

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Allison M. Macfarlane

SUBJECT: COMGEA-12-0001/COMWDM-12-0002 – PROPOSED
INITIATIVE TO IMPROVE NUCLEAR SAFETY AND
REGULATORY EFFICIENCY

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____


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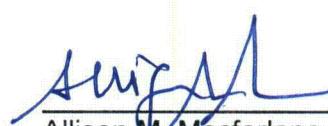
12/5/12
DATE

Entered on “STARS” Yes _____ No _____

Chairman Macfarlane's Comments

**COMGEA-12-0001/COMWDM-12-0002 – PROPOSED INITIATIVE TO IMPROVE NUCLEAR
SAFETY AND REGULATORY EFFICIENCY**

I commend Commissioners Apostolakis and Magwood for their efforts to identify a systematic method for prioritizing issues in a manner that maintains safety as the primary driver in implementation decisions. I approve their request that the staff develop a notation vote paper to further explore the idea of using probabilistic risk analysis to prioritize regulatory issues on a site specific basis. I would also ask the staff to address issue management under such a regime. The potential for issues to be deferred for extended periods of time could impact timeliness of generic issue resolution and implementation of new regulations. Therefore, I would ask that the staff explore the use of a backstop under such a process to ensure that issues will be resolved and regulations implemented in a timely manner. In addition to the points raised under the proposed staff direction, I would also ask the staff obtain input from industry and external parties to inform the process in the areas of issue management and public perception. Finally, I believe that a timeframe of 1 year is too short for this effort. Given the breadth of high priority activities currently being addressed by the NRC's PRA staff (e.g. NTTF Recommendation 1, NFPA 805, Risk Management Task Force Recommendations, and Level 3 PRA), this new effort would by necessity impact the ongoing efforts. I would have the staff propose a timeframe for delivering the requested Commission Paper at the requested Commissioners' Assistants brief.


Allison M. Macfarlane 12/5/12
Date

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: COMGEA-12-0001/COMWDM-12-0002 – PROPOSED INITIATIVE TO IMPROVE NUCLEAR SAFETY AND REGULATORY EFFICIENCY

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below Attached XX None



SIGNATURE

01/15/13

DATE

Entered on “STARS” Yes No

**Commissioner Svinicki's Comments on COMGEA-12-0001/COMWDM-12-0002 –
Proposed Initiative to Improve Nuclear Safety
and Regulatory Efficiency**

The proposal before the Commission, penned jointly by two of my colleagues, recognizes the importance and relevance of the cumulative effects of NRC's regulatory actions on the ability of the regulated community to operate their facilities safely and effectively. I thank Commissioners Apostolakis and Magwood for continuing our focus on this important topic, which has not faded – and arguably shines more brightly – in the face of the significant regulatory actions NRC has taken, and contemplates, in response to the nuclear events at Fukushima Dai-ichi. We must be confident that nothing in our regulatory actions, and the timeframes within which we compel their implementation, creates a loss of the singular focus on the day-to-day safety and security of operating nuclear facilities in this country.

The proposal in this joint COMM requires the NRC staff to develop a notation vote paper for Commission consideration providing approaches for allowing licensees to propose to the NRC a prioritization of the implementation of regulatory actions as an integrated set and in a way that reflects their risk significance on a plant-specific basis. This proposal has secured (through the voting process) majority support. I do not interpose any objection to my colleagues' desire to have the staff develop this concept further and propose a method for its implementation and, in that spirit, I collegially support and approve this direction to the staff. I have deep misgivings, however, about the concept described in the COMM and express the following cautions and perspectives.

If a new regulatory requirement is to be promulgated, it is the NRC's obligation to justify instituting this requirement through a regulatory analysis that provides a regulatory basis and complies with backfit requirements, as applicable. It is also the NRC staff's responsibility to propose an implementation period, and the Commission's duty to review that proposal, and adjust it, if appropriate. The duty to justify requirements and set the timetables for their implementation belongs to regulators. This burden cannot be fundamentally shifted to the regulated community. Although requirements are set, in most cases, after opportunity for review and comment by the public under the Administrative Procedure Act, the final decision is the regulator's.

