RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN KLEIN

SUBJECT: COMGBJ-08-0002 – COMMISSIONER JACZKO'S REQUEST FOR RECONSIDERATION OF THE COMMISSION DECISION IN SECY-05-0045

Approved _____ Disapproved _xx_ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _xx_ None ___

SIGNATURE

4/25/08

DATE

Entered on "STARS" Yes ___ No ___

Chairman Klein's Comments on COMGBJ-08-0002-Corrected

As requested in COMGBJ-08-002-Corrected, April 22, 2008, I have evaluated Commissioner Jaczko's motion for reconsideration of the previous Commission decision on SECY-05-0045, "Denial of a Petition for Rulemaking to Revise 10 CFR Part 50 to Require Offsite Emergency Plans to Include Nursery Schools and Day Care Centers (PRM-50-79). I have reviewed the Commission's decisions on both PRM-50-79 as well as PRM-50-81, a more recent decision on fundamentally the same issue, as well as the information contained in SECY-07-0225 which documents the review of NUREG-0654, Supplement 3, 'Criteria for Protective Action Recommendations (PAR) for Severe Accidents'. For the reasons detailed below, I have concluded there is insufficient reason to reopen the petition for rulemaking.

Both PRM-50-79 and PRM-50-81 requested that NRC amend its regulations regarding offsite state and local government emergency plans for nuclear power plants to ensure that day care centers and nursery schools in the vicinity of nuclear power facilities are properly protected during a radiological emergency.

The Commission denied petition PRM-50-79 on the basis that NRC requirements as well as NRC and Federal Emergency Management Agency (FEMA) guidance already provide reasonable assurance that all members of the public will be protected in the unlikely event of an accident at a nuclear power plant, including children attending day care centers and nursery schools.

The Commission denied petition PRM-50-81 in February 2007, on the basis that this petition did not provide significant new information or arguments that were not previously considered by the Commission in denying PRM-50-79. In recommending the petition be denied, the staff again concluded that FEMA arrived at a defensible finding of reasonable assurance that children at day care facilities and nursery schools would be evacuated in the event of a radiological emergency at a nuclear power plant.

I do not believe that that the PAR study provides sufficient evidence for accepting PRM-50-79. The PAR study was undertaken to evaluate alternative protective actions that could potentially reduce consequences during a severe radiological emergency at a nuclear power plant. The results of the study, once vetted with State and local government emergency response professionals, stakeholders and industry, will be employed to improve Federal guidance conveyed in NUREG-0654, Supplement 3, which is in turn implemented through current NRC requirements documented in 10CFR50.47(b)(10). There is no new information in SECY-07-0225 which would lead me to disagree with the staff's determination that these requirements and guidance, as currently codified, reasonably assure adequate protection of all members of the public, including children attending day care centers and nursery schools, in the event of a nuclear power plant accident. Moreover, improving NUREG-0654, Supplement 3 by taking into account the results of the PAR study can, logically, only enhance emergency response plans for populations living near nuclear power plants.

I believe that the original Commission decisions pertaining to petitions PRM-50-79 and PRM-50-81 were correct. I support the staff's continued efforts to complete the processes described in SECY-07-0225 to inform the revision of NUREG-0654, Supplement 3, and I believe that continued NRC interactions with FEMA will appropriately address potential emergency planning (EP) issues that are jurisdictionally within the scope of FEMA's mandate, such as offsite EP.

4/25/08

Dale E. Klein Date

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: COMGBJ-08-0002 – COMMISSIONER JACZKO'S REQUEST FOR RECONSIDERATION OF THE COMMISSION DECISION IN SECY-05-0045

Approved __X___ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _X__ None ___

SIGNATURE

5/9/08

DATE

Entered on "STARS" Yes X No ___

COMMISSIONER JACZKO'S COMMENTS ON COMGBJ-08-0002
REQUEST FOR RECONSIDERATION OF THE COMMISSION DECISION IN SECY-05-0045

I believe that the Commission has now been presented with sufficient information that there could potentially be generic weaknesses in the emergency preparedness regulations and guidance involving special needs populations that the Commission should grant a broad petition for rulemaking in this area.

Earlier petitions received by the agency (PRM-50-79 and 50-81) raised concerns about the adequacy of evacuation plans for special needs populations and facilities, specifically nursery schools and daycare centers in Pennsylvania. The petitions raised legitimate issues as evidenced by the amount of work that the licensee (workshops around Pennsylvania), the State (a new law), and the NRC and FEMA staff did to address any potential weaknesses in emergency planning at those facilities. These efforts were valuable and gave the Commission the confidence that any potential issues in Pennsylvania were addressed. This work did not, however, answer the lingering question about whether similar issues exist with special needs populations in the 30 other states around the country that house nuclear power plants. The staff could not provide that assurance but the majority of the Commission denied the petition as having been resolved with respect to Pennsylvania.

