



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 8, 2007

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0200

TITLE: RESULTS OF THE REVIEW OF EMERGENCY
PREPAREDNESS REGULATIONS AND GUIDANCE

The Commission (with all Commissioners approving in part and disapproving in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of January 8, 2007.

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 cursive script, 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 Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-06-0200

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X	X			X	11/17/06
COMR. McGAFFIGAN	X	X			X	11/16/06
COMR. MERRIFIELD	X	X			X	11/28/06
COMR. JACZKO	X	X			X	10/26/06
COMR. LYONS	X	X			X	10/27/06

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved in part and disapproved in part the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on January 8, 2007.

Commissioner Comments on SECY-06-0200

Chairman Klein

I approve the staff's recommendations to enhance the Emergency Preparedness (EP) regulations and guidance. I also approve, in part, staff's request to begin activities to explore a new voluntary performance-based EP regulatory regimen. I agree with Commissioner Lyons' approval of initial staff activities to explore this concept, starting with engaging Department of Homeland Security and then holding one or more public stakeholder meetings followed by a recommendation to the Commission on any resulting plan going forward. I also agree with Commissioner McGaffigan's resource concerns regarding a new performance-based EP regulatory regime, particularly in light of the current budget situation and other priorities. I disapprove at this time staff's recommendation for the Commission to delegate to the staff the ability to approve emergency plan changes that represent a decrease in effectiveness and requiring on-shift emergency response organization (ERO) members to have no collateral duties.

Licensees have implemented significant enhancements to their EP programs in response to NRC orders and communications related to security in the past five years. The staff's proposal to codifying these enhancements in the regulations makes good sense. I commend staff's effort in taking a systematic approach that considered important factors such as goals related to EP, safety, and security; NRC's strategic goals; and impact on various stakeholders for identifying high priority EP issues that has led to the development of the staff's recommendations. I believe these revisions to the regulations would promote clarity, flexibility, and enhance both public safety and confidence.

For recommendations related to decrease in effectiveness of emergency planning, I approve staff's set of proposals to clarify the regulatory requirements regarding a licensee submittal of EP plan changes for NRC review. However, I disapprove at this time the proposal for the Commission to delegate the staff the ability to approve emergency plan changes that represent a decrease in effectiveness, mainly due to lack of sufficient explanation for why such a change would represent an improvement from the current requirement. Instead, the staff should submit to the Commission a documented basis for this proposed action with recommended language to be incorporated in an appropriate Management Directive that would authorize such delegation. This will ensure that a sufficient basis for a decision will be documented for Commission consideration and that such process would be made publicly available.

I disapprove requiring on-shift ERO members to have no collateral duties. It is unreasonable to have personnel with no other duties than waiting for an emergency to occur at the facility. This goes beyond our regulatory function as it is not our function to manage these aspects of licensee operations.

In addition to the enhancements mentioned above, the staff has proposed to explore developing a new performance-based EP regulatory regimen that could serve as a voluntary alternative approach to existing EP regulations and guidance. The staff stated that the current regimen tends to emphasize compliance with, and control over, emergency plans and facilities and that a performance-based regimen would focus licensee efforts on actual performance competencies, rather than emergency plans and procedures. At a high conceptual level, the potential benefits are appealing. However, I believe it is premature at this time to fully embrace

this concept.

I believe that the existing EP regulations have served the public well, and they will be further strengthened with the changes and improvements discussed above. Their value has been demonstrated by their use as a source for development of emergency planning for other types of emergencies. They provide flexibility to address widely varying local conditions and accident sequences, through reasonable and prudent means of achieving dose reduction, as a second or third of line of defense beyond engineered design features and corrective actions. Moreover, the planning requirements (e.g., "a range of protective actions") were developed after consideration of a broad range of accidents and consequences substantially beyond the traditional design basis accidents. Thus, a fundamental premise of our regulations is that the adequacy of emergency plans is not assessed by efforts to predict dose consequences of a specific accident sequence.

