

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-11-0093 – NEAR-TERM REPORT AND
RECOMMENDATIONS FOR AGENCY ACTIONS
FOLLOWING THE EVENTS IN JAPAN

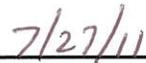
Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE



DATE

Entered on "STARS" Yes No

**Commissioner Ostendorff's Comments on SECY-11-0093
Near-Term Report and Recommendations for
Agency Actions Following the Events in Japan**

I want to thank the Task Force for their dedicated efforts in completing their review in a relatively short period of time. Their report represents a very significant first step in learning from the events at Fukushima. That said, there is much more to be done. I would like to thank Dr. Charles Miller for his committed leadership of the Task Force. While I have some views that differ from those of the Task Force, that is expected and to be encouraged in an agency that prides itself on openness and transparency.

This is perhaps one of the most important votes I will cast as a Commissioner. The gravity of this subject mandates thoughtful reflection upon the NRC's *Principles of Good Regulation – Independence, Openness, Efficiency, Clarity, and Reliability*. With these principles in mind, I have carefully reviewed the Task Force report, sought input from the NRC staff, and listened to the views of my colleagues on the Commission. I will offer my views on SECY-11-0093 organized under these main areas: (I) Overarching decision-making principles; (II) Addressing the NRC's regulatory framework – Task Force recommendation 1; (III) Short-term regulatory actions; and (IV) Governance of the NRC's actions going forward and the long-term review.

I. Overarching decision-making principles

Following the March 23, 2011 tasking memorandum for COMGBJ-11-0002, I was keenly interested in what judgments the Task Force would make regarding the safety of U.S. operating reactors of all designs. To this very point, I highlight that the Task Force observed that (page 18):

Although complex, the current regulatory approach has served the Commission and the public well and allows the Task Force to conclude that a sequence of events like those occurring in the Fukushima accident is unlikely to occur in the United States and could be mitigated, reducing the likelihood of core damage and radiological releases.

Therefore, in light of the low likelihood of an event beyond the design basis of a U.S. nuclear power plant and the current mitigation capabilities at those facilities, the Task Force concludes that continued operation and continued licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security.

The above findings anchor my views on how to responsibly move forward in assessing the Task Force recommendations. Let me offer four additional observations:

- 1) In October 2010, an Integrated Regulatory Review Service team conducted an international peer review mission to assess the NRC's regulatory program and found that "the NRC has a comprehensive and consistent regulatory system that has been

developed in a determined manner” and that “the NRC has a strong drive for continuous improvement in its own performance and has well achieved its goals”;

- 2) The Fukushima tragedy occurred in another country whose regulatory structure is quite different from that found in the U.S.;
- 3) I agree with the statements made by Commissioner Apostolakis at the July 19, 2011 Commission meeting, that the occurrence of the tsunami on March 11 was not an unthinkable external event; and
- 4) There is still a great deal that we do not know about Fukushima concerning the sequence of events, failure modes of equipment, functionality, and execution of procedures, etc.

These four observations helped frame my study of the Task Force report and recommendations.

As noted earlier, the NRC's *Principles of Good Regulation* are relevant to my decision-making on the Task Force report. Regarding the process for addressing the Task Force recommendations and the long-term review, I believe that three of these principles deserve specific mention. First, the principle of *Clarity* calls for the Commission to provide immediate direction to the staff on the philosophical approach that should guide the disposition of the Task Force recommendations. Second, the principle of *Reliability* leads me to conclude that to ensure that our regulations are not in an unjustifiable state of transition, the substantial institutional knowledge and operational experience of the NRC should be fully utilized in moving forward to address the Task Force recommendations. Third, the principle of *Openness* requires us to engage external stakeholders in a meaningful way. The spirit of this third principle underlies the June 23, 2011 COM on “Engagement of Stakeholders Regarding the Events in Japan” that I co-authored with Commissioner Magwood (COMWDM-11-0001/COMWCO-11-0001). In that light, I support the underlying premise of Chairman Jaczko's proposal for the Commission to have public meetings to engage stakeholders and to inform Commission decision-making in a timely, responsive manner. I look forward to working with all of my colleagues on the Commission to determine the appropriate subjects and schedule for such Commission meetings.

