

identified. Under current NRC staff guidance, a minority or low-income community is identified if the impacted area's percentage of minority or low-income population significantly exceeds that of the State or County. "Significantly" is defined by staff guidance to be 20 percentage points. Additionally, if either the minority or low-income population percentage in the impacted area exceeds 50 percent, environment justice matters are considered in greater detail. As indicated above, numeric guidance is helpful; thus, the staff should continue to use such guidance in identifying minority and low-income communities. The staff's analysis will be supplemented by the results of the EIS scoping review discussed below.

3. Scoping

The NRC will emphasize scoping, the process identified in 10 CFR 51.29, and public participation in those instances where an EIS will be prepared. Reliance on traditional scoping is consistent with the E.O. and CEQ guidance. See E.O. 12898, 59 FR at 7632 (Section 5-5); CEQ Guidance at 10-13. CEQ guidance reminds us that "the participation of diverse groups in the scoping process is necessary for full consideration of the potential environmental impacts of a proposed agency action and any alternatives. By discussing and informing the public of the emerging issues related to the proposed action, agencies may reduce misunderstandings, build cooperative working relationships, educate the public and decision makers, and avoid potential conflicts." CEQ Guidance at 12. Thus, it is expected that in addition to reviewing available demographic data, a scoping process will be utilized preceding the preparation of a draft EIS. This will assist the NRC in ensuring that minority and low-income communities, including transient populations, affected by the proposed action are not overlooked and in assessing the potential for significant impacts unique to those communities.

III. Guidelines for Implementation of NEPA as to EJ Issues

- The legal basis for analyzing environmental impacts of a proposed Federal action on minority or low-income communities is NEPA, not Executive Order 12898. The E.O. emphasized the importance of considering the NEPA provision for socioeconomic impacts. The NRC considers and integrates what is referred to as environmental justice matters in its NEPA assessment of particular licensing or regulatory actions.

- In evaluating the human and physical environment under NEPA, effects on low-income and minority communities may only be apparent by considering factors peculiar to those communities. Thus, the goal of an EJ portion of the NEPA analysis is (1) to identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities; and (2) to identify significant impacts, if any, that will fall disproportionately on minority and low-income communities. It is not a broad ranging review of racial or economic discrimination.
- In developing an EA where a Finding of No Significant Impact is expected it is not necessary to undertake an EJ analysis unless special circumstances warrant the review. Special circumstances arise only where the proposed action has a clear potential for off-site impacts to minority and low-income communities associated with the proposed action. In that case, an appropriate review may be needed to provide a basis for concluding that there are no unique environmental impacts on low-income or minority communities that would be significant.
- EJ-related issues normally are not considered during the preparation of generic or programmatic EISs. In general, EJ-related issues, if any, will differ from site to site and, thus, do not lend themselves to generic resolutions. Consequently, EJ, as well as other socioeconomic issues, are considered in site-specific EISs.
- "EJ per se" is not a litigable issue in NRC proceedings. Rather the NRC's obligation is to assess the proposed action for significant impacts to the physical or human environment. Contentions must be made in the NEPA context, must focus on compliance with NEPA, and must be adequately supported as required by 10 CFR part 2 to be admitted for litigation.
- The methods used to define the geographic area for assessment and to identify low-income and minority communities should be clear, yet, allow for enough flexibility that communities or transient populations that will bear significant adverse effects are not overlooked during the NEPA review. Therefore, in determining the geographic area for assessment and in identifying minority and low-income communities in the impacted area, standard distances and population percentages should be used as guidance, supplemented by the EIS scoping process, to determine the presence of a minority or low-income population.
- The assessment of disparate impacts is on minority and low-income

populations in general and not to the "vaguely defined, shifting subgroups within that community." See PFS, CLI-02-20, 56 NRC 147 (2002).

- In performing a NEPA analysis for an EIS, published demographic data, community interviews and public input through well-noticed public scoping meetings should be used in identifying minority and low-income communities that may receive adverse environmental impacts.

Dated at Rockville, Maryland, this 30th day of October, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48720; File No. SR-NYSE-2003-23]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Repealing Exchange Rule 500 and Amending Section 806 of the Listed Company Manual

October 30, 2003.

I. Introduction

On August 20, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to delete Exchange Rule 500 in its entirety and amend Section 806 of the Exchange's Listed Company Manual regarding the application by an issuer to delist its securities from the Exchange. Notice of the proposed rule change was published for comment in the **Federal Register** on September 10, 2003.³ The Commission received four comments regarding the proposal.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48435 (September 3, 2003), 68 FR 53413 ("Notice").

⁴ See letters to Jonathan G. Katz, Secretary, Commission, from Craig S. Tyle, General Counsel, Investment Company Institute ("ICI") dated October 1, 2003 ("ICI Letter"); John Endean, President, American Business Conference ("ABC"), dated September 30, 2003; Edward S. Knight, Executive Vice President, Nasdaq Stock Market ("Nasdaq"), dated October 6, 2003 ("Nasdaq Letter"); and Junius Peake, Professor, University of Northern Colorado, dated September 29, 2003 ("Peake Letter").