

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001



June 28, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0048

TITLE: PETITION FOR RULEMAKING ON PROTECTION OF U.S.
NUCLEAR POWER PLANTS AGAINST RADIOLOGICAL
SABOTAGE (PRM-50-80)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 28, 2005.

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

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

SECY NOTE: THIS VOTING RECORD WILL BE RELEASED TO THE PUBLIC 5
WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE
PETITIONER.

VOTING SUMMARY - SECY-05-0048

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	5/9/05
COMR. McGAFFIGAN	X				X	5/23/05
COMR. MERRIFIELD	X				X	5/12/05
COMR. JACZKO	X				X	5/20/05
COMR. LYONS	X					4/11/05

COMMENT RESOLUTION

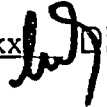
In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 28, 2005.

SECY NOTE: THIS VOTING RECORD WILL BE RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE PETITIONER.


NOTATION VOTE

RESPONSE SHEET

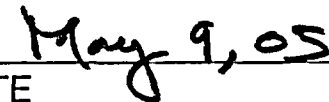
TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-05-0048 - PETITION FOR RULEMAKING ON
PROTECTION OF U.S. NUCLEAR POWER PLANTS
AGAINST RADIOLOGICAL SABOTAGE (PRM-50-80)**

Approved xx  Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:
See attached comments.



SIGNATURE



DATE

Entered on "STARS" Yes No _____

Chairman Diaz's Comments on SECY-05-0048

I approve the staff recommendations in SECY-05-0048, "Petition for Rulemaking on Protection of U.S. Nuclear Power Plants Against Radiological Sabotage (PRM-50-80)," to:

- Develop the technical basis for a rulemaking to require licensees evaluate the effects of plant changes on the safety/security interface.
- Deny the second requested action of PRM-50-80 regarding licensee analyses of aerial crashes.
- Publish the *Federal Register* Notice.

The rulemaking effort should accomplish the following objectives:

- Ensure that instances where permanent changes to the facility that are made with NRC approval (10 CFR 50.90) and without NRC approval (10 CFR 50.54(p) or 10 CFR 50.59) as well as temporary configurations allowed under the Maintenance Rule (10 CFR 50.65) are addressed.
- Plant changes should neither result in the inability to meet the supplemented security requirements, including the supplemented design basis threat, nor significantly diminish the capability to mitigate the effects of other threats (i.e., large fires and explosions) using existing or readily available resources.
- Relevant guidance documents (eg., Regulatory Guide 1.174) should be updated.
- This effort should be planned and budgeted in future budget requests.
- The following editorial changes should be included into the *Federal Register* Notice and response letter:

"The proposed revisions would not make NRC activities and decisions more effective, efficient, realistic, and timely because NRC already required nuclear power plant licensees to implement specific security enhancements and/or measures to mitigate the potential consequences of an ~~successful~~ attack on a nuclear power plant. The enhanced security requirements are contained in ~~in a manner that incorporates the full scope of~~ the Interim Compensatory Measures required by Order dated February 25, 2002 and the DBT as supplemented by Order on April 29, 2003." (FRN page 12)

"However, the NRC staff plans to amend the regulations ~~10 CFR Part 73~~ to require nuclear power plant licensees to implement specific security enhancements and/or measures to mitigate the potential consequences of an ~~successful~~ attack on a nuclear power plant. The amended regulations will incorporate ~~in a manner that incorporates~~ the full scope of the revised supplemented DBT issued by Order on April 29, 2003." (Response letter page 2)

"Additional site-specific ~~studies~~ inspections of operating nuclear power plants are underway or being planned to ensure appropriate mitigative strategies have been put into place and are effective. Site-specific assessments of important aspects of nuclear power plants are also underway or planned to identify if there are any additional potential mitigative strategies ~~determine the need, if any, for additional mitigating capability on a site-specific basis.~~" (SECY Paper page 6, FRN page 11 and 12, and response letter page 3)

NOTATION VOTE

RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-05-0048 - PETITION FOR RULEMAKING ON PROTECTION OF U.S. NUCLEAR POWER PLANTS AGAINST RADIOLOGICAL SABOTAGE (PRM-50-80)**

Approved ^{w/comments} Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE



DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-05-0048

I approve the staff recommendations to grant in part and deny in part a petition for rulemaking concerning the protection of U.S. nuclear power plants against radiological sabotage. In particular, the staff should proceed to develop as a high priority the rule that would require licensees to evaluate the effects of plant changes on the safety/security interface.