With this in mind, I believe it is worth exploring the feasibility of whether a full menu of sound performance standards and indicators can be developed to construct a regulatory structure that would serve as an adequate alternative to the existing EP regulatory framework. Thus, I approve the staff's proposal to go forward with initial activities only, considering stakeholder inputs, to explore the concept of performance-based oversight of nuclear power plant EP programs and to determine its feasibility, and report the results and any recommendation for further actions to the Commission.

Commissioner McGaffigan

I approve the staff's recommendations to proceed with near-term rulemaking and proposed guidance changes as outlined in SECY-06-0200 and attendant Enclosure 2, with two exceptions and one addition.

I join with Commissioner Lyons in disapproving the staff's recommendation, at this time, that the Commission delegate to the staff the ability to approve emergency preparedness (EP) changes that represent a decrease in effectiveness.

Additionally, I do not support the removal of the "near-site" requirement for Emergency Operating Facilities (EOFs), consistent with my votes on SECY-04-0236 (Southern Company) and SECY-05-0172 (Duke Power). I will not repeat those votes here, but the NRC will always need to dispatch a significant team to any site at which an incident of national significance has occurred. The team will need to be properly prepared to interact with the tsunami of State, other agency, and media attention that any such accident will generate. Indeed, the "nuclear phobia" effect may result in any reactor incident getting media coverage at a level similar to the Katrina hurricane. We will end up replicating the near-site EOF, whether we call it that now or not, because the NRC, the licensee, and other governmental players will need to have decision makers proximate to the action and not just as "talking heads" hundreds of miles away. I was in the minority in the two earlier cases and that may be the case here. If so, I would hope that any Commission majority would require, as was done with Southern and Duke, that the existing near-site EOFs be maintained. They would not be sufficient should an accident occur, but they would be a great help nonetheless, and far better than nothing.

One EP-related item not contained in SECY-06-0200, but which I believe merits enhanced Commission support, is the Emergency Response Data System (ERDS) modernization effort.

ERDS is the system by which the NRC monitors real-time data from reactor sites and, as such, is a primary Agency resource in any reactor event. According to recent briefings by the staff, the existing ERDS hardware and software has become technically obsolete, costly to support, and less than appropriately reliable. The staff should give the ERDS modernization effort high priority, including any necessary rulemaking activities and data collection approval requests to OMB.

I consider the above rulemakings to be sufficiently important and well enough understood so as not to require the development of related rulemaking plans for submittal to the Commission. Instead, the staff should prepare and submit the proposed rule changes for Commission review, using the open and transparent processes consistent with the Staff Requirements Memo for COMNJD-06-0004/COMEXM-06-0006, "Streamlining the NRR Rulemaking Process." This will ensure that the proposed rule, the regulatory analysis, and any backfit analyses are fully public and available to all stakeholders throughout the development process, while potentially allowing these efforts to be completed in two to three years, instead of perhaps as long as four.

I do not approve the staff recommendation to begin activities to develop a new, voluntary, performance-based EP regulatory regimen. I consider such an initiative to be premature technically until after the Agency has gained the necessary insights from the state of the art reactor consequence study (SOARCS), scheduled for completion in 2009 at the earliest. Additionally, I feel that such an effort would result in a diversion of limited EP resources, already constrained by the high priority the Commission has appropriately given to integrated response activities associated with DHS and other federal agencies.

The impacts of those inter-Agency activities on NRC resources can already be seen, as the staff recently informed the Commission that they had deferred development of several of the assessment tools that would be necessary to support a performance-based regulatory regime until the FY2009 Budget request. The staff has enough to say grace over right now without having to try to devise a new performance-based EP regulatory regime, which would have to be revised again based on the SOARCS result. That effort can wait until after the SOARCS results come in, the near-term rulemaking is complete, and the staff is ready to support the development of the necessary assessment tools.