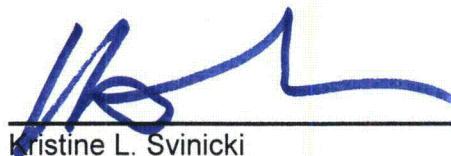
Many of us have seen the attached chart. To the extent this chart authentically depicts what could be termed regulatory overload, beyond that which any one facility can implement well and effectively, I would respond that the responsibility for bringing coherency to this timeline falls to regulators. The COMM notes a comment made by a licensee during a public Commission meeting that "all regulatory issues are high priority." I disagree with the COMM's dismissal of this statement through application of the canard that "if all regulatory work is high priority, then none is of high priority." On the contrary, at facility after facility that I visit, I observe that compliance with regulatory requirements is the highest priority; discretionary plant improvements are, for the most part, funded secondary to compliance-related items.

It is also unclear to me whether implementation of the COMM's proposal will disturb existing Commission direction with respect to Level 3 Probabilistic Risk Analysis (PRA), particularly through the COMM's use of the term "full-scope PRA." The maturation of tools and methodologies for doing high-quality, Level 3 PRA requires considerable work over the years to come. The NRC staff has already embarked on initiatives in this area. The direction of that work should not be altered at this time.

In a similar vein, the efforts the staff has already undertaken to address cumulative effects in NRC's rulemaking process – which are modest, but productive, beginnings to an eventual, more holistic consideration of this issue – should not be altered, and resources should not be diverted

from these efforts, as a result of the COMM. Further direction on this topic will be provided in the staff requirements memorandum issued in response to SECY-12-0137, "Implementation of the Cumulative Effects of Regulation Process Changes."

