

October 3, 2002

COMMISSION VOTING RECORD

DECISION ITEM:       SECY-02-0132

TITLE:                PROPOSED RULE: REVISION OF 10 CFR 50.48 TO PERMIT LIGHT-WATER REACTORS TO VOLUNTARILY ADOPT NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) STANDARD 805, "PERFORMANCE- BASED STANDARD FOR FIRE PROTECTION FOR LIGHT-WATER REACTOR ELECTRIC GENERATING PLANTS, 2001 EDITION" AS AN ALTERNATIVE SET OF RISK-INFORMED, PERFORMANCE-BASED FIRE PROTECTION REQUIREMENTS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 3, 2002.

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 L. 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

## VOTING SUMMARY - SECY-02-0132

### RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. MESERVE	X				X	9/13/02
COMR. DICUS	X				X	7/24/02
COMR. DIAZ	X				X	9/4/02
COMR. McGAFFIGAN	X				X	9/18/02
COMR. MERRIFIELD	X				X	9/19/02

### 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 October 3, 2002.

## Commissioner Comments on SECY-02-0132

### Chairman Meserve

I approve of the staff's plan to publish the notice of proposed rule change in the Federal Register, allowing 75 days for public comment.

The current fire protection regulations are in need of change to meet the demands of our stakeholders and to produce a more risk-informed and performance-based set of fire protection requirements. Current nuclear facility fire protection requirements were developed more than twenty years ago before the NRC or industry had the benefit of probabilistic risk assessments (PRAs) for fires, and before there was a significant body of operating experience. Recently, the NRC staff cooperatively participated in the development of a National Fire Protection Association (NFPA) standard which could provide flexibility in achieving fire protection safety measures. I commend the staff's hard work in the development of this proposed rulemaking.

I believe a rule change to allow licensees the option to apply NFPA 805, "Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants, 2001 Edition" will result in increased attention to the most risk-significant fire protection equipment and activities for each reactor plant. Additionally, this rule change will reduce the need for exemptions, reduce unnecessary regulatory burden associated with the current deterministic approaches, and will maintain reactor safety while adding appropriate flexibility to the licensees' fire protection activities.

One issue concerning the proposed rule warrants discussion at this point. The Nuclear Energy Institute (NEI) has recently submitted a letter requesting that the proposed language for § 50.48(c)(4) be modified to eliminate the requirement that a licensee submit a license amendment to obtain approval to use alternative methods and analytical approaches. Letter to R.A. Meserve from R.E. Beedle (Aug. 22, 2002). It justifies this assertion on the basis of Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315 (1996). Although I recognize that any alternative methods or analytical methods, in order to be acceptable, must satisfy the goals, performance objectives, and performance criteria of NFPA 805, the endorsement of such alternatives would likely require an exercise of judgment quite unlike the approval at issue in Perry. Moreover, the revision of a material specimen withdrawal schedule at issue in Perry was defined in the relevant standard, see 44 NRC at 328, whereas NFPA 805 itself provides that deviations, analysis methods, and the like, must be approved by the authority having jurisdiction. See, e.g., NFPA 805 §§ 2.4.1.2.1, 2.4.2. I also note that NEI's argument, if accepted, would create the paradoxical situation in which the application of NFPA 805 would require a license amendment (as provided by proposed § 50.48(c)(3)), but the adoption of an alternative to NFPA 805 under proposed § 50.48(c)(4) would not. Although I would certainly consider further comment on this issue in the course of the rulemaking, I would not make any changes to proposed § 50.48(c)(4) at this time. However, I would modify the first sentence of § 50.48(c)(4) for purposes of clarity so that it provides: "A licensee may submit a request to use alternative methods and analytical approaches, including alternatives to the fundamental fire protection program and minimum design requirements identified in Chapter 3 of NFPA 805, . . . ."

I suggest certain other minor editorial changes to the Federal Register notice of the proposed rule.

Commissioner Dicus

Approve with edits to proposed FRN. See attached.

Commissioner Diaz

Although a license amendment is the appropriate mechanism to change from the current fire protection requirements contained in license conditions and/or technical specifications, it is not clear that a license amendment is the appropriate mechanism to gain approval to use alternative methods and analytical approaches from those specified in NFPA 805. If an existing license condition or technical specification must be changed to implement an alternative, a licensee amendment would be necessary. Otherwise, another means of approval may be adequate.

The staff should evaluate the methods that could be used to approve alternatives. Until this evaluation is complete, the second sentence of paragraph 50.48(4) of the proposed rule should be modified to read "The request must be in the form of an application for license amendment under § 50.90 if a change to a license condition or technical specification is necessary."

Commissioner McGaffigan

I concur in the Chairman's comments and edits. I particularly agree with his comments regarding NEI's August 22, 2002, letter.

Commissioner Merrifield

I approve the staff's recommendation to publish the notice of proposed rulemaking in the Federal Register, allowing 75 days for public comment.

As I have expressed on many occasions, our current fire protection regulations provide a glaring example of an overly complex and prescriptive regulatory regime. They are so convoluted that licensees expend inordinate effort trying to understand and comply with them, and our staff spends an equally inordinate amount of time interpreting them and ensuring consistent compliance and enforcement. Furthermore, these requirements were developed before the NRC or the industry had the benefit of probabilistic risk assessments for fires, and before recent advances in performance-based methods such as fire modeling. Over the past couple of years, I have strongly encouraged the staff to accelerate their efforts to produce a more risk-informed and performance-based set of fire protection requirements. While progress on this initiative has been slow, I am pleased that the staff, through its cooperative participation in the development of a National Fire Protection Association (NFPA) standard, has taken a significant step in moving toward that goal. I commend the staff for their efforts associated with this important initiative.

I agree with the staff that by giving licensees a regulatory option to adopt NFPA 805, as excepted, the NRC would enable licensees to focus their resources primarily on the most risk-significant fire protection equipment and activities for each plant. Furthermore, this alternative should reduce the need for exemptions, reduce unnecessary regulatory burden associated with the current deterministic approaches, and will maintain reactor safety while adding appropriate flexibility to our

licensees' fire protection activities. Based on the information provided by the staff, I sincerely believe that the staff's proposal is consistent with the agency's safety mission and performance goals, and serves our stakeholder community well.

In a letter to the Chairman dated August 22, 2002, the Nuclear Energy Institute (NEI) requested that the proposed language for § 50.48(c)(4) be revised to eliminate the requirement that a licensee submit a license amendment to obtain approval to use alternative methods and analytical approaches. I agree with the Chairman that changes to the proposed § 50.48(c)(4) should not be made at this time. This is a complicated issue that warrants further consideration and analysis, and I believe that the agency could benefit from further stakeholder comment on the issue during the course of the rulemaking. The staff and OGC should carefully review the comments received from stakeholders and provide the Commission with their analysis of these comments and the basis for their ultimate position on this important issue as part of the final rulemaking package.

Finally, I support the Chairman's minor editorial changes and proposed clarifying revision to the first sentence of § 50.48(c)(4).