One final thought that is not ready for rulemaking or guidance at this time, but that needs to be discussed with and among the States, concerns protective actions following any declaration of site area emergency. I have participated in at least one emergency exercise a year for the past decade. I have come to learn that the States have widely varying preplanned actions at the declaration of a site area emergency by the licensee. This is true even for States sharing a single 10-mile plume emergency planning zone. For example, some immediately begin to evacuate parks and schools within the 2-mile EPZ subzone. Most, however, do not take any protective measures at this stage. In my ten years on the Commission, there has been only one declared site area emergency at an operating reactor (LaSalle, February 20, 2006), and it occurred shortly after midnight local time and was probably an overcall in terms of the emergency action level. It was over before dawn, so action during a site area emergency during daylight hours is not something with which we or the States have practical experience, except in exercises that rarely involve political level decision makers at the State level and do not adequately capture the media frenzy level likely to besiege the Governor(s).

A daytime site area emergency at a reactor facility will - with the full panoply of modern instantaneous communications devices now available - pose a tremendous problem for a

Governor whose current plan calls for no protective measures at site area emergency. Several hundred non-essential workers will be sent home from the affected site. The media will quickly learn that this is happening and will ask the obvious question of why the licensee is protecting its workers and yet the Governor is taking no steps to protect nearby populations, especially schools. This simply may not be a sustainable position if the site area emergency is not quickly de-escalated, especially as the media learns that other States begin protective measures at the site area emergency declaration.

As I said above, this is not ready for rulemaking or guidance at this time. But the States should be aware of the disparity among them and should think about the implications of modern instant communications on their plans.

Commissioner Merrifield

I approve the staff's recommendation to develop a rulemaking plan and the associated guidance changes for the emergency planning regulations in the short term. I also approve the recommendation to begin initial activities to develop a new voluntary performance-based emergency planning regulatory regimen as an alternative to the current regulations, although I believe this endeavor will take a significant amount of time and effort to complete, and thus should be given a low priority compared to other work in the reactor arena. Any actual performance-based EP rulemaking effort should be deferred until the short term goal of codifying the recent EP orders is achieved.

At this time, I do not approve delegating to the staff the authority to approve changes to a licensee's emergency plan that results in a decrease in effectiveness, or "DIE", as the staff calls it. Regarding acronyms, I have long tried to persuade the staff to use fewer of them when describing nuclear systems, structures and components, or programs developed by the NRC or our licensees. I must confess, this is the most distasteful and inappropriate acronym I have run across during my tenure on the Commission. Why does this 3-word phrase need to be reduced to an acronym, and even if there needs to be an acronym, why would the staff use the term "die" in connection with emergency planning? Could staff use the word "reduction" instead? I hope the staff will strive to use fewer acronyms in the future, and when such tools are needed as shorthand to describe complex technical systems or processes. I hope the staff will be more sensitive when developing acronyms, and our senior managers will ensure that this does not happen again. As for a change to an emergency plan that results in a real reduction in effectiveness, I believe such changes should be extremely rare. In fact, I do not recall hearing of any such changes during my time on the Commission. Therefore, I see no need to delegate the authority for approving such changes to the staff at this time. If the staff can provide the Commission with a sound basis for making this change, similar to delegations of authority for 10 FR 50.59 (changes tests or experiments) or 10 CFR 50.12 (security plans) in Management Directive 9.27 (Organization and Functions - Office of Nuclear Reactor Regulation), I might be willing to reconsider.

I do, however, support the staff recommendation to address ambiguities in the regulations concerning what sort of emergency plan change constitutes a reduction in effectiveness. As I understand the current process, a licensee may spend time preparing a submittal for what they believe may be a reduction in effectiveness of their emergency plan, only to have the NRC determine upon review that the change is not a decrease in effectiveness. On the other hand, a licensee may determine a change to the emergency plan does not constitute a decrease in

effectiveness, and therefore would not submit the change to the NRC for approval prior to implementing the change, only to find out later through an NRC inspection that they are in violation of the regulations because the change was indeed a reduction in effectiveness. Providing clarification as to what sort of change constitutes a reduction in effectiveness would save both NRC and licensees resources that could best be spent elsewhere.