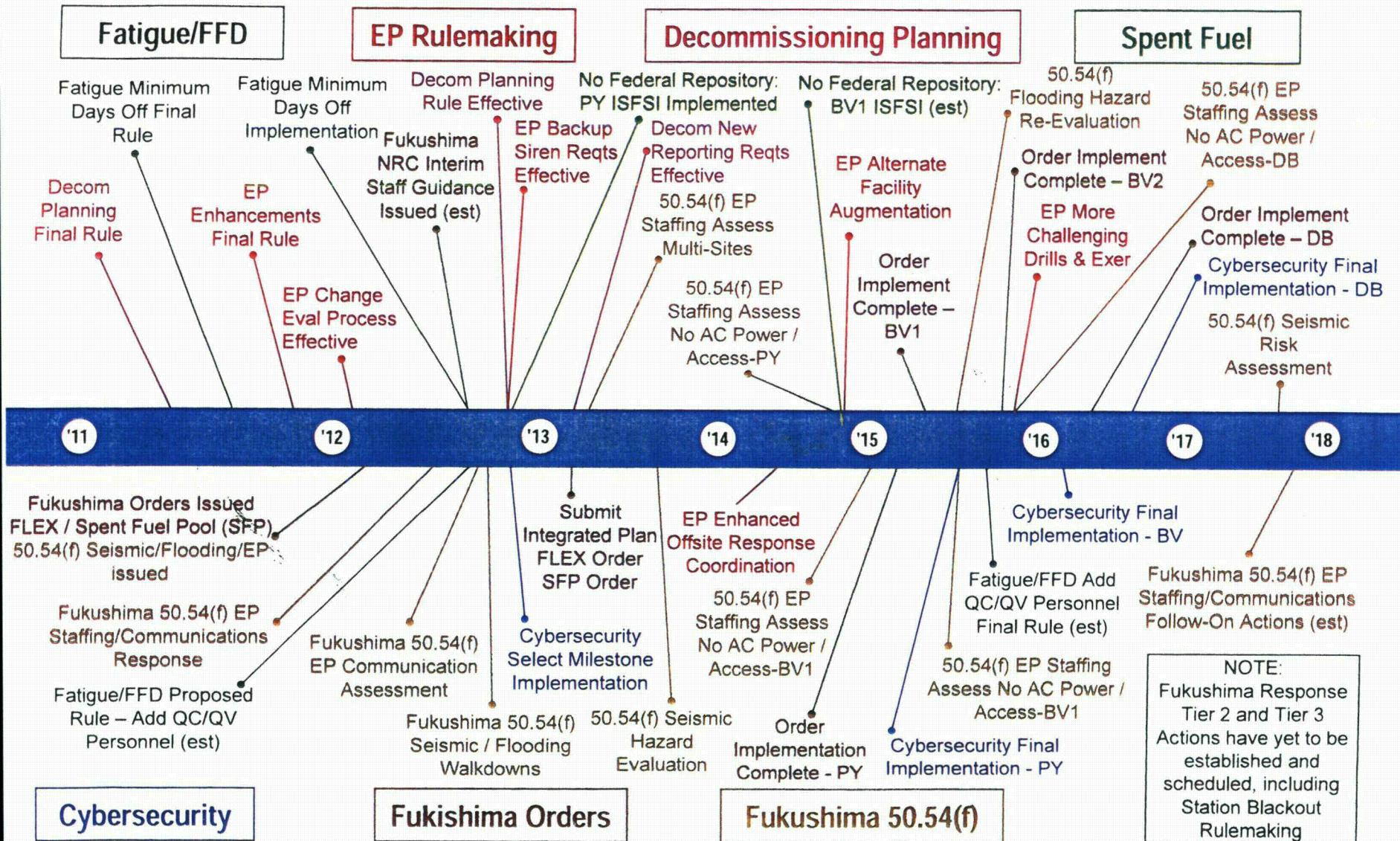
Finally, a COMM does not provide the staff's resource estimate. In inquiring about the potential resource impacts of the COMM's proposal, the staff advised me that certain of the personnel likely to be assigned to develop the notation vote paper called for in the COMM are already assigned to high-priority rulemakings such as waste confidence and station blackout. After issuance of the Commission's direction resulting from the COMM, the staff should provide a memorandum, describing the resource impact of the effort, and identifying sources, from which resources will be drawn. I also support the proposals advanced by Chairman Macfarlane, in her vote, that stakeholder input be sought on any proposal developed in response to this COMM and that staff propose a timeframe for developing and delivering this proposal, longer than the one year outlined in the COMM.



Kristine L. Svinicki

01/15/13

Nuclear Regulatory Timeline



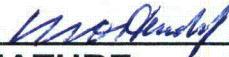
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: COMGEA-12-0001/COMWDM-12-0002 – PROPOSED INITIATIVE TO IMPROVE NUCLEAR SAFETY AND REGULATORY EFFICIENCY

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

12/1/12

DATE

Entered on “STARS” Yes X No _____

**Commissioner Ostendorff's Comments on COMGEA-12-0001/COMWDM-12-0002,
"Proposed Initiative to Improve Nuclear Safety and Regulatory Efficiency"**

I approve the proposal for a Commission notation vote paper that could allow, as an incentive, licensees to propose to the NRC a prioritization for the implementation of regulatory actions as an integrated set. Under the proposal, the prioritization scheme would reflect risk significance on a plant-specific basis. Commissioners Apostolakis' and Magwood's joint proposal to stimulate further development of high-quality probabilistic risk assessments (PRAs) through the lens of the cumulative effects of regulation (CER) process is noteworthy to explore. I believe that the use of risk assessment in the management of plant engineering modifications or program changes attributed to our regulatory impacts could be beneficial. As I noted in my recent vote on GSI-191 resolution, I support the notion of licensees voluntarily providing the NRC staff with plant-specific PRA insights to help prioritize schedules given other planned plant activities and improvements for safety. Although I am approving this COM, this action should not be read as an approval of the proposed incentive-based approach, at this time. I will need to thoroughly consider a comprehensive notation paper before I could commit to moving forward.

