

January 5, 2000

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-246

TITLE: PROPOSED GUIDELINES FOR APPLYING RISK-INFORMED DECISIONMAKING IN LICENSE AMENDMENT REVIEWS

The Commission (with Chairman Meserve and Commissioners Dicus, McGaffigan, and Merrifield agreeing and Commissioner Diaz agreeing in part and disagreeing in part) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of January 5, 2000.

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 January 5, 2000.

Annette Vietti-Cook
Secretary of the Commission

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

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

VOTING SUMMARY - SECY-99-246

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	12/15/99
COMR. DICUS	X				X	11/8/99
COMR. DIAZ	X	X			X	11/29/99
COMR. McGAFFIGAN	X				X	12/16/99
COMR. MERRIFIELD	X				X	12/3/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners, except for Commissioner Diaz, approved the staff's recommendation and provided some additional comments. Commissioner Diaz approved in part and disapproved in part. Commissioner Diaz approved the basic concepts laid out in SECY-99-246 for identifying and evaluating risk significant license amendment requests, but disapproved implementation of the proposed process on an interim basis prior to a full discussion with stakeholders. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on January 5, 2000.

Chairman Meserve

I approve the staff's approach as proposed in SECY-99-246, subject to the following:

- The interim process to be used to judge a special circumstance appears quite subjective, but perhaps necessarily so at this point in time. Staff should strive to develop final guidance that articulates what constitutes a special circumstance in a clear and objective manner.
- The staff should provide to the Commission for information, its schedule for completing development and/or modification of the guidance documents, as well as the final versions of those documents.

Commissioner Dicus

I approve the staff request to use the concepts described in SECY-99-246 for identifying and evaluating license amendment requests to determine whether the request warrants further evaluation from a risk perspective since they could create "special circumstances" - circumstances under which compliance with existing regulations would not produce the intended or expected level of safety. The staff should propose modifications to relevant guidance documents ensuring stakeholders, both internal and external, are meaningfully engaged in the development of the guidance documents. The staff should provide the Commission with its schedule for completing development of the guidance documents.

I also approve the use of the interim approach, if needed, for considering risk in license application reviews. This is an important step in continuing to realize the benefits of using risk to enhance and improve safety decision-making. However, I recognize that this is a subjective process that carries with it caution and concern from stakeholders. Therefore, I believe that Commission should be informed when a license amendment request is determined to meet the requirements for a "special circumstance" and the basis for such a determination. Until guidance is finalized, the staff should also periodically provide the Commission with an assessment of whether the interim approach review process is causing unnecessary delays in the license amendment review process. Finally, since such "special circumstances" may involve new technologies or have generic applicability, the staff should consider whether all or some of the review fees associated with these type reviews should be waived.

While the focus of the paper is on "special circumstances" associated with non-risk-informed license submittals, it appears possible that some risk-informed submittals would involve "special circumstances". In other words, a "special circumstance" exists because of the nature of the request and its relationship to our current regulations and does not depend on whether the request is risk-informed. In assessing areas for regulatory improvement, it appears important that the staff and Commission be made aware of areas where a proposed change could be approved under existing regulations but involves circumstances under which compliance with existing regulations would not produce the intended or expected level of safety. Therefore the staff should inform the Commission when any license amendment request, whether initially risk-informed or not, requires the use of risk information to support staff approval because compliance with existing regulations could not assure the level of protection necessary to avoid undue risk to public health and safety.

Commissioner Diaz

I agree with and approve the basic concepts the staff has laid out in SECY-99-246 for identifying and evaluating risk significant license amendment requests. The process for considering risk in staff reviews as described in SECY-99-246 appears to be based on sound logic and is consistent with the NRC policies regarding risk-informed regulatory activities. Under its statutory authority, the NRC should require licensees to submit additional risk information and risk assessment results, if, and only if, there is a "special circumstance" that leads the staff to believe that there is a potential significant risk associated with the licensee's request for a plant change or a license amendment. In such a case, the staff has the burden of proof of a potential significant risk associated with the licensee's request.

However, the process described by the staff needs further definition to make it effective and "implementable." This would require that the process be circumscribed by a set of well-defined criteria for identifying the "special circumstance" that warrants the staff's review, and the request for risk information, on matters beyond the design basis issues addressed in a licensee's deterministic submittal. This set of well-defined criteria will provide a critical component of the proposed process for considering risk in license amendment reviews.

