



REQUEST REPLY BY: 8/11/03 release
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

COMSECY-03-0036

July 17, 2003

M2030970617

Approved. See attached comments.

Jeffrey S. Merrifield, 5/6/04

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.

CONTACTS: William D. Reckley, NRR
301-415-1323

Margie Kotzalas, NRR
301-415- 2737

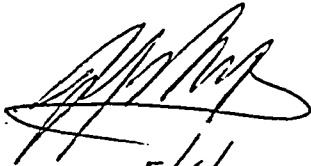
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Commissioner Merrifield's Supplemental Comments on COMSECY-03-0036

This supplement is to respond to Commissioner McGaffigan's vote and Chairman Diaz's revised vote on COMSECY-03-0036. They disapprove the staff's recommended standard for withholding sensitive, unclassified information from the public and recommend a tighter withholding standard.

I would have preferred to adopt the staff's recommended standard. While it is significantly more restrictive than the standard in place prior to September 11, it continues to afford the staff enough flexibility to disclose information sufficient to provide the public with a meaningful opportunity to understand and participate in our regulatory activities. It is not clear to me that either the Federal Energy Regulatory Commission's rule or the Department of Homeland Security Interim Rule on Procedures for Critical Infrastructure Information referred to by the majority compel the tighter standard that is being adopted today. Those rules take into consideration whether the information is readily available, mandated or voluntarily submitted and other factors that may be extremely important when balancing the public's need for the information against the risk posed by disclosure. For example, there are licensing documents and emergency planning information that the NRC has always made available to the public and which now may be withheld in their entirety.

I would strongly encourage the staff to keep in mind the benefit to the public of full disclosure of information and to make every effort to draft documents in such way that the greatest amount of information possible can be disclosed. Further, I would recommend better training for the staff and appropriate guidance for our licensees to recognize information that should not be disclosed, such as the information referred to by Commissioner McGaffigan that was pointed out by David Lochbaum. I believe that even under the previous standard much, if not all, of that information should not have been disclosed.



5/6/08