The Commission has now been presented with a comprehensive study that concludes there is more work that must be done to protect the most vulnerable populations around nuclear power plants – both those people in special needs facilities such as schools and hospitals, and those people with special needs who live at home. It notes the difficulties experienced in previous disasters such as Hurricanes Katrina and Rita when it was discovered that multiple special facilities had contracted with the same transportation services for evacuations, and those resources were overwhelmed by the need to simultaneously evacuate them all. The study notes that evacuating some of these facilities – such as hospitals – can take up to 20 hours. It also focuses on the challenges to, and importance of, doing additional work to identify in advance those members of the special needs populations who do not reside facilities to ensure they are adequately incorporated into emergency plans.

I believe that this additional piece of information has provided more than sufficient evidence that the Commission should initiate a rulemaking to provide a formal process involving public participation to determine what generic improvements need to be made to strengthen this vital special needs populations component of the agency's emergency preparedness regulations.

While additional work with FEMA is good and necessary, the NRC has the ultimate authority and responsibility to pursue direct and prompt action to eliminate any doubts about an assurance of adequate protection that have been identified by the petitioners and this study.

5/9/08

Gregory B. Jaczko Date

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: COMGBJ-08-0002 – COMMISSIONER JACZKO'S REQUEST FOR RECONSIDERATION OF THE COMMISSION DECISION IN SECY-05-0045

Approved _____ Disapproved __X__ Abstain _____

Not Participating _____

COMMENTS: Below __X__ Attached __X__ None ___

The earlier vote dated 4/11/08 that had been marked "Approved" is being modified by this vote to now reflect "Disapproved." This is being done to ensure a more clear alignment with the intent of the attached comments, which have not been changed.

Peter B. Lyons
SIGNATURE

4/ 28 /08
DATE

Entered on "STARS" Yes __X__ No ___

Commissioner Lyons' Comments on COMGBJ-08-0002

As requested in COMGBJ-08-0002, I have reconsidered the earlier decision of the Commission on SECY-06-0228 (Denial of a Petition for Rulemaking to Codify Federal Emergency Management Agency GM EV-2, "Protective Actions for School Children," Into the Emergency Planning Regulations in 10 CFR Part 50 (PRM-50-81). I do not believe there is sufficient reason to reopen the petition.

This petition and an earlier petition, i.e., PRM-50-79, requested that NRC amend its regulations regarding offsite state and local government emergency plans for nuclear power plants to ensure that all day care centers and nursery schools in the vicinity of nuclear power facilities are properly protected during a radiological emergency. The Commission denied petition PRM-50-79 in December 2005, on the basis that current NRC requirements and NRC and Department of Homeland Security (DHS) guidance reasonably assure adequate protection of all members of the public, including children attending day care centers and nursery schools, in the event of a nuclear power plant incident. NRC stated in its denial that many of the specific requests of petition PRM-50-79 either are already covered by regulations or guidance documents (including GM EV-2 – a FEMA guideline) or are inappropriate for inclusion in NRC regulations owing to their very prescriptive nature. The Commission denied petition PRM-50-81 in February 2007, on the basis that this petition did not provide significant new information or arguments that were not previously considered by the Commission in denying PRM-50-79.

In its review of PRM 50-79, the Commission determined that the petition and information obtained during the review of the petition raised questions about local implementation of relevant requirements and guidelines. Accordingly, in its October 26, 2005, SRM to SECY-05-0045, the Commission directed the staff to undertake several actions to further assess these implementation questions and to provide appropriate recommendations for improvement.

The staff responded to this direction, and reported the results of its interactions with DHS and the Pennsylvania Emergency Management Agency to obtain information relevant to local implementation in SECY-06-0101 dated May 4, 2006. In SECY-06-0101, the staff reported that it found no sufficient basis to question the adequacy of DHS findings regarding reasonable assurance and that it believes that the DHS findings are consistent with the planning standards of 10 CFR 50.47(b) and the existing memorandum of understanding between NRC and DHS. The Commission approved the staff's recommendations in its SRM, dated June 21, 2006, and directed further staff interaction with FEMA on a revision to the NRC/FEMA MOU.

COMGBJ-08-002 was initiated as a result of an issue raised in SECY-07-0225, which contained the following staff recommendation: "Advance planning for the evacuation of special needs populations that do not reside in special facilities may not be consistently addressed within all nuclear plant EPZs. This issue warrants additional review to determine extent. The staff will discuss this issue with the Federal Emergency Management Agency" (FEMA). I note that this subset of the special needs population differs from the subset addressed in the petitions. Nonetheless, I believe that NRC needs to continue its interactions with FEMA to appropriately address potential emergency preparedness (EP) issues that are within the scope of FEMA's mandate, such as offsite EP.

