



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

MEMORANDUM MET FILE 03

8/11/03

release

COMSECY-03-0036

July 17, 2003

Disapproved. See attached comments.
This vote supercedes my vote of
October 22, 2003.

Nils J. Diaz

4/29/04

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers
Executive Director for Operations

SUBJECT: UPDATE ON THE WITHHOLDING FROM PUBLIC DISCLOSURE OF
SENSITIVE, UNCLASSIFIED INFORMATION RELATED TO
POWER REACTORS

Following the events of September 11, 2001, the Nuclear Regulatory Commission (NRC) and other government agencies reviewed and revised policies related to the routine release of information to the public. The guidance developed by the NRC staff is described in COMSECY-02-0015, "Withholding Sensitive Homeland Security Information from the Public," dated April 4, 2002. The Commission approved the guidance and provided additional instructions to the staff in its staff requirements memorandum (SRM) dated May 28, 2002.

Selected staff in the Office of Nuclear Reactor Regulation (NRR) and other offices have used the guidance in COMSECY-02-0015, and the processes put in place to implement the guidance have generally worked well. Since issuance of the SRM, the staff involved with reviewing information and developing guidance have gained experience and refined review practices. The staff from different program offices have met routinely, before and after issuance of COMSECY-02-0015, to share experiences and discuss issues associated with the control of information. The staff has also discussed the control of information with representatives from other agencies, including the Environmental Protection Agency and Federal Energy Regulatory Commission, and followed activities related to the Critical Infrastructure Information Act of 2002 to determine if requirements or guidance issued by the Department of Homeland Security (DHS) would require changes to the NRC processes.

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CHAIRMAN REC'D
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COMMENTS OF CHAIRMAN DIAZ ON COMSECY-03-0036

I disapprove the staff's proposed clarifying guidance, subject to directing the staff to revise it and resubmit it so as to reflect recent developments and reconsideration of the criteria that guide withholding for sensitive, unclassified information, including information relating to nuclear power facilities and Category I fuel cycle facilities. Specifically, I recommend that the staff revise the withholding criteria, as set out in COMSECY-02-0015 and the pending proposed clarifying guidance for nuclear power plant licensees, by employing a "could be useful" or "could reasonably be expected" standard in place of the "would clearly" and "clear and significant" terminology. I believe that such revisions would afford a more appropriate and prudent degree of flexibility in making disclosure determinations and would help ensure the availability of the full measure of protection for sensitive but unclassified information. In addition, the proposed clarifying guidance needs to be modified to be consistent with the Interim Rule on Procedures for Handling Critical Infrastructure Information published by the Department of Homeland Security (DHS) on February 20, 2004 (69 Fed. Reg. 8074). I also recommend that the staff consider whether its proposed clarifying guidance should be modified or supplemented in light of experience in applying the withholding criteria since the development of the proposed guidance.