II. Addressing the NRC's regulatory framework – Task Force recommendation 1

I appreciate the Task Force's thoughtful accounting of the background for the NRC's current regulatory framework. Some in the press have focused on the use of the word “patchwork” in the report to describe the NRC's existing regulatory framework. I think that term diminishes the dynamic, evolving nature of the NRC's regulatory framework. Our predecessors took certain concrete actions in response to the events at Three Mile Island and the attacks of September 11, 2001. With the benefit of hindsight, one could suggest there may have been better ways to approach certain issues at the time. But, I am not a critic of those past actions. Rather, I personally believe that previous NRC staff and Commissions used their best judgment to frame

courses of action appropriate to address the problems they faced. While that regulatory approach, one of a dynamic and evolving nature, may not have the coherence of a framework that might be developed with the luxury of being done in a closed room at one static point in time, it does not mean that the framework is not effective. To the contrary, I believe that the NRC's Reactor Oversight Process (ROP) is a key example of an evolutionary change that has resulted in a rigorous oversight program that is focused on safety in the areas of greatest risk significance. Since 2000, NRC inspection findings in the ROP have brought to light substantive issues on nuclear reactor operations, plant design, maintenance, and defense-in-depth, and corresponding corrective actions to address such findings.

As stated earlier, the Task Force noted that "the current regulatory approach has served the Commission and the public well." I also reiterate what I stated at the July 19, 2011 public Commission meeting on the near-term report: "While I support thoughtful consideration of any potential safety enhancements in a systematic and holistic manner, I do not believe that our existing regulatory framework is broken."

Consistent with the NRC's organizational value of *Excellence* that drives us to be continuously improving and self-aware, I support moving forward, but not at this time, with Task Force recommendation 1. Such an effort would constitute a highly significant undertaking for the entire agency and realistically would take some number of years to accomplish. While I support the notion of enhancing our existing framework, I firmly believe that any such effort should be undertaken as a separate, distinct effort from the rest of the Fukushima Task Force recommendations. Acting upon recommendation 1 in the near-term will distract the NRC from timely and responsive action on those Task Force recommendations that would enhance safety in the near-term and are ripe for execution. Therefore, I propose that recommendation 1:

- 1) Be pursued independent of any activities associated with the review of the other Task Force recommendations; and
- 2) Be deferred for action and commence only after receiving future direction from the Commission. To facilitate this Commission direction, the EDO should submit a notation vote paper to the Commission that would take into account the cumulative lessons learned and stakeholder input from the review of other Task Force recommendations, and provide the Commission with a full range of options for addressing recommendation 1. This notation vote paper should be provided to the Commission no later than 18 months from the date of the final Staff Requirements Memorandum (SRM) for SECY-11-0093.

III. Short-term regulatory actions

I agree with Commissioner Magwood that there are short-term actions that the agency should consider to enhance safety. As such, I support Commissioner Magwood's recommendation with some modification. Specifically, I recommend that within 30 days (instead of 20 days) of the final SRM associated with this paper, the EDO should provide the Commission with a

notation vote paper that identifies and makes recommendations regarding any Task Force recommendations that can, and in the staff's judgment, should be implemented, in part or in whole, without unnecessary delay. I would add additional guidance that the staff should, in framing these short-term actions, consider the wide range of regulatory tools available. Again, these short-term actions should be assessed using the NRC's existing regulatory framework. Taking this step in the short-term will get the agency and licensees started down the path to implement appropriate safety enhancements sooner rather than later.

