



SECRETARY

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

October 4, 2017

COMMISSION VOTING RECORD

DECISION ITEM: SECY-17-0081

TITLE: STATUS AND RESOLUTION OF ISSUES ASSOCIATED WITH
THE TRANSFER OF SIX DECOMMISSIONING URANIUM MILL
SITES TO THE STATE OF WYOMING

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 4, 2017.

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 blue ink, reading "Annette L. Vietti-Cook", is written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Svinicki
Commissioner Baran
Commissioner Burns
OGC
EDO
PDR

VOTING SUMMARY – SECY-17-0081

RECORDED VOTES

	<u>APPROVED</u>	<u>DISAPPROVED</u>	<u>ABSTAIN</u>	<u>NOT</u> <u>PARTICIPATING</u>	<u>COMMENTS</u>	<u>DATE</u>
Chrm. Svinicki	X				X	10/02/17
Cmr. Baran	X				X	09/20/17
Cmr. Burns	X				X	09/20/17

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN SVINICKI

SUBJECT: SECY-17-0081: Status and Resolution of Issues
Associated with the Transfer of Six Decommissioning
Uranium Mill Sites to the State of Wyoming

Approved XX Disapproved Abstain Not Participating

COMMENTS: Below XX Attached None

I approve the staff's recommended Option 2, under which the NRC would retain regulatory authority over the American Nuclear Corporation (ANC) site, in Gas Hills, Wyoming, even after the State of Wyoming, under an anticipated limited Section 274b. Agreement, would assume regulatory authority over five other Wyoming sites in the same materials category. I do this based on the facts presented in the instant case and find the staff's approach well-reasoned in light of those facts and the policy questions at issue. Upon the finalization of the Commission's decision on this question, the staff should move expeditiously to conclude negotiation of the agreement and presentation of it to the Commission for review and ratification.



SIGNATURE

10/ 2 /17

DATE

Entered on "STARS" Yes ✓ No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

SUBJECT: SECY-17-0081: Status and Resolution of Issues
Associated with the Transfer of Six Decommissioning
Uranium Mill Sites to the State of Wyoming

Approved X Disapproved Abstain Not Participating

COMMENTS: Below Attached X None

Entered in "STARS"

Yes X

No



SIGNATURE

9/20/17

DATE

**Commissioner Baran's Comments on SECY-17-0081,
"Status and Resolution of Issues Associated with the Transfer of Six Decommissioning
Uranium Mill Sites to the State of Wyoming"**

The State of Wyoming is seeking to become an Agreement State, an arrangement that would have Wyoming assume – and NRC discontinue – regulatory authority over uranium and thorium milling, the management and disposal of related byproduct material, and five of the six decommissioning uranium mill sites that NRC currently regulates. However, the state does not wish to take regulatory authority over the American Nuclear Corporation (ANC) decommissioning mill site in Gas Hills, Wyoming.

The circumstances surrounding the ANC site are unique. NRC has regulated this site since the 1980s, when ANC ceased operations. The licensee subsequently went out of business in 1994 due to financial insolvency. NRC estimated the cost of decommissioning the site at \$16.3 million, but only \$700,000 remains in the reclamation performance bond to complete the work. Thus, the site needs extensive reclamation, remediation, and closure work, but the licensee is financially insolvent and unable to complete the decommissioning activities. Under a 1996 Confirmatory Order from NRC, Wyoming is using the remaining reclamation bond funds to stabilize the site but is not required to pay for further decommissioning activities once those funds are exhausted.

Yet, Wyoming is understandably concerned that it may be accepting financial responsibility for decommissioning the site if it assumes regulatory oversight. In 1997, NRC informed Agreement States that they "were responsible for any radioactive material remaining at sites in an Agreement State, including material originally licensed by the NRC or the Atomic Energy Commission ... where the license was terminated prior to the State becoming an Agreement State." A grant program was later established with over \$3 million of funding to address these unfunded remediation costs, but this program ended in 2007. Although ANC's license was not terminated, the situation is arguably analogous.

The two options presented in the paper are for Wyoming to assume regulatory authority over the ANC site or for NRC to retain regulatory authority over just this one site. Under either option, the Commission would be departing from past precedent. If NRC maintains jurisdiction over the ANC site while discontinuing its authority over the other five decommissioning uranium mill sites, the agency would be deviating from the 30-year practice of only relinquishing regulatory authority to a state for all licensees within a category or subcategory of materials or activities covered in the agreement. On the other hand, NRC has never before transferred "a partially remediated uranium mill site with a significant financial liability and no viable licensee to one of our Agreement State partners." This would effectively require Wyoming to take on a \$16 million decommissioning effort in order to become an Agreement State.

I agree with the NRC staff that NRC should retain regulatory authority over the ANC site. I think it is unfair to require Wyoming to shoulder the unfunded remediation of this site as a condition of becoming an Agreement State. This approach is also more consistent with the spirit of the 1996 Confirmatory Order and the now-defunct grant program that assisted states with such costs.

Because of these unique circumstances, I do not view this outcome as setting a new precedent for other states or sites. In my view, the general practice of new Agreement States taking regulatory authority over an entire category or subcategory of materials or activities remains the right one. Moreover, this is not a case where the NRC would be taking regulatory

authority of a financially insolvent site back from an Agreement State, as Wyoming has not previously exercised regulatory authority over the site.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Burns

SUBJECT: SECY-17-0081: Status and Resolution of Issues
Associated with the Transfer of Six Decommissioning
Uranium Mill Sites to the State of Wyoming

Approved X Disapproved Abstain Not Participating

COMMENTS: Below X Attached None

I approve the staff recommendation for an exception to the Commission's long standing Agreement State policy based on what I view as a unique set of facts, including the fact that a single licensee is insolvent and that the NRC staff has been aware of the insolvency for a number of years. I further clarify that by my vote I am not approving a change to the Commission's current Agreement State policy, but instead a one-time exception to that policy based on case-specific facts. I look forward to staff's paper on how the NRC may obtain the necessary decommissioning funding for this site, whether it be a funding stream to a site stand-by trust agreement to which the NRC is the sole beneficiary or whether the site is legislatively transferred to the Department of Energy for remediation. If the funding is sought for the NRC it should be off the fee base and should only address the remediation of those activities resulting from the NRC's license. Wyoming should be afforded the opportunity to provide its support to obtain the necessary decommissioning funding for the site.

Staff should move quickly to finalize the Section 274b. agreement with the State of Wyoming.



Signature

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Yes X

No

20 September 2017

Date