I brought this issue up at the March 24, 2004 Commission briefing where I urged the staff to consider amending 10 CFR 50.59(c) to add an additional criterion relating to the security implications of licensee controlled changes, tests and experiments. I was told that the same issue had been included in a petition for rulemaking that the staff had under review and that a Commission paper (this paper) would be forthcoming.

I am frustrated that it took the staff a year to send the paper and that it is scheduled to take four years more and five FTE to develop the technical basis and finalize the rule package. I support the interim action proposed by staff to issue a generic communication to heighten licensee awareness of the potential for changes to the facility or the security plan to adversely affect plant safety or security. I request that that communication be issued by no later than September 30, 2005.

I would also recommend that the staff's proposed rule on the safety/security interface for plant changes be incorporated in the even higher priority proposed rulemaking on 10 CFR 73.55 and appendices to Part 73 which is due to the Commission in February 2006. I have grave doubts about the staff's ability to meet that February 2006 date for the 73.55/Part 73 appendices proposed rulemaking if the resource requirements are in any way commensurate to the response to this petition for rulemaking.

There needs to be real urgency in establishing our power reactor security rules going forward, particularly if there is going to be a series of COL applications in the 2007-2008 time frame. We cannot afford to expend 5 FTE on this bite-sized issue alone, and take until 2009 to complete the rule. In a separate paper just presented to the Commission on the National Source Tracking System rulemaking, the staff estimates only 1.2 FTE are needed to complete it by next year. That estimate has to be low given the complexities of that rulemaking and the need for interagency coordination particularly with DOE, DHS, and OMB on our requirements.

I believe that we urgently need a real staff plan for conducting security rulemakings (in the reactor, materials, and waste arenas) with proposed priorities and realistic resource estimates so the full set of final rules will be completed by FY 2009. Almost none of these rulemakings are currently in the Rulemaking Activity Plan (SECY-05-0067). Perfection in technical basis development for proposed changes cannot be a staff goal, nor is it a requirement under the Administrative Procedure Act. The staff has consistently argued that since we have post-9/11 security orders in place for our various classes of existing licensees for current security conditions, rulemakings can proceed at our leisure. I agree we have adequate measures in place, but stability going forward can best be established by rules applying to both existing licensees and future applicants for licensees. This set of rules needs to be our highest rulemaking priority until the rules are finalized.



NOTATION VOTE
RESPONSE SHEET

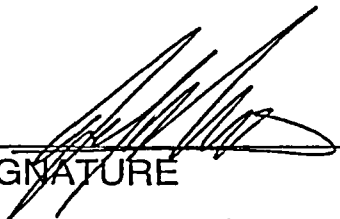
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-05-0048 - PETITION FOR RULEMAKING ON PROTECTION OF U.S. NUCLEAR POWER PLANTS AGAINST RADIOLOGICAL SABOTAGE (PRM-50-80)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.



SIGNATURE

5/12/05
DATE

Entered on "STARS" Yes No

Commissioner Merrifield's Comments on SECY-05-0048

I approve the staff's proposal to grant in part and deny in part a petition for rulemaking on protection of U.S. nuclear power plants against radiological sabotage. I agree with the petitioners that it is important for our licensees to review proposed changes to their facilities, whether they are permanent changes or temporary changes in the form of maintenance activities, with a holistic view of the interface between safety and security. I believe that licensees are already engaging in this type of review for proposed changes, but amending NRC regulations will provide clarity and implementation guidance that is lacking at the present time. Consequently, I approve the staff's request to partially grant the petitioners' first proposed action. I also approve the staff's request to deny the petitioners' second proposed action related to aerial hazards.

With this in mind, the staff should revise the Federal Register Notice (FRN) and letter to the petitioners in the following manner:


–Change the "ACTION" line of the FRN to "Petition for rulemaking: Partial grant."

