

September 13, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-176

TITLE: PLANS FOR PURSUING PERFORMANCE- BASED INITIATIVES

The Commission (with Commissioners Diaz and Merrifield disapproving, Commissioner McGaffigan approving, and Chairman Dicus approving in part and disapproving in part) agreed to the actions recorded in the Staff Requirements Memorandum (SRM) of September 13, 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 September 13, 1999.

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-99-176

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
COMR. DICUS	X	X			X	8/8/99
COMR. DIAZ		X			X	7/29/99
COMR. McGAFFIGAN	X				X	8/17/99
COMR. MERRIFIELD		X			X	7/22/99

COMMENT RESOLUTION

In their vote sheets, Commissioners Diaz and Merrifield disapproved the paper, Commissioner McGaffigan approved, and Chairman Dicus approved in part and disapproved in part. All Commissioners provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on September 13, 1999.

Commissioner Comments on SECY-99-176

Chairman Dicus

I disapprove the staff's overall plan as outlined in SECY-99-176. Although the paper contains the general elements required by the February 11, 1999, SRM, it offers no definitive schedules, milestones or goals for pursuing performance-based regulatory activities. Additionally, it does not discuss how risk

information might assist in the development of performance-based initiatives. Nevertheless, I am interested in approving certain elements of the plan. In light of this, I offer the following comments:

1. In lieu of the paper's proposed approach, the staff should report yearly (starting in six months, approximately late February 2000) on where it is developing, using, or assessing the implementation of performance-based approaches. This could be similar to the examples provided in SECY-99-176.
2. The staff should proceed to develop guidelines to identify and assess candidate performance-based activities. These guidelines should be at a high-level and developed within six months (approximately late February 2000) with input from the program offices. These guidelines would be used by the program offices in identifying and assessing proposed candidate performance-based activities, and would discuss how risk information might assist in the development of performance-based initiatives. The guidelines should be provided to the Commission for information along with the first report on developing, using, or assessing the implementation of performance-based approaches.
3. As the staff gains more experience and become more confident with developing, using and implementing performance-based approaches (and becomes a normal part of doing business), then the Commission may terminate the yearly report.
4. Furthermore, staff should continually seek stakeholder involvement in regard to performance-based approaches as previously directed.

Commissioner Diaz

Commissioner McGaffigan

I approve the staff activities described in this paper. As my Commission colleagues have pointed out, the paper lacks definitive schedules, milestones or goals (although these have been provided separately to the Commission for many of the activities with performance-based elements described in the paper). What this paper lays out is essentially a case-by-case approach until the staff has dealt with enough cases to provide a general framework for going forward. The paper does describe a generally sound approach to continue assessing and studying possible approaches to and applications of performance-based regulatory initiatives.

Our strategic plan commits the Commission to "risk-informed and, where appropriate, performance-based regulations." As I said in my vote on [SECY-98-132](#), the precursor to this paper, the staff and the Commission both have been struggling with the concept of performance-based regulation and where it would be appropriate to utilize that approach instead of prescriptive regulation. I noted the lack of a foundation for performance-based regulation compared to risk-informed regulation. The May 1999 "White Paper on Risk-Informed, Performance-Based Regulation" gave the staff very little guidance on where performance-based approaches are appropriate to use. From the stakeholder meetings, it is also clear that stakeholders are also struggling with this concept.

Thus, I am not surprised at the staff's case-by-case approach to performance-based regulation. Indeed, both NRR and NMSS clearly have a significant number of activities underway in which performance-based initiatives are being pursued. Also, where appropriate, the staff is planning to seek stakeholder comment in each new proposed rule on whether the proposed rule is unnecessarily prescriptive and can be more performance-based. All of these activities should eventually yield a firmer foundation for performance-based regulation without diverting resources from higher priority risk-informed initiatives.

