

July 8, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-135

TITLE: INTERIM ENFORCEMENT POLICY REGARDING ENFORCEMENT DISCRETION FOR NUCLEAR POWER PLANTS DURING THE YEAR 2000 TRANSITION

The Commission (with Chairman Dicus and Commissioner Merrifield approving in part and disapproving in part) approved the staff's recommendation in part. Commissioners Diaz and McGaffigan approved the paper. The result is recorded in the Staff Requirements Memorandum (SRM) of July 8, 1999.

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 July 8, 1999.

/s/

---

Annette Vietti-Cook  
Secretary of the Commission

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

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

---

VOTING SUMMARY - SECY-99-135

RECORDED VOTES

	<b>APRVD</b>	<b>DISAPRVD</b>	<b>ABSTAIN</b>	<b>NOT PARTICIP</b>	<b>COMMENTS</b>	<b>DATE</b>
COMR. DICUS	X	X			X	6/16/99
COMR. DIAZ	X				X	6/9/99
COMR. MCGAFFIGAN	X				X	5/28/99
COMR. MERRIFIELD	X	X			X	6/11/99

COMMENT RESOLUTION

In their vote sheets, Chairman Dicus and Commissioner Merrifield approved in part and disapproved in part the staff's recommendation. Commissioners Diaz and McGaffigan approved the paper. Commissioner Diaz believes it should be recognized that the NRC has always maintained that the licensees are responsible for the safety of their operation of nuclear power plants. Consistent with that responsibility, it would be appropriate that the NRC provide the necessary enforcement discretion so that licensees can take appropriate actions to safeguard public health and safety as well as the common defense and security, including consideration of maintaining the electrical grid at a time in which it could be threatened. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on July 8, 1999.

---

## Commissioner Comments on SECY-99-135

### Chairman Dicus

I approve issuance of the interim Enforcement Policy with the exception of the provision that allows continued plant operation in violation of license or regulatory requirements if the licensee is unable to obtain enforcement discretion from the NRC.

Most circumstances which create a situation where enforcement discretion may be considered, do not happen in a time frame that does not allow time for notification, contingency planning and compensatory action. Since the likelihood of a licensee not being able to inform HQ, any Regional Office or the resident inspector of the need for enforcement discretion is extremely low, given the fact that all sites will have augmented resident inspector coverage during the Y2K transition periods and will have at their disposal satellite communications equipments, I see no reason to give licensees the authority to grant themselves enforcement discretion.

If prior NRC approval can not be obtained, the plant should shut down in accordance with their license requirements until NRC approval of enforcement discretion is obtained.

Recognizing that any discretion that is granted by the NRC must reasonably assure adequate protection of the environment and no undue risk to public health and safety, I agree with Commissioner Merrifield's comment regarding modification of criterion (c) to include a licensee's determination of reasonable assurance that public health and safety is maintained with enforcement discretion.

### Commissioner Merrifield

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.