

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

April 4, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0036

TITLE: PUBLIC DISCLOSURE OPTIONS WITHIN THE SECURITY
CORNERSTONE OF THE REACTOR OVERSIGHT
PROCESS

The Commission (with Chairman Diaz and Commissioner Merrifield approving in part and disapproving in part, Commissioners Jaczko and Lyons approving, and Commissioner McGaffigan disapproving) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 4, 2006.

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

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
FDR

VOTING SUMMARY - SECY-06-0036

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X	X			X	3/20/06
COMR. McGAFFIGAN		X			X	2/16/06 & 3/30/06
COMR. MERRIFIELD	X	X			X	3/16/06
COMR. JACZKO	X				X	3/3/06
COMR. LYONS	X				X	3/21/06

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioner Merrifield approved in part and disapproved in part, Commissioners Jaczko and Lyons approved, and Commissioner McGaffigan disapproved the staff's recommendation. Commissioner McGaffigan provided additional comments on March 30, 2006. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 4, 2006.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-06-0036 - PUBLIC DISCLOSURE
OPTIONS WITHIN THE SECURITY
CORNERSTONE OF THE REACTOR
OVERSIGHT PROCESS**

Approved ^{in part} xx *(initials)* Disapproved ^{in part} xx *(initials)* Abstain _____
Not Participating _____

COMMENTS:

See attached comments.

(Signature)

SIGNATURE
March 20, 06

DATE

Entered on "STARS" Yes No _____

Chairman Diaz' Comments on SECY-06-0036

I approve the staff's Option 2B subject to the revisions made by Commissioner Merrifield. In addition, I believe that the inspection report cover letter should be issued at the completion of the inspection in all cases, for several reasons. First, licensees must be in compliance with applicable security requirements prior to the NRC inspectors' departure from the site, even though compliance may be through compensatory measures. Second, a delay in issuance of the cover letter until permanent corrective measures are implemented could signal the continuing existence of security issues. Third, delay in the issuance of the cover letter seems unnecessary since, under Option 2B as modified by Commissioner Merrifield, the inspection report cover letter would not identify the specific attributes affected by adverse findings. With these changes, I believe that Option 2B would better inform the public of NRC inspection activities in the Security Cornerstone, yet would not provide information that might be useful to a potential adversary.

NOTATION VOTE

RESPONSE SHEET

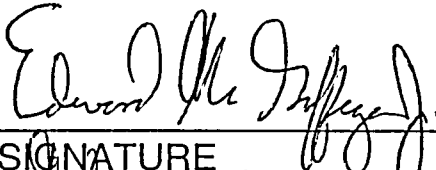
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0036 - PUBLIC DISCLOSURE
OPTIONS WITHIN THE SECURITY
CORNERSTONE OF THE REACTOR
OVERSIGHT PROCESS**

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE
February 16, 2006

DATE

Entered on "STARS" Yes X No _____

Commissioner McGaffigan's Comments on Secy-06-0036

I disapprove the staff proposal and instead approve Option 1, the status quo.

The status quo allows the staff to keep cleared stakeholders, particularly the States, fully informed about any security performance deficiencies at power reactors. The status quo is consistent with how security information is treated by every other agency of the Federal government. Indeed, we often find ourselves today arguing with DOE over what they regard as NRC's too open policy with regard to some documents they regard as sensitive, for example relating to ISFSI's or category I fuel cycle facilities.

The openness goal in our strategic plan is clearly caveated when it comes to security information. For example, the strategic plan states:

"The NRC will adopt policies relating to sensitive security information consistent with those at the Department of Homeland Security and other agencies.

"(4) Provide a fair and timely process to allow public involvement in NRC decision-making in matters not involving sensitive unclassified, safeguards, classified or proprietary information.

"(5) Provide a fair and timely process to allow authorized (appropriately cleared with a need to know) stakeholders involvement in NRC decision-making in matters involving sensitive unclassified, safeguards, classified, or proprietary information."

Option 1 is entirely consistent with the strategic plan. I defended that option during my confirmation process last fall. My nomination was not blocked. So I see no significant Congressional pressure to adopt a policy of sharing security inspection report cover letters with the public. Indeed, I see no public pressure for such a policy outside of the usual anti-nuclear zealots.

Option 2B will set the Commission on a slippery slope. The staff claims that "no discussion would be provided regarding an overall assessment of licensee security performance, inspection periodicity, or any other sensitive matter." But by looking over a series of these cover letters, at the very minimum inspection periodicity information will be able to deduced by interested observers including terrorists. "Plant A must be in more trouble with NRC than Plant B because they are having more inspections." But this will be just the start, of course, for any plant with findings. As I said in my vote on SECY-04-0020, if there are findings reported, "the staff will be pressed to reveal more information... Congressmen will feel compelled to write letters. Reporters will feel compelled to seek safeguards information. This will be a fool's errands, carried out time and again, consuming staff and Commission resources in large quantities." I have no idea what information will be disclosed as a result of this inevitable process, but I suspect it will routinely result in the disclosure of sensitive security information. And, of course, the staff budget estimate for Option 2B, 1.0 FTE per year, does

not include any funding for our fool's errands.

