

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

SUBJECT: **SECY-99-135 - INTERIM ENFORCEMENT POLICY  
REGARDING ENFORCEMENT DISCRETION FOR NUCLEAR  
POWER PLANTS DURING THE YEAR 2000 TRANSITION**

Approved ☒ Disapproved ☒ Abstain ☐

Not Participating ☐

COMMENTS: - See attached comments.

  
SIGNATURE

6/11/99  
DATE

Entered on "AS" Yes ☒ No ☐

## COMMISSIONER MERRIFIELD'S COMMENTS ON SECY-99-135

I approve issuance of the interim Enforcement Policy with the exception of: 1) Criteria (c) and 2) the provision that allows a licensee to make the decision to continue plant operation in violation of license conditions when communication with the NRC staff is not possible.

I disapprove Criteria (c) regarding a licensee's determination that "Any decrease in safety as a result of continued plant operation is small (considering both risk and deterministic aspects)." This criteria is void of any discussion regarding maintaining reasonable assurance of public health and safety. I believe that Criteria (c) should be modified such that a concurrent requirement is added which asserts that the licensee has also determined that reasonable assurance of public health and safety is maintained with the enforcement discretion.

There is growing confidence that the electric grid and telecommunications infrastructures will remain operable during the Y2K transition. However, the NRC has prudently established a robust contingency plan for Y2K problems in the nuclear industry. This plan is outlined in SECY-99-134. The plan recommends that a resident or regional inspector be stationed at every nuclear power plant (NPP) and gaseous diffusion plant (GDP) site. It also indicates that the NRC Region IV office will be prepared to assume the functions of headquarters if an unanticipated Y2K problem results in the unavailability of the headquarters Operations Center. As discussed in the plan, information provided to the NRC suggests that the local telephone switches providing services to NPPs and GDPs will be Y2K compliant. In addition, many utilities have corporate communication networks that they would be able to rely upon as well as the Emergency Telecommunications System (ETS) provided by the NRC. The backbone of the ETS is the FTS 2000 network, which is essentially separate from the public switched telephone network, and will be Y2K ready by July 1999 according to GSA. Finally, the NRC is planning to provide one portable satellite telecommunications unit at each NPP and GDP in the U.S. and to install appropriate satellite communications equipment at Headquarters and in Region IV. The staff has outlined other telecommunication contingencies in SECY-99-134.

The purpose of the above discussion is to highlight how extraordinary it would be for a licensee to be unable to communicate with the NRC during the rollover periods. While I believe this point is adequately conveyed in SECY-99-134, I do not believe it is adequately conveyed in SECY-99-135. I believe we owe it to our stakeholders to inform them of the robust contingencies we will have in place to preclude such an extensive and concurrent loss of communications with our licensees.

For reasons associated with public protection and perception, I disapprove of the staff's enforcement discretion plan regarding incidents in which communication with the NRC is not possible. Specifically, I do not believe it is prudent for the NRC to give licensees the authority to grant themselves enforcement discretion allowing continued plant operation while in violation of license conditions. If, in fact, extraordinary circumstances do result in making communication between a licensee and the NRC impossible, it is equally likely that communication with Federal, State, and local emergency response organizations is also impossible. I am not comfortable giving licensees the authority to grant themselves enforcement discretion, which would allow them to operate the plant while in violation of license conditions, at the same time communications with the NRC and organizations responsible for protecting the public in the event of an emergency are unavailable. At the very least, the situation at the plant would involve a tenuous grid condition, violation of license conditions, and

an extraordinary series of events which disrupts all communications with the NRC and most likely emergency response organizations. It is not clear to me how the NRC can assure itself and its many stakeholders that it is fulfilling its mission of protecting public health and safety when it allows licensees to grant themselves enforcement discretion, without NRC knowledge, during such tenuous conditions. Thus, I cannot approve the staff's enforcement discretion plan as it pertains to incidents in which communication with the NRC is not possible.

It should be clear to licensees and our other stakeholders that the situation we are addressing in SECY-99-135 pertains to grid reliability and stability, and not a situation where there is an emergency and a licensee needs to take action that departs from a license condition or a technical specification to protect the radiological health and safety of the public. Our licensees are well aware of the procedures to follow in the latter situation because it is already dealt with in our regulations in 10 CFR 50.54(x) and nothing in our decision affects that authority.