparent and fair to all parties in the proceeding and establish a process that would be applicable to future proceedings.



Gregory B. Jaczko 5/21/12
Date