I urge my colleagues to reject the staff's proposal and preserve the current system, which is working exactly as intended.

There is one element of the security cornerstone, material control and accountability (MC&A), where I would make all inspection reports public. I believe that MC&A really does not belong in the security cornerstone. It could easily be moved to the public radiation safety cornerstone of the ROP. We have publicly discussed the Millstone, Vermont Yankee and Humboldt Bay cases. All cases discovered thus far or likely to be discovered, involve no security threat. Irradiated fuel is not going to leave the site unless it is confused with low-level waste, as some fuel pin segments have been, and shipped in appropriately shielded containers to a low-level waste site. Such circumstances certainly should be prevented, and if they occur, be pursued under our enforcement process. But this is hardly a security matter and certainly our interactions with our licensees on any such infractions should not be kept from the public.


E. J. J. J.
Feb 16, 2006

Additional Comments of Commissioner McGaffigan on SECY-06-0036

I recognize that all of my colleagues have decided now to pursue the staff's recommended option 2B, namely to make security inspection report cover letters publicly available for power reactor licensees. I regret that decision, and as I wrote in my original vote, it will set NRC at odds with literally every other agency of the federal government. While individual Members of Congress have expressed concern about NRC's security information "blackout," Congress as a whole in legislation passed since 9/11 has been vigilant to ensure that security vulnerability assessments at critical infrastructure facilities are protected from disclosure. The Department of Homeland Security Act of 2002 included provisions prohibiting the public release of information contained in or derived from security assessments of critical infrastructure facilities.

This statute does not apply directly to NRC-licensed facilities. But under our legislation, NRC has the power to follow a similar course, and we have done so since 9/11 up to now. Our security inspections at power reactor facilities (and indeed other NRC-licensed facilities) are unique in the commercial critical infrastructure. No other commercial facilities have such vigorous on-the-ground vulnerability assessments by federal personnel year round. Only the Department of Energy and the Department of Defense pursue a similar approach for the federal facilities they control. I believe that we should have awaited clear direction by Congress as a whole before taking this action, which will put us at odds with the rest of the U.S. Government.

As for the security information "blackout" alleged by some stakeholders, it does not exist. We and our staff have since 9/11 continued to discuss security matters publicly. We have testified before Congress, put out numerous reports, conducted public meetings, and hosted panel discussions at our annual Regulatory Information Conference. The only information which we pulled from our web page was data on three security performance indicators, which I believe everyone agreed were completely and utterly useless and had never been anything but "green" for every plant, and a few inspection report cover letters that I believe disclosed almost nothing, certainly less than the staff now proposes. Nothing except statistical information for the fleet was disclosed about force-on-force exercise results. By every rational measure we have had a more complete discussion about security at power reactors since 9/11 compared to prior to 9/11. But we have done so without disclosing any particular vulnerabilities at particular facilities. Under Option 2B, we will soon be doing just that. Either the Commission majority is at the cutting edge of a new, and thus far indiscernible, trend in Congress and the executive branch toward openness about security vulnerabilities in the critical infrastructure, or they (and the staff whose recommendation they are following) are further isolating NRC from the rest of government. Only time will tell.


Edward McGaffigan, Jr. 3/30/06

(Date)

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0036 - PUBLIC DISCLOSURE
OPTIONS WITHIN THE SECURITY
CORNERSTONE OF THE REACTOR
OVERSIGHT PROCESS**

Approved *in part* Disapproved *in part* Abstain _____

Not Participating _____

COMMENTS:

See attached comments.

[Signature]
SIGNATURE
3/16/06
DATE

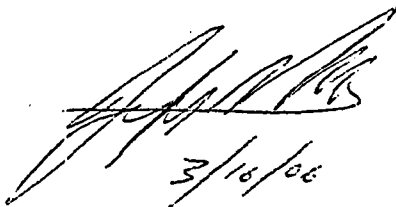
Entered on "STARS" Yes No _____

Comments from Commissioner Merrifield on SECY-06-0036:

I approve a revised version of Option 2 Sub-option B as provided by the staff in SECY-06-0036. The revised version of Sub-option B reads as follows:

The summary would state: An NRC inspection was conducted in one or more of the attributes of the Security Cornerstone (e.g., access authorization, access control, physical protection, and/or contingency response). If the inspection resulted in no findings, this would be stated. If the inspection resulted in one or more findings, then the statement should read "The inspection resulted in one (or more) findings. The deficiency/deficiencies was/were promptly corrected or compensated, and the licensee was in compliance with applicable physical protection and security requirements within the scope of this inspection prior to the inspector(s) leaving the site." At that time, staff should not describe the specific attributes affected by the adverse findings. Once the significance of these findings has been determined, the staff would assess whether to make this security information available to the public.

