

September 14, 2000

COMMISSION VOTING RECORD

DECISION SECY-00-0160

ITEM:

TITLE: WITHDRAWAL OF PROPOSED RULE AND DENIAL OF PETITION FOR RULEMAKING SUBMITTED BY THE PUBLIC CITIZEN LITIGATION GROUP AND THE CRITICAL MASS ENERGY PROJECT

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum ([SRM](#)) of September 14, 2000.

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 Vietti-Cook  
Secretary of the Commission

Attachments: 1. Voting Summary  
2. Commissioner Vote Sheets

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR

SECY NOTE: TO BE MADE PUBLICLY AVAILABLE 5 BUSINESS DAYS AFTER THE LETTERS TO THE PETITIONERS HAVE BEEN DISPATCHED.

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VOTING SUMMARY - SECY-00-0160

RECORDED VOTES

	<b>APRVD</b>	<b>DISAPRVD</b>	<b>ABSTAIN</b>	<b>NOT PARTICIP</b>	<b>COMMENTS</b>	<b>DATE</b>
CHRM. MESERVE	X				X	8/16/00
COMR. DICUS	X				X	8/18/00
COMR. DIAZ	X				X	8/14/00
COMR. McGAFFIGAN	X				X	8/7/00
COMR. MERRIFIELD	X				X	8/10/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on September 14, 2000.

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## **Commissioner Comments on SECY-00-0160**

### **Commissioner Dicus**

I do not see a problem with denying the petition from a technical or policy standpoint. The bigger issue may be that it took 21 years. Therefore, I agree with Commissioner McGaffigan's comments regarding the decision and reasons for the delay. We may also need to be prepared to address questions and concerns from the media.

### **Commissioner Diaz**

I approve the publication of the Federal Register notice that denies the petition for rulemaking and withdraws the proposed rule. However, I find unacceptable the delay in fully addressing the petition and concluding the rulemaking. The staff should advise the Commission of any actions that are necessary to prevent such inordinate delays in the future. We owe the petitioners not only a full explanation of the disposition of the petition, but also an acknowledgment of our regrets for the delay.

### **Commissioner McGaffigan**

I vote to approve publication of the Federal Register notice denying the petition for rulemaking related to the TMI-2 incident and withdrawing the 1985 proposed rule. I agree that it was the intent of Congress to set the radiation standards for an extraordinary nuclear occurrence (ENO), which suspends certain normal legal defenses, at a level which reflects a truly "extraordinary" event. This determination has a much different purpose and should be set at a higher level than the EPA's protective action guidelines of 5 Rem to the whole body (WB). The existing guidelines of 20 Rem WB remain reasonable as a current ENO standard.

Clearly, the Commission's ENO determination for the TMI-2 incident was timely. However, to take 21 years to address the petitioner's question related to the validity of the existing ENO criteria is embarrassing. For most of that time, rulemaking was in the Office of Nuclear Regulatory Research. It should be obvious that we need to ensure our rulemaking prioritization process has been or will be changed to prevent similar results in the future. In addition, prior to the closure of this issue the staff should contact the petitioners and provide them with the details behind our final decision and the reasons for the delay.

### **Commissioner Merrifield**

I vote to approve publication of the Federal Register notice denying the petition for rulemaking to amend the regulatory criteria for an extraordinary nuclear occurrence (ENO) and withdrawing the associated rule proposed in 1985. I also approve of the staff's approach in contacting the petitioners to advise them of the decision and provide whatever explanation may be necessary.

I am concerned, however, about the length of time it took to address the rulemaking action. I am interested in receiving more information from the staff about any other pending issues that similarly extend beyond the normal timeframe for resolution.