

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIRMATION SESSION

PUBLIC MEETING

Nuclear Regulatory Commission
Commission Hearing Room
11555 Rockville Pike
Rockville, Maryland
December 8, 2004

The Commission met in open session, pursuant to notice, at 12:55pm,
Nils J. Diaz, Chairman, presiding.

COMMISSIONERS PRESENT:

NILS J. DIAZ, Chairman

EDWARD MCGAFFIGAN, JR., Member of the Commission

JEFFREY S. MERRIFIELD, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

ANNETTE L. VIETTI-COOK, Secretary of the Commission

KAREN D. CYR, General Counsel

DISCLAIMER

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[12:55pm]

PROCEEDINGS

CHAIRMAN DIAZ: Good afternoon. Before we get to the staff, Madam Secretary, you have some items for us to affirm?

MS. VIETTI-COOK: The first item is Hydro Resources Inc. The Commission is being asked to act on a Memorandum and Order responding to petitions filed by the licensee and intervenors for review of parts of the Presiding Officer's decision in LBP-04-03. The licensee's petition requested review of the rulings on estimated labor and equipment costs. The intervenor's petition requested review of the refusal to consider arguments raised which challenged the estimate of the volume of water needed to be processed and circulated to restore groundwater. The Commission has voted to approve a Memorandum and Order which affirms LBP-04-03's ruling on the water volume issue and reverses the rulings on the labor and equipment issues. Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

MS. ANNETTE VIETTI-COOK: The second item is a final rule on security requirements for portable gauges containing byproduct material. The Commission is being asked to act on a final rule amending 10 CFR 30.34 to require a portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee. The Commission has voted to approve the publication and implementation of this final rule subject to the comments and changes noted in the attachment. Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

MS. VIETTI-COOK: The third item is a motion to quash OI subpoena issued to Rene Chun. The Commission is being asked to act on a Memorandum and Order responding to a Motion to Quash an Office of Investigations subpoena issued to Rene Chun. The Commission has voted to approve a Memorandum and Order which grants the Motion to Quash in part, subject to a condition expressed in the Order; and denies the Motion to Quash in part; and sets a new date for compliance with the subpoena. Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

MS. VIETTI-COOK: This is in the matter of Louisiana Energy Services. The Commission is being asked to act on a Memorandum and Order responding to 1) petitions for reconsideration of CLI-04-25 filed by New Mexico Environment Department and the Attorney General of New Mexico, 2) Licensing Board referral of ruling on motions for clarification on participation, 3) New Mexico Environment Department and Attorney General of New Mexico's motions to file a late-filed contention, and 4) Licensing Board referral of ruling on Attorney General of New Mexico request for "co-lead" party status. The Commission has voted to approve a Memorandum and Order which 1) denies the petitions for reconsideration of CLI-04-25, 2) affirms the Board's decisions denying New Mexico Environment Department and Attorney General of New Mexico's requests to participate on other parties' admitted contentions, 3) remands to the Board for its consideration those parties' motions to file a late-filed contention, and 4) affirms the Board's decision rejecting Attorney General of New Mexico's

request to serve as a “co-lead” party with other intervenors. Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye

MS. VIETTI-COOK: This is in the matter of Dominion Nuclear Connecticut Millstone Nuclear Station. The Commission is being asked to act on a Memorandum and Order responding to an appeal by the Connecticut Coalition Against Millstone of the Licensing Board’s decision in LBP-04-15 that denied their petition for intervention on the ground that the contentions were inadmissible. The Memorandum and Order also responds to the Connecticut Coalition Against Millstone’s appeal of LBP-04-22 in which the Licensing Board denied Connecticut Coalition Against Millstone’s motion for reconsideration of LBP-04-15 and request for permission to provide additional support for its contentions. The Commission has voted to approve a Memorandum and Order which affirms the Licensing Board’s decisions in LBP-04-15 and LBP-04-22, denies Connecticut Coalition Against Millstone’s two appeals, and terminates this proceeding. Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I just might note there is some very strong language in this which all of us strongly concurred in with regard to the CCAM council.

MS. VIETTI-COOK: This is the last item on Duke Energy Corporation. The Commission is being asked to act on a Memorandum and Order responding to Motion for

Reconsideration of CLI-04-29 by Blue Ridge Environmental Defense League. The Commission has voted to approve a Memorandum and Order which denies Blue Ridge Environmental Defense League's Motion for Reconsideration of CLI-04-29. Would you please affirm your votes?

CHAIRMAN Diaz: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye

MS. VIETTI-COOK: That's it.

COMMISSIONER MERRIFIELD: Mr. Chairman, before we move to the next proceeding I did want to make one notion about one of the items we affirmed today, and that was the issue of the additional security for portable gauges. This is a matter which has been I think of long standing interest to many on the Commission. These portable devices are some which we've had a number of them for a long period of time have gone awry, have been stolen from the backs of pickup trucks or from other areas. We did have some who felt that those were not materials of high risk and that the actions that we were taking were not necessary from a risk standpoint. That having been said, I think from my viewpoint and I think the Commission by affirming that final rule recognizes that risk is not the only criterion that we use. There were many, including many of our stakeholders who felt that our licensees needed to do a better job of securing those devices and my hope, Mr. Chairman, is that by effectuating this final rule we will move to a standpoint where the periodicity of our receiving notices from our licensees and from the states, that those devices had gone lost or stolen, will be significantly reduced.

CHAIRMAN DIAZ: I think that is an excellent point and I think this was the intent of the Commission. We're adjourned.

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Affirmation Session
 (PUBLIC MEETING)

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: December 8, 2004

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company.

Transcriber: DARLENE K. WRIGHT

Reporter: (TAPE RECORDING)