One other area on which I will offer comment is the proposal to revise the regulations to allow a multi-plant licensee to consolidate the individual plant emergency operations facilities, as long as the licensee can demonstrate it can cope with an emergency at any of the associated facilities. I applaud the staff proposal. After touring Southern Nuclear's consolidated emergency operating facility for the Farley, Hatch, and Vogtle nuclear plants in Birmingham, Alabama, I believe there is a benefit to having senior managers at the corporate level available to respond to emergencies, especially for licensees of multiple plants. Having the facility located at the corporate office, where a large number of knowledgeable, experienced nuclear managers are always available, allows the licensee to form teams to man the facility around the clock during emergencies. The facility has the ability to monitor all significant plant parameters, and coupled with today's state-of-the-art communications capabilities, allows the facility to respond to plant emergencies, regardless if the plant is located 2 miles or 200 miles from the site.

Commissioner Jaczko

I applaud the staff's efforts to reach out to a diverse group of stakeholders over the last two years as an integral part of performing a comprehensive evaluation of the radiological emergency preparedness program. The staff found that this program is effective but could be improved and for the most part I approve the staff's recommendations contained in this paper. The proposed regulatory changes will make both short term incremental enhancements to emergency preparedness around nuclear power plants and have the potential to result in significant long term improvements. The relationships staff have built with state and local officials and other stakeholders during the process of developing this paper will serve the agency well into the future.

I approve of the first set of changes the staff proposes in this paper involving better incorporating security based events into drills and exercises and emergency action levels. These changes are crucial in the post-September 11, 2001, environment. The Commission has approved these changes and codifying them into requirements is the logical next step. I would encourage the staff to build in flexibility as to the frequency of security based exercises. The initial proposal is that one of the biennial exercises conducted during a 6-year cycle should have a security based scenario. It may be beneficial for some plants to conduct security based exercises more frequently than every six years and therefore that option should be built into the requirements. The staff should also ensure that these events involve a spectrum of simulated releases to ensure that emergency responders have an opportunity to gain experience with differing timing, duration and severity of simulated releases.

I approve of the first of the staff's other emergency preparedness (EP) related recommendations which involves amending the regulations in 50.47 and Appendix E to require compensatory means to notify the public of an incident at a nuclear power plant in the event the primary notification system fails. Such a step would allow the agency to better resolve issues such as the repeated failure of the siren system at Indian Point nuclear power plant by requiring

licensees to take advantage of new technologies and implement a backup notification capability, although I believe that this recommendation could be best achieved for the long term by moving to a performance-based regulatory framework recommended by the staff.

I strongly support the staff's second recommendation which involves changing the agency's regulations to require periodic review and updating of evacuation time estimates. This issue gets to the heart of one of the biggest public confidence problems facing these programs. The agency currently requires licensees to develop estimates of how long evacuations would take to complete during different times of day, days of the week, and weather conditions. Stakeholders around many nuclear power plants have raised concerns that these estimates are wrong and that evacuation plans will therefore not work. This belief is based on a misunderstanding of what the current EP program is set up to accomplish. There is no specific evacuation time requirement in NRC regulations. These estimates are simply to inform the type of protective action recommendations that would be made depending upon the incident and the length of time it would take to evacuate. Stakeholders, however, have raised valid concerns about these estimates, because some have not been updated in decades. Therefore, I fully support more stringent maintenance requirements for these evacuation time estimates and approve the triggers for doing the updates suggested by the staff including every ten years, when emergency planning zone (EPZ) populations change by 10 percent or more, and when there are major changes to the infrastructure around the plants. Better evacuation time estimates will yield better protective action recommendations. This recommendation is also comprehensively dealt with by moving to a performance based regulatory framework.

