



COMMISSIONER

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

COMGBJ-06-0004

REQUEST REPLY BY: 7/17/06

June 30, 2006

MEMORANDUM TO: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Lyons

FROM: Gregory B. Jaczko

SUBJECT: POTENTIAL CLOSURE OF THE ISSUES SURROUNDING THE  
FEBRUARY 22, 2002, SECURITY ORDERS TO NUCLEAR POWER  
PLANTS

*Approved subject to  
attached comments.  
Elle Gaffigan  
8/9/06*

**Background:**

A February 2002 Commission Order required nuclear power plant licensees to develop specific guidance and strategies to withstand damage to or loss of large areas of the plants. This damage may be caused by a range of deliberate attacks that result in large fires and explosions. The mitigation strategies address both spent fuel pool and reactor core and containment cooling using existing or readily available resources (equipment and personnel).

In addition to the Orders, the Commission established Policy that licensees were to achieve a new level cognition of safety and security through a comprehensive understanding of the capabilities and limitations of the plants under normal, abnormal, and severe circumstances, and that, based on this improved understanding, licensees would take reasonable steps to strengthen their capabilities and reduce their limitations.

All of these efforts became known as the Phase 1, 2, and 3 efforts. Phase 1 focused on those mitigative strategies required by the February 25, 2002 Order, Section B.5.b and the February 25, 2005 implementation guidance document. Phase 2 evolved to be that which focused on mitigative strategies beyond the Order requirements to address spent fuel pool damage. Phase 3 evolved to be that which focused on mitigative strategies beyond Order requirements to address damage to the reactor and containment.

At this stage, the Commission has reviewed and approved the methodology the industry is using to meet the Phase 2 effort by approving related agency correspondence in a June 13, 2006 Staff Requirements Memorandum. On June 16, 2006, and June 27, 2006, the NRC received additional correspondence from Marvin S. Fertel, Senior Vice President and Chief Nuclear Officer for the Nuclear Energy Institute (NEI), which outlined the industry's proposed resolution to the remainder of this effort.

## Commissioner McGaffigan's Comments on COMGBJ-06-0004

Commissioner Jaczko noted in COMGBJ-06-0004 that the Commission had approved both the February 25, 2002 Order which was the source of the requirements for the mitigative strategies in Phase 1, and also the NRC correspondence which addressed the actions associated with Phase 2.

I would have preferred a similar level of Commission involvement in formalizing the specific agency positions with respect to actions taken in response to Phase 3. Indeed, I wish the Commission had been provided with just the sort of analyses that Commissioner Jaczko now seeks, after the fact. For that reason, I support COMGBJ-06-0004 even though, having reviewed the votes of my colleagues, I recognize that the majority position of the Commission is not to direct the staff to perform the analyses recommended by Commissioner Jaczko. And I do also recognize, as pointed out by Commissioner Lyons in his vote, that the staff has now partially met Commissioner Jaczko's proposed tasking.

Among the items that I would have explored, if the matter had come before the Commission for review, are the structuring and control of licensee commitments made to satisfy potential Phase 3 concerns. I would have advocated that such commitments be of a type requiring licensee notification to the NRC prior to modification or deletion, instead of after the fact in a routine summary report. Lacking such a prior notification requirement for licensees, I propose that the Commission direct the staff to notify the Commission within 60 days that a licensee has reported a modification or deletion of any commitment made pursuant to Phase 3, together with a recommendation as to whether an Order should be issued. I make this proposal because I consider the licensee commitments made to mitigate Phase 3 scenarios to be very important; the equipment involved may not be safety related; and among the lessons learned from Davis-Besse is that the control of commitments has historically received less rigor than items required by rule or statute.

Additionally, I join with Chairman Klein and Commissioner Merrifield in support of the recommendation by Commissioner Lyons that the staff should provide to the Commission a summary report following the completion of all staff licensing actions related to these initiatives.

*E. M. McGaffigan*  
8/9/06