

June 29, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-024

TITLE: RECOMMENDATIONS OF THE SAFEGUARDS PERFORMANCE ASSESSMENT TASK FORCE

The Commission (with Chairman Jackson and Commissioners Diaz, McGaffigan, and Merrifield agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 29, 1999. Commissioner Dicus disapproved the staff's recommendations.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of June 29, 1999.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-99-024

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	2/17/99
	X				X	3/3/99
COMR. DICUS		X			X	3/2/99
COMR. DIAZ	X				X	2/23/99
COMR. MCGAFFIGAN	X				X	6/9/99
COMR. MERRIFIELD	X				X	2/9/99
	X				X	5/14/99

COMMENT RESOLUTION

In their vote sheets, Chairman Jackson and Commissioners Diaz, McGaffigan, and Merrifield approved the staff's recommendation and provided some additional comments. Chairman Jackson and Commissioner Merrifield later supplemented their votes with additional comments, although still indicating approval. Commissioner Dicus disapproved the staff's recommendation because she wanted to resolve the Differing Professional Opinion (DPO) first. At the May 5, 1999 briefing of the Commission on the recommendations of the Safeguards Performance Assessment Task Force, Mr. Orrick informed the Commission that he considered his concerns outlined in the February 3, 1999 DPO resolved. Subsequently, the comments of the Commission were

Commissioner Comments on SECY-99-024

Chairman Jackson

Commissioner Dicus

I disapprove the SPA Task Force recommendations as stated SECY-99-024. Although I commend the staff for attempting to identify more effective and more efficient methods for testing licensees' contingency response capabilities, I am not convinced that the SPA Task Force recommendations achieve this goal. They may, arguably, be more efficient. However, I am concerned about their effectiveness. At a time when concerns about terrorist threats in the United States are growing, I believe it imperative that we assure the effectiveness of our methods for testing licensees' contingency response capabilities.

The Differing Professional Views (DPVs) in Attachment 2 of SECY-99-024 and in the Differing Professional Opinion (DPO) provided to the Commission in a memorandum from William D. Travers dated February 12, 1999, made several good points in favor of continuing the OSRE program. After careful consideration of the information in the DPVs and DPO, I believe that I have insufficient information to make a fully informed decision regarding the fate of the OSRE program. Therefore, I request that the staff complete the formal review process for the DPO as described in Management Directive 10.159 (Differing Professional Views or Opinions) and consider the results of this review in the context of recommendations made in SECY-99-024. Upon completion of its review, the staff should forward its recommendations to the Commission for further consideration.

Commissioner Diaz

I approve the staff's recommendations to modify the regulations to require identification of target sets, develop protective strategies, and exercise these strategies on a periodic basis, and to develop: associated regulatory guides, inspection program changes, revisions to the Enforcement Manual and necessary training for NRC inspectors.

However, the proposed actions are not sufficient to address the root of this controversy: an unclear and unstable body of rules governing nuclear power reactor security. I believe that it is possible to add clarity and specificity to [10 CFR Part 73](#). In particular, the staff should

- define the desired level of protection in the Purpose and Scope at [10 CFR 73.1](#);
- clarify the definition of radiological sabotage at [10 CFR 73.2](#); and
- in [10 CFR 73.55](#), clarify the agency's expectations by, for example, sharpening definitions of terms such as "objective," "high assurance," "not inimical," and "unreasonable risk."

Improving our regulations in this manner will help to ensure that the American people have the proper level of security protection at nuclear power plants without the imposition of unnecessary and unrealistic burdens.

Commissioner McGaffigan

I approve the staff's four recommendations outlined in SECY-99-024, as supplemented by the staff's remarks at the May 5th Commission briefing. I also join Commissioner Merrifield in commending the staff that outlined their concerns in the two differing professional views (DPV) and the one differing professional opinion (DPO) on the OSRE program. In the final analysis, I agree that the new safeguards assessment program is a better product because of the interactions arising from the concerns raised in the DPVs and DPO.

I note that at the May 5th briefing, Mr. Orrick informed the Commission that he considered his concerns outlined in the February 3, 1999, DPO resolved. I am encouraged by this constructive use of the DPV/DPO process.

The proposed new rule and associated guidance offer the opportunity to clarify our security requirements and reduce unnecessary regulatory burden. It will be a significant step forward to recognize operator actions and engineered safety systems as integral components of a licensee's overall response to sabotage scenarios. As the staff develops the rule and associated guidance and uses the remaining OSREs to pilot concepts for the revised safeguards inspection and assessment program, I would encourage staff to interact with stakeholders in an open process, akin to that used for the Part 70 proposed rule and the revised source term proposed rule. The Commission has received remarkably positive comments on the open process we have used in each of these rulemakings. I recognize that in this case, protection of safeguards information may impinge on openness, but that should be kept to a minimum.

I also agree that our design basis threat needs to be periodically updated. As I indicated at the May 5th briefing, I have doubts about the notion of no warning. That may be appropriate for some parts of the threat spectrum, but as the threat becomes more elaborate, the probability of detection and warning goes up. At the current time power reactor licensees must maintain a constant high-level vigilance to defeat a design basis threat that could do far more damage with far less likelihood of adverse consequences for the attackers by attacking other soft targets in say the chemical industry. Our European colleagues, presumably, have a very different design basis threat for their power reactors, because one does not see anything like the large U.S. guard forces and other security measures at European plants. The Commission needs to better understand this disparity.

