

May 1, 2000

COMMISSION VOTING RECORD

DECISION ITEM: SECY-00-0074
TITLE: REGULATORY GUIDE FOR ASSESSING AND MANAGING RISK BEFORE MAINTENANCE ACTIVITIES AT NUCLEAR POWER PLANTS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum ([SRM](#)) of May 1, 2000.

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

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets

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

VOTING SUMMARY - SECY-00-0074

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	4/13/00
COMR. DICUS	X				X	4/17/00
COMR. DIAZ	X				X	4/5/00
COMR. McGAFFIGAN	X				X	4/13/00
COMR. MERRIFIELD	X				X	4/4/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Chairman Meserve and Commissioners Dicus and Merrifield approved extending the implementation period for the revised 10 CFR 50.65 to 180 days after issuance of the final regulatory guide. Commissioners Diaz and McGaffigan preferred the original plan of 120 days after the issuance of the guidance and did not find industry's arguments for the extension to be persuasive. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 1, 2000.

Commissioner Comments on SECY-00-0074

Chairman Meserve

I approve publishing Regulatory Guide (RG) 1.XXX, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants," which endorses Section 11 of NUMARC-93-01, "Assessment of Risk Resulting from Performance of Maintenance Activities" as one acceptable means of complying with [10 CFR 50.65\(a\)\(4\)](#).

The rulemaking promulgating 10 CFR 50.65(a)(4) provided that the rule would become effective 120 days after issuance of Revision 3 to Regulatory Guide 1.160, "Monitoring the Effectiveness of Nuclear Power Plants." 64 Fed. Reg. 38511 (1999). The staff should clarify in the subsequent Federal Register notice that it has decided to issue RG 1.XXX, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants," rather than a revision to RG 1.160, and that this action triggers the clock for the effectiveness of the rule.

The Nuclear Energy Institute has requested that the effective date be postponed to 180 days after the issuance of the guidance in order to assure proper implementation. The staff has indicated that it does not object to such an extension. I approve the extension in order to provide licensees with adequate opportunity to implement the new guidance.

Commissioner Dicus

I approve publication of the Regulatory Guide for assessing and managing risk before maintenance activities at nuclear power plants. The effective date of the revised 10 CFR 50.65 should be 180 days after issuance of the regulatory guide.

Commissioner Diaz

I approve the staff's recommendation to publish Regulatory Guide 1.XXX, "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants" endorsing Section 11 of NUMARC 93-01 as an acceptable method for complying with 10 CFR 50.65(a)(4).

It is important to start implementing 10 CFR 50.65(a)(4) so that the industry can gain experience using the regulatory guidance and NRC staff can gain experience using the new inspection procedures for the revised reactor oversight process. Therefore, I support the original plan to make the revised 10 CFR 50.65 effective 120 days after issuance of the final regulatory guide. It is now time to focus on risk-informing the scope of the Maintenance Rule.

Commissioner McGaffigan

I approve publishing Regulatory Guide 1.XXX as one acceptable method for complying with 10 CFR 50.65(a)(4), subject to the minor change discussed below. I also approve making the rule effective 120 days after issuance of the final regulatory guide.

I commend the staff for its continuing dedication and hard work on the (a)(4) assessment rulemaking effort. As we heard at the recent Commission briefing on the risk-informed regulation implementation plan, this rulemaking constitutes a real safety enhancement by virtue of its contribution to risk-informed configuration management.

I strongly support the modification to the regulatory guidance that addresses the overlapping applicability of 10 CFR 50.59 and the new 10 CFR 50.65(a)(4), as described in Section 11.3.8 of the final revision to NUMARC 93-01, as well as Section 1.2 of Draft Regulatory Guide DG-1095, "Guidance for Implementation of 10 CFR 50.59 Changes, Tests, and Experiments." It is a common sense change that reduces unnecessary burden. It appears that the authority for eliminating the overlapping requirement is derived from 10 CFR 50.59(c)(4). However, the effective date of the maintenance rule is likely to precede the effective date for the 10 CFR 50.59 rule by several months. Consequently, until the revised 50.59 rule becomes effective, I suspect that performing a 50.65(a)(4) assessment in lieu of a 50.59 review may give rise to a *de minimis* compliance issue. If my understanding is correct, I believe that the staff should continue its policy of exercising enforcement discretion for these *de minimis* non-compliance issues until 10 CFR 50.59 rule becomes effective. The staff should consult with OGC on this concern, and take whatever action is appropriate.

I have read NEI's letter of March 30, 2000, requesting Commission consideration of a 180 day implementation period, rather than a 120 day period, following issuance of the final regulatory guidance. I do not find the industry's arguments persuasive. The first objection NEI raises in its letter -- namely, that the additional time is needed because implementation of the new 10 CFR 50.65(a)(4) configuration risk management involves many disciplines within the licensee's organization -- is not persuasive because licensees should have been aware of the draft regulatory guidance since it was issued in November 1999. The draft regulatory guidance was the product of an open and public collaborative effort involving industry representatives and NRC staff. Viewed from that perspective, notice to licensees realistically began in November. The additional 120 day implementation period gives licensees a total of approximately ten months to prepare for the 50.65(a)(4) rule change. NEI's second objection -- the guidance to use the 50.65(a)(4) assessment in lieu of the 10 CFR 50.59 process under certain circumstances -- is moot because of the *de minimis* non-compliance issue discussed above. The only reason I would support a 180 day implementation period is to allow the staff adequate time for training inspectors. On that point, the staff has repeatedly said that it can successfully implement the rule within the 120 day period.

Finally, I note that the paragraph numbering in Attachment 2 to SECY-00-0074 is incorrect in several places. This should be corrected before publishing the final guidance.

Commissioner Merrifield

I commend the staff for their efforts associated with the Regulatory Guide entitled "Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants". This is an important achievement representing a great deal of hard work on the part of our staff, the nuclear industry, and our stakeholders.

I **approve** publishing the Regulatory Guide and also **approve** extending the implementation period for the revised 10 CFR 50.65 to 180 days. I believe that extending the implementation period is prudent to ensure that licensees have the time necessary to develop sound programs for implementing 10 CFR 50.65 (a)(4). I encourage NRR to utilize the extension to ensure that our staff and regulatory infrastructure are prepared to effectively implement the revised 10 CFR 50.65.

As part of its regulatory oversight activities, the staff intends to monitor licensee implementation of 10 CFR 50.65 (a)(4). On the basis of these activities, the staff will determine whether the guidance for assessing and managing risk before maintenance activities at nuclear power plants needs to be modified. I encourage the staff to keep the Commission informed of significant problems it identifies associated with licensee implementation of 10 CFR 50.65 (a)(4).