In my vote to approve SECY-07-0225, I noted that "the technical analyses documented in NUREG/CR-6953 Vol. 1 represent the best and current science, have been reviewed and commented upon by the NRC Advisory Committee on Reactor Safeguards, and will be published and publicly available during the revision process. Nonetheless, issues associated

with any potential for public evacuation are sensitive ones, so I am particularly encouraged that the process for considering the development of revised guidance will be robust and scrutable. As described in SECY-07-0225, the process will include soliciting insights from State and local government emergency response professionals, professional conferences and other scheduled meetings, and a telephone survey of Emergency Planning Zone populations with results to be published as NUREG/CR-6953 Vol. 2." As I have stated before, I believe that in matters involving extensive inter-governmental coordination, it is necessary for the associated parties to make an extra effort to communicate and to coordinate their various roles and responsibilities. Accordingly, I again encourage the staff to continue it's intergovernmental and stakeholder interactions on emergency planning issues.

On the basis of my review, I have concluded that the NRC appropriately responded to the earlier petitions and I continue to support my earlier vote approving the staff recommendation to initiate the processes described in SECY-07-0225 to guide the revision of NUREG-0654, Supplement 3, so that it reflects the results of the protective action recommendations study.

Peter Lyons 4/11/08

Peter B. Lyons Date

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: COMGBJ-08-0002 – COMMISSIONER JACZKO'S REQUEST FOR RECONSIDERATION OF THE COMMISSION DECISION IN SECY-05-0045

Approved _____ Disapproved __XX__ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached __XX__ None ___

SIGNATURE

5/ 7 /08
DATE

Entered on "STARS" Yes ✓ No ___

Commissioner Svinicki's Comments on COMGBJ-08-0002-Corrected

As requested in COMGBJ-08-0002-Corrected [April 22, 2008], I have evaluated Commissioner Jaczko's motion for reconsideration of the previous Commission decision on SECY-05-0045, "Denial of a Petition for Rulemaking to Revise 10 CFR Part 50 to Require Offsite Emergency Plans to Include Nursery Schools and Day Care Centers" (PRM-50-79). Because I was not serving on the Commission during its consideration of PRM-50-79, I have reviewed the Commission's decision in that matter, as well as the underlying petition and related petitions. I have considered the Commission's action on PRM-50-79 in light of information subsequently brought forward in SECY-07-0225. Specifically, I have reviewed whether the information documented in NUREG-/CR-6953, Volume 1, "Review of NUREG-0654, Supplement 3, 'Criteria for Protective Action Recommendations (PAR) for Severe Accidents'" would cause me to support an outcome different than that supported by a majority of the Commission in SECY-05-0045 (PRM-50-79). I have concluded that it does not. Consequently, I do not support the motion and do not approve Commission reconsideration of its decision in SECY-05-0045 (PRM-50-79).

In PRM-50-79, petitioners requested that the NRC amend its regulations regarding offsite state and local government emergency plans for nuclear power plants to ensure that all daycare centers and nursery schools in the vicinity of the plants are properly protected in the event of a radiological emergency. In denying PRM-50-79, the Commission found that current regulations and guidance along with state and local government-established emergency plans provide reasonable assurance of adequate protection of all members of the public, including special populations. Specifically, all nuclear power reactor licensees are required under Part 50 to develop specific plans for all "special facility populations," which refers not only to pre-schools, nursery schools, and daycare centers, but all kindergarten through twelfth grade students, nursing homes, group homes for physically or mentally challenged individuals and those who are mobility challenged; as well as those in correctional facilities. Additionally, FEMA provides further guidance to licensees through "Radiological Emergency Preparedness for Handicapped Persons" (GM 24) and "Protective Actions for School Children" (GM EV2) . All emergency plans are submitted to FEMA for review and tested in a biennial emergency preparedness exercise conducted for each nuclear power station. The Commission also found that the very specific requests of the petitioners were either already covered by regulations and/or guidance documents or were inappropriate for inclusion in NRC regulations due to their prescriptive nature or because FEMA indicated that they were unnecessary.

As I understand it, the motion for reconsideration is specifically prompted by sections of NUREG/CR-6953, Volume 1, which note that evacuating some facilities, such as hospitals, can take up to 20 hours and which discuss the challenges of identifying special needs populations to ensure they are adequately incorporated into emergency plans. Although these matters are of vital importance in emergency planning, and are the subject of ongoing work by staff, I do not find a basis in these statements to support an outcome different than that arrived at by the majority in SECY-05-0045 (PRM-50-79). Consequently, I conclude that the action on the petition was appropriate and need not be reconsidered.

Kristine L. Svinicki 5/7/08