This said, I am not opposed to Chairman Dicus' recommendation that the staff provide an annual update on performance-based initiatives. I would caution, however, against any expectations that the staff can deliver an annual "Performance-Based Regulation Implementation Plan" similar to the "PRA Implementation Plan" which we use as a tool to pursue risk-informed regulation. The two concepts of "risk-informed regulation" and "performance-based regulation" are far apart in their relative maturity.

Commissioner Merrifield

I disapprove the staff's recommendation for the reasons discussed below.

In their votes on SECY-98-132, both Commissioners Diaz and McGaffigan provided insights regarding building a foundation to support performance-based regulation. The associated SRM captured these insights and directed the staff to use them to enhance its plans for pursuing performance-based initiatives. I expected the staff to use these insights as a platform upon which to launch its efforts to develop a well thought out plan which integrates staff activities and provides concrete and tangible milestones. Having reviewed SECY-99-176, I believe the staff missed the mark.

I applaud the staff for their efforts associated with the individual NRR and NMSS performance-based initiatives that are currently ongoing. However, the stated purpose of SECY-99-176 is to obtain Commission approval of plans for pursuing performance-based initiatives consistent with the direction in the SRM to SECY-98-132. The key word in that statement is "plans". From my perspective, the paper left many unanswered questions and the plans came across as an unfocused and open-ended research project. The plans lack: 1) key milestones and deliverables, 2) a clear portrayal of what the staff is striving to accomplish and how the various activities are linked to that outcome, and 3) a clear description of how the proposed staff activities are being integrated and managed. Given that performance-based regulation is a key component of the agency's Strategic Plan and Performance Plan, and that agency resources are constrained, the staff's plans for furthering performance-based initiatives must be comprehensive, well-integrated, and facilitate effective and efficient utilization of resources. It was not clear from the plans laid out in SECY-99-176 that the agency will be in a better position to increase performance-based regulation in 1-2 years than it is now.

At the risk of shifting the staff's focus away from my primary concerns discussed above, I feel it is important to point out individual issues discussed in SECY-99-176 that not only left me with unanswered questions but raised concerns about how effectively we are utilizing our resources. For example:

1. The staff indicates that it recently completed a research project designed to improve the understanding and implementation of performance-based approaches to regulations and states that the results are in NUREG/CR-5392. What is lacking is a discussion of how this research enhanced our understanding of performance-based regulation and how it will be used to further our efforts. Without such a discussion, the value of our research

efforts could and should be called into question.

2. Related to Example 1, after discussing NEI's perspective on further research, the staff states, "Being mindful of the NEI comments, the staff will focus on how application of research insights have benefitted the projects and [to] assure that future research insights will provide high value." I believe such a focus should always be at the forefront of our research activities, regardless of stakeholder scrutiny.
3. The staff discusses how acceptable approaches to meeting regulatory requirements are provided in guidance documents such as regulatory guides and Standard Review Plan sections, and reiterates that CRGR reviews new criteria before they are used. Immediately following that discussion, the staff presents valuable stakeholder feedback that most of existing rules are not viewed as overly prescriptive, but the prescriptiveness may arise from sources such as guidance documents. Embedded in this discussion is a statement indicating that CRGR will evaluate whether it should increase its emphasis on performance-based concepts. I find it hard to believe that much evaluation is necessary on "whether" CRGR emphasis should be increased. Rather, the evaluation should focus on 1) how this increased emphasis will manifest itself and 2) how CRGR's activities will be integrated into the overall plan.

The staff should understand that my comments are not meant to undermine their efforts in this area. Instead, my comments are meant to reflect my strong belief that transition to performance-based regulation is a high priority for this agency. To support this transition, which is described in NRC's Strategic Plan and Performance Plan, our plans in this area must provide a clear road map to success with well-defined goals and milestones. Furthermore, given our budget constraints, it is imperative that we ensure our activities associated with performance-based regulation are well-integrated so that agency resources are utilized effectively and efficiently.