

June 18, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-133

TITLE: FINAL REVISION TO 10 CFR 50.65 TO REQUIRE LICENSEES TO PERFORM ASSESSMENTS BEFORE PERFORMING MAINTENANCE

The Commission (with Chairman Jackson and Commissioners Dicus, McGaffigan, and Merrifield agreeing) approved the subject paper as noted in an Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of June 18, 1999. Commissioner Diaz disapproved the rulemaking.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the Affirmation Session SRM of June 18, 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-99-133

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	5/19/99
COMR. DICUS	X				X	6/3/99
COMR. DIAZ		X			X	6/17/99
COMR. MCGAFFIGAN	X				X	6/11/99
COMR. MERRIFIELD	X				X	6/2/99

COMMENT RESOLUTION

In their vote sheets, the Commission (with Chairman Jackson and Commissioners Dicus, McGaffigan, and Merrifield agreeing) approved the staff's recommendation as noted in the Affirmation Session. Commissioner Diaz disapproved the rulemaking believing that the rulemaking is no longer necessary to ensure licensees are performing adequate safety assessments, and that for the purposes of risk-informing the rule it should be issued for public comments. Subsequently, the comments of the majority of the Commission were incorporated into the guidance to staff as reflected in the Affirmation Session SRM issued on June 18, 1999.

**Chairman Jackson**

I commend the staff for completing this rulemaking effort, which represents the culmination of a multi-year effort to bring a required level of regulatory oversight to the conduct of maintenance during shutdown conditions and to on-line maintenance during power operation. I approve the proposed rule for the reasons cited in the staff's recommendations. As the increased use of on-line maintenance surfaces vulnerabilities that the design bases for reactor plants did not consider fully, namely multiple safety-related components out-of-service simultaneously, it is altogether appropriate that the NRC take this action.

As the staff engages our stakeholders in the development of regulatory guidance for this rule, there should be a clear understanding that structures, systems and components (SSCs) which directly support high risk-significant (or "high risk") SSCs are themselves to be considered within the scope of assessments. Additionally, I believe that the method ultimately developed for determining high risk SSCs which are "in scope" must provide confidence that the SSCs which are identified as high risk remain current. My concern in this area is that changes to plant design (such as the addition of new equipment or the abandonment-in-place of existing equipment), operational practices (such as crediting increased amounts of manual operator action), or external conditions (such as environmental impacts which may affect cooling or ventilation systems supporting key equipment) can change the risk significance of various SSCs. For instance, at facilities such as Salem and Turkey Point, seasonal variations in the volume of aquatic grasses in the ultimate heat sinks make the screen wash systems associated with the pumps for the heat sinks very important to the overall core cooling capability of the facility on a variable basis. The staff should ensure that such possibilities are taken into account in developing guidance and implementing the rule.

Finally, the staff should ensure that the guidance developed for this rulemaking advances a holistic approach to assessing the risk of maintenance activities. I concur with the ACRS conclusion that the Configuration Risk Management Program (CRMP), described in some technical specifications, was designed primarily to support the risk-informed extension of technical specification allowed outage times for individual components (as opposed to a number of components or systems). As a result, combinations of low-safety-significant SSCs that, taken together, might represent a high risk condition are not covered under the scope of the CRMP. The guidance developed for the implementation of this rulemaking should advance the position that an assessment should be performed, at least once, which would identify possible combinations of low risk-significant SSCs that should be treated within the scope of a(4) of the proposed rule. In the alternative, other methods that would consider the impact of low risk significant SSCs would be acceptable, such as robust risk monitoring methods which can be demonstrated to have addressed this concern.

**Commissioner Dicus**

I approve the final rulemaking for 10 CFR 50.65 and support including at the end of paragraph (a)(4) the ACRS language "for the proposed configuration." Staff should correct the attached editorial changes to the FRN.

**Commissioner Diaz**

I have been a strong and consistent advocate of improving the maintenance rule to achieve a higher level of safety at justifiable cost, focusing first on requiring assessment of plant configurations. My advocacy is now confronted by concerns about the credibility, accountability and fairness of this rulemaking.