The third change suggested by the staff would allow multi-plant licensees to consolidate emergency operations facilities. I can not support this recommendation. I have twice voted against the establishment of multi-state, multi-plant emergency operations facilities during my tenure - those involving Southern Nuclear Operating Company and Duke Power Company. I have opposed these exemptions to our regulations requiring "near-site" facilities to coordinate emergency response efforts because I do not believe we have adequately investigated the effects that locating facilities 100 to 200 miles away have on these operations and on coordination with State and local government officials and the public. Therefore, I believe the Commission should continue to address each such change on a case-by-case basis to ensure that emergency response strategies will adequately cope with an emergency at any of the associated plants. I would be willing to reexamine this issue in the context of a performance-based approach to EP.

While I am sympathetic to the staff's goals in their fourth recommendation - to change the regulation (50.54q) dealing with licensee changes to emergency plans that decrease their effectiveness - I do not approve it at this time. This regulation provides a good illustration of why the staff's recommendation to move to a performance-based approach (which I address below) is appealing. Under the current regulatory structure, licensees are required to keep a record of all plan changes that do not decrease effectiveness and to seek Commission approval of all plan changes that do result in a decrease in effectiveness. This program has led the staff to compile a long list of examples of changes and created a labor intensive review of plan updates. The procedural necessity to focus on every specific update could be alleviated if licensees were simply judged on their ability to achieve the desired outcome of emergency planning. Until such time as a performance-based regime is in place, however, I see no alternative but continuing to require licensees to provide this information to the Commission.

I approve of the staff's fifth recommendation to incorporate time lines for making notifications

regarding an emergency into the regulations. These time lines are important, have been established and implemented, and should be codified into regulatory requirements.

I also approve change number six which would establish functional requirements for emergency responders as opposed to the more procedural requirements currently contained in 10 CFR 50 and Appendix E. This change appears to be a logical step in the direction of the staff's final recommendation for the longer-term development of a less procedural, performance based emergency preparedness regime.

Finally, I also support the staff's proposal to develop performance-based emergency preparedness regulations. I have been concerned that the agency needs to better define what reasonable assurance of adequate protection means in the context of emergency preparedness. Sections 50.47 and Appendix E of our regulations detail 16 planning standards that must be met both for licensees, and also serve as the goal for state and local governments because language in the Homeland Security Department's regulations states that these regulations "apply insofar as FEMA is considered to State and Local Governments" (44 CFR 350.5 (a)). These planning standards are good, but they and their associated guidance such as NUREG-0654/FEMA-REP-1 from 1980, are mostly procedural and based on an understanding of technology and emergency management that is now three decades old.

I believe emergency preparedness is now mature enough that we can do a better job of adding more specificity into our regulations to define what constitutes an acceptable level of preparedness and response capabilities. Technological advances, improved understanding of radiological materials, and reorganizations at the federal level for dealing with emergencies have taken place. It is a good time to clarify overall goals for all of the different organizations involved to be able to do their jobs as efficiently and effectively as possible.

Specifically, the NRC has a responsibility to do more to provide our federal, state, and local partners with easier access to the nuclear expertise we possess. As DHS's own regulations read the NRC should:

"Participate with FEMA in assisting State and Local governments in developing their radiological emergency plans, evaluating exercises to test plans, and evaluating the plans and preparedness." (44 CFR Part 351.21)

I believe the best way to do this is to embrace the development of the performance-based regime recommended by staff and work to develop a performance-based definition of reasonable assurance. The agency has defined performance-based requirements as those that have a measurable or calculable outcome. In general, a performance-based regulatory approach focuses on results as the primary basis for regulatory decision-making. The way I understand the proposal in the paper, the staff would continue their dialogue with all stakeholders about what the standard should be, quantify the protection that emergency preparedness plans and procedures result in, and then propose codifying these results into regulations that are objective and measurable.