In matters involving common defense and security, there is a very fine line between adequately informing the public and at the same time not allowing potential adversaries access to critical information which could allow them to exploit or circumvent security measures. In order to build public confidence, the NRC must communicate that we are conducting appropriate security inspections and provide sufficient information for the public to conclude either no problems were identified or that problems identified were corrected before we left the site. If members of the public request additional information through a Freedom of Information Act request, we have adequate procedures to protect safeguards information and sensitive but unclassified information that should not be released. I fully expect that members of Congress may exercise their legal authority to request a more detailed briefing on individual inspections on facilities either within their representational areas or within their area of responsibility. Members of Congress have exercised this right in the past and we have provided these briefings as appropriate.



3/16/06

NOTATION VOTE

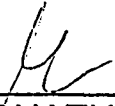
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: **SECY-06-0036 - PUBLIC DISCLOSURE
OPTIONS WITHIN THE SECURITY
CORNERSTONE OF THE REACTOR
OVERSIGHT PROCESS**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: See attached comments.



SIGNATURE

DATE 3/17/06

Entered on "STARS" Yes X No _____

Commissioner Jaczko's Comments on SECY-06-0036
Public Disclosure Options within the Security Cornerstone of the Reactor Oversight
Process

I approve of the staff's recommendation to provide limited security-related inspection information to the public as described in Option 2B of the paper. I commend the staff for delivering the proposed options for Commission deliberation so promptly following the August 15, 2005 Staff Requirements Memorandum. In addition, I commend the staff for working to improve the transparency of the security cornerstone, and for maintaining the necessary protection of information regarding vulnerabilities at NRC regulated facilities.

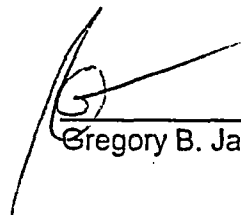
As stated in my vote on SECY-05-0082, I support maintaining the physical protection cornerstone within the ROP and the Action Matrix, limiting the public availability of security-related information, and inspection reports only until corrective actions were completed. This position would have me more aligned with Option 3, but I see Option 2B as a better first step toward greater openness with substantial resource savings.

While I fully support the staff's efforts to improve the transparency of security oversight, there is another issue the staff's current proposal does not address, namely the proper integration of safety and security within the Reactor Oversight Process (ROP). Maintaining the security cornerstone and its action matrix separate from the remaining six cornerstones is contrary to the overall agency objectives of assessing licensee performance across all seven cornerstones.

The security cornerstone has been a unique challenge to the agency since the events of September 11, 2001. The agency is, however, on a path to achieving regulatory stability in this area and, the Commission should reconsider the 2004 policy decision that removed security findings from the overall publicly available Action Matrix. The staff should present options to the Commission for re-integrating the security cornerstone into the Action Matrix.

Once again, I appreciate and support the staff's effort to improve the transparency of the agency's security oversight, while ensuring protection of information that could be useful to malevolent actors. One of the most important functions for the NRC is to maintain the high level of security at the nations nuclear power plants. The staff's approach will help inform the public that the NRC is fulfilling its mission and that, in turn, will further the NRC objective of safe and secure operation.

Absent a security basis for protecting this information, the staff should release this paper after Commission voting.



Gregory B. Jaczko 3/7/06
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-06-0036 - PUBLIC DISCLOSURE
OPTIONS WITHIN THE SECURITY
CORNERSTONE OF THE REACTOR
OVERSIGHT PROCESS**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.

Peter B. Lyons



SIGNATURE

3/ 7/ 06

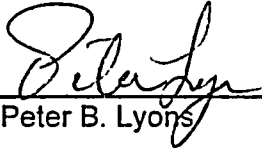
DATE

Entered on "STARS" Yes No

Commissioner Lyons' Comments on SECY-06-0036

I approve the staff's recommendation (Option 2B) to increase the amount of public information released pursuant to the implementation of the Security Oversight Process (SOP), subject to the following comments. I have no objection to the public release of this paper, the Commission voting record, and the corresponding SRM, following approval and issuance of the final SRM.

I agree with the comments of the Chairman and Commissioner Merrifield. In addition, I believe the additional increment of public information to be provided under Option 2B must be more precisely prescribed within the SOP program guidance to support staff consistency and efficiency. The staff should develop more definitive guidelines that would provide consistent 'template' inspection report language for a range of conceivable situations (e.g. type of inspection conducted, number and significance of inspection findings) and permit the staff to respond to public inquiries promptly, to the extent established in the guidelines.


Peter B. Lyons 3/21/06
Date