First, a bit of history. Two years ago, a staff report indicated that, although licensees had developed programs to assess plant maintenance activities, in some instances licensees were not conducting the assessments or their assessments were inadequate.<sup>(1)</sup> This raised a valid safety concern and compelled me to agree to a revision of the rule to require a safety assessment of maintenance activities. Now, the staff tells me that all licensees are implementing their maintenance rule programs and perform adequate safety assessments. Therefore, what made perfect sense in 1997 does not in 1999.

In my judgment, the final maintenance rule now before the Commission represents a fundamental change<sup>(2)</sup> from the proposal on which public comments were solicited and submitted. The originally proposed rule language was focused on requiring a safety assessment. Moreover, it could be argued that one key change to the rule is attributable to the input of a single commenter submitted some four months after the close of the comment period. To me, this raises a question of fairness. We owe the public a process that is both fair and has the appearance of fairness. The public is entitled to formal notice of what the agency proposed to do in a way that affords a real opportunity for any interested member of the public to make meaningful comment and to have that comment addressed. I believe neither the public nor licensees have had such opportunity. Therefore, as matter of prudence, if not also of legal necessity, I believe that a further round of public comment is imperative. I can only support this rulemaking on that basis.

The Commission has testified repeatedly to the great importance of risk-informing our regulatory framework. The maintenance rule could serve as a cornerstone for subsequent risk-informed efforts if done properly. This is the first time that we are codifying "risk-informed" in 10 CFR Part 50. It deserves front-line coverage without a rush to judgment. The public and licensees deserve the opportunity to participate in this momentous regulatory change. Everyone of us can use the time to further reflect on this rule and profit from additional public insights. I urge my fellow Commissioners to avail themselves of the opportunity for further discussion.

**Commissioner McGaffigan**

I applaud the staff's efforts to provide this final rulemaking package to the Commission on a timely basis, particularly the effort to coordinate with CRGR and ACRS in the final weeks before the paper's arrival for Commission deliberations. I support the rule language as proposed by the staff, and I join

Commissioner Merrifield in his remarks on this paper. In particular, I support the last sentence in 50.65(a)(4) which limits the scope of the (a)(4) assessments to systems, structures and components "that a risk-informed evaluation process has shown to be significant to public health and safety." I do not support the ACRS recommendation to add the words "for the proposed configuration" to this sentence. As the staff indicated in its June 2<sup>nd</sup> letter to ACRS, I believe the ACRS concerns can be addressed in the regulatory guide.

There are other scope sentences which one could use as a link to the regulatory guide. For example, one option which I considered and asked questions about at the May 5<sup>th</sup> Commission briefing, read as follows: "The scope of structures, systems, and components (SSCs) to be included in the assessment may be limited to those SSCs that individually or in combination, can be shown by operating experience, deterministic analysis, or probabilistic risk assessment to have a significant effect on the performance of key plant safety functions." This struck me as no better (and probably no worse) than the staff's final recommendation. It would still need to be explained in regulatory guidance.

Once the Commission has addressed the final rule language, the difficulty I foresee involves promptly developing acceptable regulatory guidance. It is clear that the staff and stakeholders will have to invest significant energy in the coming months in reaching a consensus on both the draft and final regulatory guidance, a revision of NRC Regulatory Guide 1.160, which will in turn in the end, I hope, endorse a revision of NUMARC 93-01 . In my view, the central issue facing the staff and stakeholders involves clarifying which combinations of non-high risk-significant SSCs should be captured in the risk-informed evaluation process for determining the scope of (a)(4) assessments. Having said that, I am not in favor of the Commission directing the staff at this time on how to resolve this issue. I believe that the staff requirements memorandum on the May 5<sup>th</sup> Commission briefing provides adequate Commission guidance. The CRGR and ACRS involvement in developing the draft regulatory guidance, the public comment period on the draft guidance, and the Commission's role in approving the final guidance, all set in place a process for resolving the issue promptly.