I do not know what these new performance-based regulations would look like. They may focus on an evacuation time standard, an amount of dose that should be prevented, a maximum dose that can be received, or some other factor. Because they would be performance-based, licensees, state and local governments, and communities would have more flexibility to address their own challenges and develop their own unique solutions to meet the reasonable assurance

definition.

This regime could also potentially be implemented in a graded approach. We should ensure that the same amount of protection is afforded to citizens around all nuclear power plants and to do that we may need to apportion emergency preparedness resources and efforts at all levels based upon factors such as the size of EPZ populations. Having the flexibility to tailor efforts in such a fashion would be an improvement over the current system which does not adequately recognize that each plant and each community are different. Because the NRC and DHS regulations are mostly one-size-fits all, they do not take into account the fundamental principles of emergency management that all disasters are local and that each community is unique.

Having a national dialogue with stakeholders about this initiative will make it more likely the agency could successfully make dramatic changes to protective action recommendations, if we find that to be necessary in the future. For instance, the preliminary results of the Sandia evacuation and protective action recommendation studies that the NRC has funded over the past few years show that in certain emergencies resulting in releases of radiological materials – such as short duration or “puff” releases – it may be better for people to shelter in place rather than attempt to evacuate. There is, however, a widespread perception that radiological emergency preparedness is equivalent to evacuation. Because there is such a belief among many members of the public that evacuation is the best option for a radiological emergency, any discussion about sheltering is seen as an admission that emergency plans will not work. Rather than focusing on the best way to achieve our common goal of protecting the public, the dialogue ends abruptly and results in a loss of public confidence. By making clear the ultimate performance measures we strive to meet, we are more likely to be able to gain the support of the very people that we need to listen, believe, and follow instructions to shelter in place – if in fact that is the safest course of action for a given scenario.

Just the discussion of this type of proposal will be extremely valuable. Public participation in the debate would allow concerned citizens to have their views heard and considered, and would provide them with additional information about the efforts undertaken every day by licensees, and state, local, and federal government personnel to keep them safe.

Therefore, while I have no preconceived notions of what a performance-based regime will look like, I applaud the staff's efforts to pursue enhancements to emergency preparedness through this type of regulatory change.

Commissioner Lyons

I approve the staff's recommendations to proceed with the development of a rulemaking plan and proposed guidance changes and to begin stakeholder outreach activities related to a possible performance-based emergency preparedness (EP) regulatory regimen, subject to the comments below. I disapprove the staff's recommendation, at this time, that the Commission delegate to the staff the ability to approve emergency plan changes that represent a decrease in effectiveness.

I believe the staff's rulemaking recommendation is a necessary step to comprehensively and coherently bring together the many changes in EP regulatory guidance over the past five years. This should help to improve regulatory stability in this important 'cornerstone' of safety. I note

that most of the rulemaking proposals fall into the above category, with only a few enhancements that are not already being implemented. Acknowledging this difference, I support a rulemaking plan that establishes a higher priority for consideration of new enhancements, relative to those enhancements already in place. The rulemaking process will also provide appropriate opportunities for public input on the several proposals for which such input is not reflected in the staff's public outreach summaries.

Regarding the staff's recommendation that the Commission delegate the ability to approve emergency plan changes that represent a decrease in effectiveness, I am not adequately informed by the staff's paper to make a judgement at this time. However, I would entertain such a recommendation in the future with more discussion of the nature of such changes, the extent of efficiencies that could be gained, and stakeholder perspectives.