Because of a myriad of ongoing risk-related projects, I am concerned about the possible overlap with the joint proposal. For example, Commission direction on the forthcoming staff paper that addresses Near Term Task Force (NTTF) Recommendation Number 1 could better inform timing of this effort. I am also mindful that the NRC's and industry's risk assessment resources are constrained by the work on high-priority activities, such as NFPA-0805 and post-Fukushima actions. Given ongoing, risk-related projects and the breadth of the issues to be addressed in the requisite paper, the staff may require more time to develop their paper. Therefore, the staff should recommend to the Commission a schedule to provide a Commissioners' Assistants brief and develop the notation vote paper given the ongoing agency work.

In addition, I agree with Chairman Macfarlane's comment that staff should explore use of an implementation time backstop. Once the Commission establishes a new requirement, a licensee's implementation should not be perpetually deferred where the safety benefit of the requirement is nullified by the delay.

Commissioners Apostolakis and Magwood clarified for me that the incentive approach they propose is a risk-informed, prioritization scheme. I offer the following addendum, based on my discussion with Commissioner Apostolakis, as direction to the staff:

Although the joint proposal emphasizes the use of plant-specific PRAs to prioritize regulatory actions, this prioritization should not be risk-based. Consistent with current agency practice, the prioritization would be done in a risk-informed manner. Other considerations, such as the need for sufficient defense-in-depth, should be a factor in any prioritization process, particularly for issues where probabilistic methods have not been sufficiently developed (e.g., for external flooding hazards).

The joint proposal uses the terminology "full-scope PRA," which I believe should be clarified. The NRC's draft NUREG-2122, "Glossary of Risk-Related Terms in Support of Risk-Informed Decision-making" states that a full-scope PRA includes a Level 1 (core damage), Level 2 (radioactive material release), and Level 3 (consequences) PRA that addresses both internal and external hazards at all power modes (at-power, low-power, and shutdown). I believe the ACRS also uses a similar definition when referencing full-scope PRAs in its recommendations to the Commission. On the other hand, the joint proposal would have the staff evaluate

requirements similar to that for new reactors. If this is the case, § 50.71(h)(1) requires only Level 1 and Level 2 PRAs. In lieu of a full scope PRA, the staff should develop their notation paper with site-specific, all hazards Level 1 and Level 2 PRAs (e.g., using the current metrics of core damage frequency and large early release frequency) in mind. The PRAs would address initiating events and plant modes as supported by NRC endorsed consensus standards.

The Commission has an existing policy on PRA quality from Staff Requirements Memorandum (SRM)-COMNJD-03-0002, "PRA Quality Expectations and Requirements" and SRM-SECY-04-0118, "Plan for the Implementation of the Commission's Phased Approach to Probabilistic Risk Assessment Quality." The staff should examine lessons-learned from the existing PRA quality policy given that those initiatives were also undertaken to provide licensees with incentives to develop more complete, high-quality PRAs, which is a theme of the subject COM. The staff should also assess the interplay with near-term major activities such as NTTF Recommendation No. 1 and Risk Management Task Force recommendations, application of State-of-the-Art Reactor Consequence Analyses insights, and the Level 3 PRA pilot study project on the Vogtle plant.

Regarding potential rulemaking, I believe item four of the joint proposal should be clarified. Item four states, "if rulemaking is required." This statement could be interpreted to mean a mandate on licensees to enhance existing PRAs, which negates the purpose of the initiative to provide incentives to licensees. It is also not clear if an alternative approach to rulemaking is viable such as use of a Regulatory Issue Summary (RIS), which is used to help NRC licensees understand agency practices. Hence, I recommend that item four be modified to state "if a voluntary rule or RIS is the desired framework" the staff should provide the Commission with a schedule and resource estimates.