–Restructure the "Reasons for NRC's Response" section of the FRN to lay out the analysis of the proposed actions in a concise, narrative form rather than segmenting the staff's reasoning by each Strategic Goal. The NRC Strategic Performance Goals are a useful tool for the staff to use in evaluating proposed actions, but they may not be conducive to producing a readable, plain language format for discussion of many important staff decisions. In a number of cases, including this one, it would be more effective for the staff to address how it considered the Strategic Goals in one, condensed paragraph. Frequently, the Agency makes decisions for a multitude of reasons above and beyond those articulated in the Strategic Plan. The staff's explanation of why we are taking a specific action should not be limited to an inflexible approach merely to justify the action based only on our Strategic Goals.

–Remove the information contained in the first full paragraph on page 9 of the FRN beginning "In addition, the NRC is aware . . ."

—Rewrite the denial of the aerial hazard portion of the FRN to incorporate language from pages 2 and 3 of the letter to the petitioner, starting with the second full paragraph on page 2, to use as a basis for denying the petitioners' second proposed action. The language in the letter more accurately explains the extensive actions the NRC has already taken in response to the petitioners' concerns. The staff should add a sentence to the end of this section stating that because the Design Basis Threat is safeguards information, the NRC is unable to communicate to the general public the results of our studies and evaluations of protection against aerial hazards. Any subsequent changes to the DBT or mitigating strategies must be protected as safeguards information in the interest of common defense and security.

–Add a paragraph to the end of the FRN summarizing the path forward to resolving the first proposed action. Include the second sentence of the first full paragraph on page 2 of the letter referencing the NRC's interoffice Safety/Security Interface Advisory Panel.



5/12/05

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: **SECY-05-0048 - PETITION FOR RULEMAKING ON
PROTECTION OF U.S. NUCLEAR POWER PLANTS
AGAINST RADIOLOGICAL SABOTAGE (PRM-50-80)**

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: See attached comments.



SIGNATURE
5/24/05

DATE

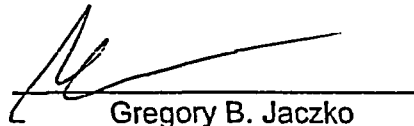
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**COMMISSIONER JACZKO'S VOTE ON SECY-05-0048
PETITION FOR RULEMAKING ON PROTECTION OF U.S. NUCLEAR POWER PLANTS
AGAINST RADIOLOGICAL SABOTAGE (PRM-50-80)**

I approve the staff proposal to grant in part and deny in part the petition for rulemaking PRM-50-80. Specifically, I support the staff's proposal to grant the petitioners request for a rulemaking effort to require licensees to evaluate the effect physical plant changes may have on security and the effect plant security changes may have on plant safety, but not necessarily by changing regulations 10 CFR 50.54(p) and 10 CFR 50.59 as requested by the petitioner. An improved regulatory framework may develop during the rulemaking process. Secondly, I support the staff's proposal to deny the petitioner's second request to require that licensees evaluate each facility against aerial hazards and make necessary changes to provide reasonable assurance that safe shutdown can be achieved following an intentional or accidental aerial assault.

The events of September 11, 2001, have forced the Commission to place a greater emphasis on security. To continue to accomplish the agency's mission, a greater emphasis must be placed on the interface between safety and security, in particular with regard to modifications of nuclear power plant infrastructure. In addition, I support Chairman Diaz's comments that the plant changes should also not result in an inability to meet supplemental security requirements and mitigation activities resulting from the implementation of the February 25, 2002, security orders. This rulemaking would be an important codification of the efforts currently ongoing in this area.

With regard to the second proposed action, I support the staff's position to deny a rulemaking effort in this area. The Commission has recently authorized the staff to develop a plan to perform comprehensive reviews of the site-specific implementation of NRC ordered mitigative measures to cope with threat independent damage states to licensed power reactor facilities and to identify beyond readily available measures. Identification and implementation of these additional mitigative measures will augment the existing robust ability of the facility to withstand substantial damage regardless of the source of that damage.


Gregory B. Jaczko

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-05-0048 - PETITION FOR RULEMAKING ON PROTECTION OF U.S. NUCLEAR POWER PLANTS AGAINST RADIOLOGICAL SABOTAGE (PRM-50-80)**

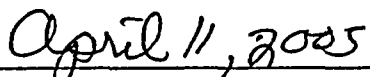
Approved Disapproved Abstain

Not Participating

COMMENTS:



SIGNATURE



DATE

Entered on "STARS" Yes No