

August 26, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-178

TITLE: TREATMENT OF VOLUNTARY INITIATIVES IN REGULATORY ANALYSES

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 26, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of August 26, 1999.

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Annette Vietti-Cook  
Secretary of the Commission

Attachments: 1. Voting Summary  
2. Commissioner Vote Sheets  
3. Final SRM

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

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VOTING SUMMARY - SECY-99-178

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
COMR. DICUS	X					7/23/99
COMR. DIAZ	X				X	7/29/99
COMR. McGAFFIGAN	X				X	8/5/99
COMR. MERRIFIELD	X				X	7/22/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 26, 1999.

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Commissioner Comments on SECY-99-178

Commissioner Diaz

I approve the staff recommendations on revising the guidelines (Rev. 2 of NUREG/BR-0058) for the treatment of industry voluntary initiatives in regulatory analyses. The treatment of voluntary initiatives in the regulatory analyses must be consistent with the Commission direction provided in the Staff Requirements Memorandum (SRM) for SECY-99-063, "The Use by Industry of Voluntary Initiatives in the Regulatory process." In that SRM, the

Commission directed the staff to develop process and guidelines for use of industry initiatives in the regulatory process. The Commission states: "The staff should ensure that the guidance developed accounts for the tracking of commitments consistent with existing regulatory processes, as well as the inspection and enforcement of voluntary industry initiatives that are implemented in lieu of regulatory requirements." For voluntary programs that fully meet these guidelines, "full credit" should be given in the regulatory analysis. For other voluntary programs, credit should be given according to the degree to which the subject voluntary program satisfies the NRC guidelines. However, before this guideline is available (scheduled for 5/2000), the staff should provide a detailed interim guidance in the revised NUREG/BR-0058 for determining the appropriate "measured credit" for industry voluntary programs. In addition, the staff should inform the Commission, on a timely basis, of safety problems and/or benefits of the licensee's voluntary programs.

#### Commissioner McGaffigan

I approve the staff's plans to require a best estimate calculation of costs and benefits which gives measured credit to voluntary industry initiatives. This is a long overdue change, the necessity for which became apparent during the Commission's consideration of the revised proposed shutdown rule (SECY-97-168). As I noted in my vote on that paper, "to the extent the approved regulatory analysis methodology forces the agency to ignore reality by, for example, precluding reliance on, or credit for, voluntary actions, the methodology disserves the staff and the Commission."

The new methodology which the staff proposes will result, when necessary, in a "best or more realistic estimate of the costs and benefits of the regulation under consideration, and a full range of results that capture the uncertainty inherent in the baseline condition." This will make transparent, and subject to debate in the rulemaking process, the staff's judgment on credit to be given to voluntary practices.

I join in Commissioner Merrifield's admonition to the staff regarding the discussion on page 3 of SECY-99-178 involving the potential for industry "backsliding" as a result of deregulation and economic competition. This discussion may well reveal a reluctance on the staff's part to fairly credit voluntary industry initiatives.

I concur in the comments by Commissioner Diaz regarding the development of interim guidance for determining the appropriate "measured credit" for industry voluntary programs. It is my understanding that the staff has begun work on a revision to NUREG/BR-0058 and that it can be finalized within a reasonable period of time.

#### Commissioner Merrifield

I approve SECY-99-178 as it appears to present a reasonable approach for the treatment of voluntary initiatives in regulatory analyses.

In the SRM associated with SECY-99-063, the Commission directed the staff to move forward, working with industry and other stakeholders, in the development of the process and guidelines for use of industry initiatives in the regulatory process. I believe the detailed nature of that SRM reflected the Commission's recognition of the importance of sound guidance in this area. I believe the regulatory analysis guidance associated with voluntary initiatives, as discussed in SECY-99-178, is equally important. The staff should ensure that this guidance facilitates consistent and predictable treatment of voluntary initiatives in regulatory analyses.

As I stated in my vote on SECY-99-063, it must be clear to the public that substituting voluntary industry initiatives for NRC regulatory action can provide effective and efficient resolution of issues, will in no way compromise plant safety, and does not represent a reduction in NRC's commitment to safety and sound regulation. I also reiterated that responsibility for the long term success of using voluntary industry initiatives as substitutes for NRC regulatory action lies with both the NRC and our licensees. This process can only be successful if licensees effectively manage and implement their commitments associated with these voluntary initiatives and the NRC provides a credible and predictable regulatory response when licensees fail to satisfy these commitments. Failure of either the NRC or licensees to effectively carry out its responsibilities would undermine the regulatory process and serve to erode stakeholder confidence in the merits of using voluntary industry initiatives in this manner.

The reason I felt it was necessary to reiterate comments from my vote on SECY-99-063 relates to the staff's following statement in SECY-99-178, "... the potential for backsliding is likely to become more problematic with the shift toward deregulation and increased cost competition in the electricity market." I understand this statement and the context in which it is used. However, I have heard reasonable arguments that such backsliding is indeed less likely in a deregulated environment because competitive market pressures will command improved plant performance and be less tolerant of "regulatory shutdowns". The staff's statement could also leave our stakeholders with the impression that backsliding is likely to occur without NRC identification and response. I believe that making statements of this nature without providing a sound basis for them detracts from the credibility of the staff's position. I recommend that if the staff intends to use such statements in the future, they be based on well-founded and well-articulated evidence.