While the proposed logic and process for identifying and evaluating risk significant license amendment requests appear appropriate, clear definition of the "special circumstance" and clear guidance, balanced through stakeholder input, are lacking. Therefore, I disapprove implementation of the proposed process on an interim basis prior to a full discussion with stakeholders. I recommend that the staff be directed to obtain stakeholder input and return to the Commission within 90 days with a proposed set of well-defined criteria for "special circumstance." During the transition to a formal process, the EDO should establish guidelines, as appropriate, for staff to follow in considering the need for risk information in the review of license amendment requests and inform the Commission accordingly. The final modified guidance documents should also be submitted to the Commission.

Commissioner McGaffigan

I basically concur in the vote of Commissioner Merrifield. Both he and Commissioner Diaz correctly point out the subjectivity and lack of clarity associated with the "special circumstance" standard under which a license amendment request would transition from traditional deterministic design basis accident space to probabilistic severe accident space. While I share Commissioner Diaz' concern about the lack of clarity, I believe that Commissioner Merrifield's proposal, that the Commission be informed whenever the special circumstance standard is invoked, adequately resolves the problems with interim application of this policy. The staff needs an interim policy to process license amendments while this issue is being discussed with stakeholders. The Commission will likely benefit, as we did in the Callaway electro sleeving case, from observing the difficulties which the interim policy runs into in practice. This may well help the Commission in finalizing the policy after stakeholder comment.

Commissioner Merrifield

Before commenting directly on the matters before the Commission in SECY-99-246, I feel it is important to address two related issues that were raised

to the Commission during the staff's review of the Callaway electrosleeve amendment and during a recent ACRS meeting with the Commission. First, NRC processes and decisionmaking should not discourage the use of emerging technologies by our licensees. Since, in many cases, these technologies enhance plant safety, the staff must ensure that its actions do not implicitly signal to licensees that the NRC is inherently averse to the use of new technologies. Clearly, the staff's review of issues related to licensee use of these technologies must be thorough. But, it must also be disciplined and timely. I believe the untimely and inadequately managed review of the Callaway amendment could serve to discourage licensees from pursuing similar technologies. Second, our processes and decisionmaking must not raise inappropriate impediments to the increased use of risk information in our regulatory processes, including licensing actions. The Commission has endorsed greater use of risk information by the staff and our licensees to both enhance safety and reduce unnecessary regulatory burden, and thus our processes must facilitate such use. I encourage the staff to assess its performance in these two areas to ensure its processes support the Commission's direction.

I **approve** the staff's use of the **concepts** described in SECY-99-246 for identifying and evaluating risk significant license amendment requests. The process proposed by the staff for considering risk in staff reviews appears to be sound. The NRC clearly has the authority to require the submittal of information in connection with a license amendment request if the staff has reason to question adequate protection of public health and safety. As correctly stated by the staff, in cases in which the licensee meets the design basis but unusual circumstances potentially introduce significant and unanticipated risks, the NRC staff must assume the burden of demonstrating that protection is not adequate or that additional license conditions are justified.

While the concepts described in the paper appear sound, I am concerned about the subjectivity and lack of clarity associated with the "special circumstances" standard; a standard at the heart of the staff's approach. The term "special circumstances" is not well-defined, resulting in an approach that is inherently subjective and unpredictable, and one that does not fully remedy the staff and stakeholder uncertainty that hindered the Callaway electrosleeve amendment review. While the staff has indicated that its "special circumstances" standard would rarely be invoked, I fear that without greater clarity, sound guidance, and strong management oversight, the proposed approach is susceptible to inconsistent implementation.

Given the importance of this matter, stakeholder involvement is essential. I encourage the staff to actively and expeditiously seek stakeholder input on NRC efforts to bring greater clarity to the special circumstances standard, and to develop clear guidance. The Commission should be informed of the results of this effort.

I **approve** the use of the proposed interim approach, as needed, for considering risk in license amendment reviews. However, given the inherent subjectivity discussed above, the EDO must ensure that management oversight of the process is robust. Furthermore, the staff should inform the Commission when it determines that a license amendment application meets the special circumstances standard, the basis for that determination, the licensee's response to the staff's determination, the expected delay in the license amendment review process, and any generic implications.