I am also concerned about the tradeoffs between security and safety at our power reactor facilities. I certainly want adequate security and to maintain these facilities in their current status as among the hardest, if not the hardest, industrial facilities in the United States. But at times security measures (such as welding doors shut) can detract from reactor safety (for example, by impeding access not only by intruders but by plant personnel). Chairman

Jackson pointed out at the May 5th Commission briefing that by recognizing operator actions and engineered safety systems, we will better understand the tradeoffs between security and safety. I agree. I will be interested in any insights gained by staff and licensees about existing security measures as this new approach is utilized in the remaining OSREs.

Commissioner Merrifield

The specific recommendations proposed by the Safeguards Performance Assessment Task Force in SECY-99-024 are acceptable to a degree, but both the paper and the recommended actions are lacking some key components. Specifically (1) the paper does not adequately address the decisions that placed the NRC in the position it is in today and (2) the recommendations do not address potential future changes in the design basis threat. However, I can still support the recommendations of the paper with the modifications described below.

First, the paper states that the plants were licensed to satisfy the design basis threat in accordance with 10 CFR 73.55(a). The SECY paper implies that the actual licensing action was only a paper review for the design basis threat. When the Operational Safeguards Response Evaluation (OSRE) revealed deficiencies in achieving the design basis threat, the staff stated that they could not require modifications to fix the deficiencies because a back-fit analysis would have to be conducted first. This implies that an actual physical check of the design basis is not adequate to say that the original paperwork review may not be accurate. This decision, as described in the paper, comes across as bureaucratic and not safety conscientious. This may not be what the staff meant to imply in the paper, but the paper should have been more specific as to the staff's reasoning. What complicates the issue is that apparently a policy decision was made to allow the licensee to increase their security measures well above what they committed to in the license as part of the OSRE. So the OSRE did not really evaluate if the minimum conditions described in the licensing process were adequate to protect against a design basis threat. But even under these circumstances, deficiencies were found. In addition, the security plan was reviewed during licensing against the requirements of 10 CFR 73.55 (b) through (h). But for some reason, not explained in the paper, the Regions were instructed to limit their inspection to the security plan. The inspectors were specifically instructed that they could issue no violations against 10 CFR 73.55(a), even though it was part of the licensing basis of the plant. These actions raise several questions that were not adequately addressed in the paper. Why were the OSRE allowed to be conducted with security measures well above the licensing commitments without, at least, evaluating if the minimum licensing conditions are adequate? This is of particular concern since licensees could remove the additional measures beyond their licensing basis at any time without even notifying the NRC. Why is requiring a plant to meet its original licensing basis a back-fit? Why are the NRC inspectors not inspecting compliance for all of 10 CFR Part 73.55? The staff may have adequate responses to all of these questions, but they were not in the SECY paper. At a minimum, an answer to these questions should be provided in the rulemaking package to satisfy recommendation 1 of the Safeguards Performance Assessment Task Force.

The actions recommended by the Safeguards Performance Assessment Task Force appear to adequately address the current problem before the staff. However, what the SECY paper does not address is the staff's plan for evaluating the adequacy of the design basis threat on a generic basis. What is the process for periodically evaluating the fundamental basis of the design basis threat and determining if a back-fit of a new design basis threat is necessary for all plants? It is not a simple matter of saying a back-fit analysis will be conducted to see if new security requirements should be placed on licensees. Many elements of security are based on current threat conditions world-wide as reported by the intelligence agencies (i.e., the size, power, and delivery method for explosive devices; number of insiders assumed in an evaluation) and are not readily amenable to a standard back-fit analysis. The staff needs to commit to a procedure for generically evaluating the design basis threat and reporting to the Commission. At a minimum, the staff should periodically (perhaps yearly) request a closed Commission meeting to discuss the staff's current generic evaluation of the adequacy of the design basis threat requirements and recommendations for either maintaining or changing the current requirements.

Commissioner Merrifield's Supplemental Comments dated 5/14/99

On February 9, 1999, I voted to approve with comments the recommendations of SECY-99-024 (Recommendations of the Safeguards Performance Assessment Task Force). Since that date, a differing professional opinion was submitted on February 12, 1999, a closed Commission meeting on the Design Basis Threat was held on March 18, 1999, and an open meeting on Safeguards Performance Assessment was held on May 5, 1999. Given this new information, I believe it is appropriate to supplement my initial vote. At the outset, I want to commend the staff who provided their differing professional views/opinions (DPVs/DPOs) as part of this review process as well as the staff who developed the revised program while considering the DPVs/DPOs. I believe the final product, which is an outline for a new safeguards assessment program, has been greatly improved as a result of this interaction.

The comments in my initial vote are still valid. However, in the ensuing months, the staff has gone to considerable lengths to address my concerns and, as expressed at the Commission meeting, the concerns expressed in the DPV. I approve the staff's plan, as outlined in more detail during the May 5, 1999 open Commission briefing, to use the remaining Operational Reactor Safeguards Examinations (OSREs) to pilot concepts for a revised safeguards performance assessment program. One key element of the revised assessment program is better integration of safeguards and operational activities so that risk informed performance based decisions can be made. Another key element of the revised program is that drills and exercises will be conducted more frequently by the licensees and periodically observed by appropriate NRC staff and contractors. At the May 5, 1999 Commission meeting, the Commission emphasized the importance of continuing to have the NRC observe some portion of the drills and exercises to be required under the future safeguards performance assessment program. In the upcoming staff proposal on the baseline reactor inspection program, the staff should include a specific recommendation on the baseline frequency of NRC inspector observation of these drills and exercises.

In SECY-99-024, the staff has proposed specific rulemaking to require periodic drills. As stated above, the staff will be piloting various concepts of the revised assessment program in the last 10 remaining OSREs. I expect the staff to consider and propose, as appropriate, any additional rulemaking (beyond the rulemaking proposed in SECY-99-024) identified as a result of the pilot program.