While I will carefully review the short-term actions that the EDO will submit in the notation vote paper described above, I believe I have an obligation to the NRC's external stakeholders and the NRC staff to communicate my view on certain Task Force recommendations. Based on my review and understanding of the accident at Fukushima, I believe the areas listed below warrant short-term regulatory attention and I offer them for consideration as appropriate by the EDO.

- 1) Reevaluate the seismic and flooding hazards at their sites against current NRC requirements and guidance (related to Task Force recommendation 2.1);
- 2) Perform seismic and flood protection walk-downs to identify and address plant-specific vulnerabilities and verify the adequacy of monitoring and maintenance for protection features such as watertight barriers in the interim period (related to Task Force recommendation 2.3);
- 3) Issue an advanced notice of proposed rulemaking and develop the technical basis to revise 10 CFR 50.63 to strengthen station blackout mitigation capability (related to Task Force recommendation 4.1);
- 4) Review 10 CFR 50.54(hh)(2) equipment protection from design-basis external events and additional equipment needs for multiunit events (related to Task Force recommendation 4.2);
- 5) Review venting capability and accessibility for Mark I and Mark II containments (related to Task Force recommendation 5.1); and
- 6) Maintain and train on Severe Accident Management Guidelines (related to Task Force recommendations 8.4 and 12.2).

IV. Governance of the NRC's actions going forward and the long-term review

In March, I applauded and supported Chairman Jaczko's prompt efforts to bring a proposal to the Commission for the NRC's response to the events in Japan. Now we find ourselves nearing the end of July, knowing more than what we knew in March. As I have learned more, my thinking about the NRC's response to Fukushima has certainly evolved since the Commission established the Task Force in March. Therefore, I find it timely for the Commission to build on

our earlier decisions and fine-tune our vision for the NRC's actions going forward and for the long-term review.

It is with this backdrop and the principles of *Clarity, Reliability, and Openness* in mind that I recommend the EDO provide the Commission with a notation vote paper with a charter for the structure, scope, and expectations for assessing the Task Force recommendations and the NRC's longer-term review. The draft charter should be based upon the concept envisioned by the EDO and Deputy EDO for Reactor and Preparedness Programs that establishes a senior level steering committee reporting to the EDO and supported by an internal advisory committee and an external panel of stakeholders. This charter should include as an objective that the steering committee would provide, through the EDO, an integrated, prioritized assessment of the Task Force recommendations along with its recommendations and bases for further regulatory actions. This model of review has effectively served the Commission in other significant efforts such as the Groundwater Task Force, the Davis-Besse Lessons Learned Task Force, and the Discrimination Task Force. The draft charter for Commission review should also incorporate any direction provided by the Commission in response to COMWDM-11-0001/COMWCO-11-0001. To support timely and clear Commission direction to the NRC staff, the paper should be provided to the Commission no later than two weeks after the date of the final SRM for SECY-11-0093.

In addition, I join Commissioners Magwood and Svinicki in directing the EDO within 45 days of the date of the final SRM for SECY-11-0093 to provide the Commission with a notation vote paper recommending a prioritization of the Task Force recommendations informed by the steering committee. This paper should include the technical and regulatory bases for the prioritization and include recommendations for appropriate stakeholder engagement as well as for Commission meetings.

Given that I have significant reservations about proceeding at this time to implement recommendation 1, I believe additional guidance to the envisioned steering committee and NRC staff is appropriate as they assess the Task Force report and provide their recommendations back to the Commission. At the July 19 Commission meeting, I specifically asked the Task Force the following question: "If the Commission did not approve Recommendation 1, would that change the Task Force recommendations for rulemaking and orders?" The answer I received was "yes." In that light, and given my position on deferring action on recommendation 1, I find it essential for the Commission to provide direction to the steering committee that they should assess the Task Force recommendations through the lens of the Task Force's finding that "the current regulatory approach has served the Commission and the public well." Therefore, consistent with existing practices, the staff should continue to consider risk insights and defense-in-depth to inform their recommendations on what actions may provide for a substantial increase in safety or are necessary to provide reasonable assurance of adequate protection.