

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette L. Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: SECY-19-0100: Discontinuation of Rulemaking -
Independent Spent Fuel Storage Installation Security
Requirements

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in "STARS"

Yes

No

SIGNATURE

6/14/21

DATE

Commissioner Baran's Comments on SECY-19-0100, "Discontinuation of Rulemaking – Independent Spent Fuel Storage Installation Security Requirements"

In the wake of the 9/11 terrorist attacks, NRC issued security orders to independent spent fuel storage installation (ISFSI) licensees. In 2007, the Commission approved the initiation of a follow-on rulemaking to "establish a risk-informed and performance-based approach to ISFSI security using scenarios and dose calculations that considered site-specific information."¹ This rulemaking also addressed an element of a 2008 petition for rulemaking filed by C-10 Research and Education Foundation, Inc.

In considering the Fiscal Year 2020 budget, "the Commission directed the staff ... to proceed with the rulemaking with the exclusive scope of codifying the requirements of the post-9/11 security orders into the NRC's regulations."² Because the NRC staff determined that a rulemaking that merely codified the post-9/11 security orders "would not further improve public health and safety or the common defense and security and would not be cost justified," the staff now recommends discontinuing the rulemaking altogether.³

The Commission traditionally has not used budget votes to re-litigate established policy decisions. Deciding policy matters through the normal process of voting on policy papers has at least two major advantages. First, policy papers provide a significant amount of information about the policy matter at issue, including options and the pros and cons of those options. A budget paper generally does not provide that type of information to allow for a fully informed policy decision. Second, policy papers (and the Commissioner votes on those papers) are typically public, which provides transparency into the Commission's decisionmaking process for interested stakeholders and the broader public. Budget votes, on the other hand, are not public.

Here, the Commission's 2018 direction to limit the scope of the rulemaking has created a false choice between not doing a rulemaking or doing a rulemaking that does nothing new. I understand why the staff would recommend against proceeding with a rule that would require exactly the same security measures as the post-9/11 orders that are already in place. There are, of course, other options.

Before deciding whether and how to proceed with this rulemaking, the Commission would benefit from a staff analysis of more options for the scope of the rule and the potential regulatory, resource, and timing impacts of those options. Rather than choosing from an arbitrarily narrow set of options, I support directing the staff to provide a notation vote paper with a full range of options for this rule. This will allow the Commission to make a well-informed decision about how to proceed. I disapprove termination of the rulemaking and denial of the C-10 petition at this time.

¹ SECY-19-0100 at 2.

² *Id.*

³ *Id.* at 1.