

January 31, 2000

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-256

TITLE: RULEMAKING PLAN FOR RISK-INFORMING SPECIAL TREATMENT REQUIREMENTS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of January 31, 2000.

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 January 31, 2000.

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Annette Vietti-Cook  
Secretary of the Commission

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

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

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VOTING SUMMARY - SECY-99-256

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	12/29/99
COMR. DICUS	X				X	12/20/99
COMR. DIAZ	X				X	1/6/00
COMR. McGAFFIGAN	X				X	12/17/99
COMR. MERRIFIELD	X				X	12/8/99

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 January 31, 2000.

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Commissioner Comments on SECY-99-256

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Chairman Meserve

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I approve the publication of the ANPR, subject to the modification of the ANPR to obtain comment on certain additional issues, as discussed below. I also

approve the rulemaking plan.

The staff, with assistance from OGC, should revise the ANPR to specifically request public comment on the follow issues:

- A. The staff should request suggestions and comments from the public on how to ensure that proposed section 50.69 is clear with respect to:
  - 1) identifying the SSC scope relevant to specific special treatment requirements (not just the regulation containing the special treatment requirement).
  - 2) any additional requirements to be placed on those SSCs in RISC I or II and any functionality requirements to be placed on SSCs in RISC III.
- B. The staff should request comments on the effect the new rule would have on terminology used by the staff, specifically with respect to the term "operability" as currently used in technical specifications' limiting conditions for operations (LCOs) and the concept of "functionality" as proposed for SSCs in RISC III.
- C. The staff should seek public comment on whether the design control and procurement requirements in Appendices A and B of Part 50 should apply to RISC II SSCs.
- D. The staff should seek public comment on whether Part 21 reporting requirements should be imposed upon vendors who supplied safety-related components to licensees who subsequently select the new regulatory approach. The staff should also seek public comment on the effect of the proposed rule change on the definition of basic component in section 223.b of the Atomic Energy Act.
- E. The staff should seek public comment on the need to develop different Part 19 notices for those licensees implementing the new regulatory approach.
- F. The staff should request comment on whether any exemptions from Part 50, Appendix A (General Design Criteria) would be required by those licensees implementing the new regulatory approach and suggestions for methods to avoid the need to grant exemptions.

I join my fellow Commissioners in commending the staff for their efforts.

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#### Commissioner Dicus

I congratulate the staff, OGC, and the ACRS on the thorough planning and review evident in SECY-99-0256 on the issues surrounding our experiment in risk-informing our regulations. While there are obviously many potential issues that we could debate extensively, I believe that the issues are resolvable in a timely manner if we keep our mission and objectives clearly in mind. I encourage all of those concerned to be receptive to comments and creative in your solutions as we progress in the rulemaking. Our stakeholders in the U.S. and around the world await the results of our efforts.

I approve issuance of the ANPR and the staff's rulemaking plan.

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#### Commissioner Diaz

I believe that the steps outlined under the staff's proposed strategy are consistent with the Commission direction in the Staff Requirements Memorandum for SECY-98-300, although risk-informing the special treatment requirements may not be sufficient for implementation of a comprehensive and internally consistent set of risk-informed rules. However, I approve the rulemaking plan and issuance of the Advanced Notice of Proposed Rulemaking (ANPR) for risk-informing special treatment requirements, in order to solicit public comment.

I continue to believe that the approach taken by the South Texas Project is sound and should be supported. In particular, the four-level safety significance ranking is practical and will lead to risk differentiation usable by both the licensees and the NRC.

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#### Commissioner McGaffigan

I approve the proposed rulemaking plan and issuance of an Advance Notice of Proposed Rulemaking for risk-informing special treatment requirements. The staff has done a good job in outlining a process for moving forward in this area and in highlighting the policy, implementation and resource issues which will be confronted during the rulemaking process. Throughout this long process it is going to be essential to keep the Commission fully informed of the staff's evolving positions and concerns. Commission briefings should occur not just at the obvious milestones -- issuance of proposed and final rules, granting of the STP exemption -- but at any point where important issues arise, such as following the ANPR comment period, following the proposed rule comment period before presenting the proposed final rule, and possibly others.

I regard this as a very important initiative that will not only reduce unnecessary burden, but also enhance safety as licensees identify the RISC-2 SSCs which are missed by the current deterministic framework and these SSCs receive special treatment going forward.

From yesterday's discussion at the Commission stakeholders' meeting, it is clear that licensees understand the enormity of this undertaking and want us

to devote the time necessary to fully understand the issues and to put in place an implementable rule. This is not a straightforward exercise on which we know all the answers from the outset. I would plead with GAO and others to understand this and not to expect that we can lay out a detailed plan with precise resource loads for exactly how we and our licensees will be implementing this rule in 2003, 2004 and 2005. This paper provides the right level of detail about our plans over the next two years. We cannot know the unknowable about the years after that, and the constant harping for detailed operational plans for distant fiscal years will only result in NRC resources being wasted writing works of fiction akin to other agencies' outyear budget and planning documents.