I am also attaching my vote on COMNJD-99-003 because in it I explain why I have proceeded to vote on this paper without the further analyses and public meeting proposed by Commissioner Diaz.

### **Commissioner Merrifield**

I commend the staff for their tireless efforts on this difficult rulemaking and approve the notice of final rulemaking for publication in the Federal Register. This is a very important first step in making the Maintenance Rule more effective and risk-informed. But clearly, this is just a first step. The staff has a great deal of work remaining on the development of regulatory guidance. This should include careful consideration of stakeholder comments and a very thorough review of the operational implications of such guidance. Given the importance of this guidance to both our licensees and inspectors, I agree with the staff that the final rule should not become effective until the final regulatory guidance is in place for a reasonable period of time. I also believe it is prudent for the Commission to review and approve this final guidance prior to its issuance by the staff.

I am pleased that the staff has modified paragraph (a)(4) to permit licensees to limit the scope of their assessments to structures, systems, and components (SSCs) that a risk-informed evaluation process has shown to be significant to public health and safety. However, I do not believe that the staff has incorporated this modification consistently in the Federal Register Notice (FRN). For example, on Page 18 of the FRN, Identification of the Proposed Action, the staff states, "The Commission is amending its regulations to require commercial nuclear power plant licensees to perform assessments of changes to the plant's status that would result from maintenance activities before performing maintenance activities on SSCs within the scope of 10 CFR 50.65, the maintenance rule." There is no mention in that section regarding the fact that licensees may limit the scope of their assessments to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. With this omission, I believe the staff's description of the proposed action is, at the very least, incomplete. I do not want to overstate the problem or imply that it recurs throughout the FRN. However, given the importance of this aspect of (a)(4), I request that the staff carefully review the Federal Register Notice prior to its issuance to ensure that it consistently accounts for the new (a)(4) language.

As discussed in SECY-98-300, the goal of the agency is to truly risk-inform Part 50, beginning with the scope of the Maintenance Rule. While I wish we were closer to accomplishing this goal, I now believe that continued progress toward this goal may not be possible without taking this first step represented by the final rule in SECY-99-133. I believe it is prudent to accept the limited success this final rule represents so that the staff can move forward on the critical next steps of developing regulatory guidance and ultimately risk-informing the scope of the Maintenance Rule. I believe that getting into a debate at this time over the content of the regulatory guidance or the process of risk-informing the Maintenance Rule would be premature and could ultimately delay or derail the progress represented by this final rule. Therefore, I am limiting my comments and extent of my approval to the staff's recommendations in SECY-99-133.

---

1. In SECY-97-055, the staff identified "weaknesses" in licensees' safety assessments for removing equipment from service for maintenance, specifically because the assessment was not a requirement. In SECY-97-173, the staff proposed changes to 50.65 supported by the above findings. The NRC issued the SRM for SECY-97-173, approving the recommendation for a new requirement for performing safety assessments, i.e., the "should" to "shall". In SECY-98-165, the staff reported on additional maintenance rule inspections, which continued to find that all licensees had voluntarily developed assessment programs to satisfy (a)(3) of 50.65. However, some failures to perform safety assessments and "weaknesses" in other safety assessment programs were also identified. The Commission continued supporting the rule revision. In SECY-99-133, no update was provided; however, at a meeting with senior NRC staff members held on June 16, 1999, the staff indicated that there were no significant problems with licensees' assessments. I understand that a draft report documenting the overall maintenance rule baseline inspection results is undergoing concurrence. There are now reasons to question whether there are sufficient safety benefits to justify the cost of this rulemaking and its implementation.

2. There are several examples of substantive and material changes. One is requiring that licensees "assess and manage the increase in risk" rather than requiring that they perform a safety assessment. Another is reducing the scope of the assessment by use of a "risk-informed evaluation process." Both

changes are more than significant and since they happened in the last month their effects are yet to be determined.