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### Commissioner Merrifield

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I approve the rulemaking plan and the issuance of the Advance Notice of Proposed Rulemaking (ANPR) for risk-informing special treatment requirements.

I commend the staff for their obvious hard work since the Commission provided direction in its SRM for SECY-98-300. I believe the staff is correct in its assessment of the benefits associated with an ANPR. Clearly, an initiative of this magnitude and importance warrants a high degree of participation from the public, the nuclear industry, and other external stakeholders. An ANPR is an excellent vehicle to solicit this level of stakeholder input. I also want to commend the staff for clearly laying out their vision, strategies, and objectives for this rulemaking effort. This ANPR represents just the beginning of what is certain to be a difficult endeavor; however, I believe it represents a sound foundation upon which to build.

To state the obvious, clear communication will be an essential component of this rulemaking effort. The staff must be consistent in its message that this alternative regulatory framework should enhance safety and reduce unnecessary regulatory burden because it will allow the NRC staff and our licensees to better focus resources on regulatory issues of greater safety significance. The staff must also take the time necessary to ensure interested stakeholders understand the new terminology and how it relates to our current terminology. Without this effort, many of our stakeholders may find the risk-informed categorization process confusing or may misunderstand the basis for our actions. I hope the following example illustrates my point. The staff states that some of the SSCs in Box 1 (RISC-1) of the new process may have additional requirements concerning reliability and availability, if attributes which cause an SSC to be safety significant are not sufficiently controlled by current special treatment requirements. The staff goes on to state that Box 2 (RISC-2) depicts the SSCs that are nonsafety-related, but that the risk-informed categorization concludes make a significant contribution to plant safety. Without understanding the context in which these statements are made, a stakeholder could infer that plants which do not volunteer for the new risk-informed approach will have SSCs which will not receive the level of special treatment the NRC believes is warranted. The logical question is "why is that acceptable to the NRC?" I simply cannot overstate my belief that the staff's success in this rulemaking effort could be determined, in large part, by its ability to effectively communicate with NRC stakeholders.

While it is premature to discuss the resolution of specific policy and implementation issues, I would like to comment on a few of them. First, I believe the staff's intent to provide a regulatory framework which supports implementation of risk-informed alternative requirements without prior NRC review and approval is a sound one. The staff is correct in noting that a regulatory approach which either requires prior NRC review and approval of the re-categorization methodology or which contains an inspection component that is ambiguous regarding what the requirements are for the new categorization process, may be viewed by our licensees as having too much uncertainty regarding what will be acceptable, and as being too unpredictable regarding the potential costs to implement the regulatory alternative. The staff must also carefully consider the significant NRC resource implications of its decision on this matter. I also agree with the staff that in order to support a "no prior approval" approach, Appendix T will need to be constructed such that expert panels will reach sound and consistent judgements. Second, the staff should be deliberate in its review of potential implications of implementing risk-informed alternatives in Part 50 on other regulations, especially Part 54. Solicitation of input from our internal (including OGC) and external stakeholders on this matter is essential. Third, I believe there is merit in considering and seeking stakeholder input on the ACRS' recommendation to explore whether more than two levels of safety significance is a better approach. Finally, I strongly endorse the staff's proposal to conduct a categorization pilot program to demonstrate the acceptability of the contemplated new Appendix T and the NEI guideline. As the development of the new reactor oversight process has taught us, significant lessons can be learned from actually trying to implement changes of this magnitude as part of a pilot program.

The resource estimates for this effort (47 FTE and \$3.0 million in technical assistance) are significant. A project of this size warrants close management oversight and close coordination between offices. "Surprises" or delays due to poor coordination could serve to undermine stakeholder confidence and should not be tolerated by agency management. Furthermore, given the magnitude of this initiative, the staff should periodically step back and assess the progress and direction of NRC efforts, the extent of licensee interest, the adequacy of communication with stakeholders, potential future obstacles to progress, the adequacy of inter-office coordination, and the accuracy of resource and schedule projections. The results of this assessment should be provided to the Commission every 6 months.

I also note that the resource estimates are focused on NRR and RES. While this may be appropriate given the stage the staff is at in the process, I am confident that regional resources will eventually be called upon to support this effort. I encourage the staff to assess the level of regional support that will be necessary and utilize the PBPM process so that appropriate planning and budgeting takes place. With the burden of the new reactor oversight process, regions should not be subjected to unplanned and unbudgeted challenges of this magnitude.

My staff will provide minor editorial changes to the NRR staff.