I approve the staff's recommendation to begin outreach activities to explore the concept of a voluntary performance-based EP regulatory regimen, although I believe the rulemaking noted above should be given a higher priority. I note that the staff has had good success with EP performance indicators (PIs) as a licensee assessment tool within the Reactor Oversight Process (ROP), and the present recommendation suggests advancing this concept into the underlying EP regulatory framework and raises the possibility of extending it to encompass performance attributes of offsite response organizations. I am not yet convinced that substantive improvements in licensee or offsite emergency response performance, above current performance levels, can be achieved using such a regimen. The advantages of performance measures are best achieved when they measure an adequate number of valid performance attributes objectively, consistently, predictably, and without unintended consequences or vulnerability to manipulation. I am concerned that it may not be possible to develop a sufficient number of performance measures having the above attributes to allow replacement of the existing EP regulatory framework. Finally, I have a general concern with extending NRC performance measures to off-site performance not fully within the control of licensees. I note that no external input has yet informed this recommendation and that any such initiative must be fully partnered with the Department of Homeland Security (DHS). However, I am willing to approve initial staff activities to explore this concept, starting with engaging DHS and then holding one or more public stakeholder meetings followed by a recommendation to the Commission on any resulting plan going forward.

NOTATION VOTE

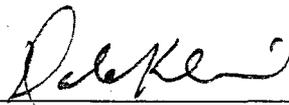
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: SECY-06-0200 - RESULTS OF THE REVIEW OF
EMERGENCY PREPAREDNESS REGULATIONS
AND GUIDANCE

Approved xx Disapproved xx Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached xx None _____



SIGNATURE

11/17/06

DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments on SECY-06-0200

I approve the staff's recommendations to enhance the Emergency Preparedness (EP) regulations and guidance. I also approve, in part, staff's request to begin activities to explore a new voluntary performance-based EP regulatory regimen. I agree with Commissioner Lyons' approval of initial staff activities to explore this concept, starting with engaging Department of Homeland Security and then holding one or more public stakeholder meetings followed by a recommendation to the Commission on any resulting plan going forward. I also agree with Commissioner McGaffigan's resource concerns regarding a new performance-based EP regulatory regime, particularly in light of the current budget situation and other priorities. I disapprove at this time staff's recommendation for the Commission to delegate to the staff the ability to approve emergency plan changes that represent a decrease in effectiveness and requiring on-shift emergency response organization (ERO) members to have no collateral duties.

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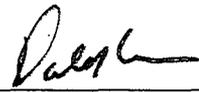
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I disapprove requiring on-shift ERO members to have no collateral duties. It is unreasonable to have personnel with no other duties than waiting for an emergency to occur at the facility. This goes beyond our regulatory function as it is not our function to manage these aspects of licensee operations.

In addition to the enhancements mentioned above, the staff has proposed to explore developing a new performance-based EP regulatory regimen that could serve as a voluntary alternative approach to existing EP regulations and guidance. The staff stated that the current regimen tends to emphasize compliance with, and control over, emergency plans and facilities and that a performance-based regimen would focus licensee efforts on actual performance competencies, rather than emergency plans and procedures. At a high conceptual level, the potential benefits are appealing. However, I believe it is premature at this time to fully embrace this concept.

I believe that the existing EP regulations have served the public well, and they will be further strengthened with the changes and improvements discussed above. Their value has been demonstrated by their use as a source for development of emergency planning for other types of emergencies. They provide flexibility to address widely varying local conditions and accident sequences, through reasonable and prudent means of achieving dose reduction, as a second or third of line of defense beyond engineered design features and corrective actions. Moreover, the planning requirements (e.g., "a range of protective actions") were developed after consideration of a broad range of accidents and consequences substantially beyond the traditional design basis accidents. Thus, a fundamental premise of our regulations is that the adequacy of emergency plans is not assessed by efforts to predict dose consequences of a specific accident sequence.

With this in mind, I believe it is worth exploring the feasibility of whether a full menu of sound performance standards and indicators can be developed to construct a regulatory structure that would serve as an adequate alternative to the existing EP regulatory framework. Thus, I approve the staff's proposal to go forward with initial activities only, considering stakeholder inputs, to explore the concept of performance-based oversight of nuclear power plant EP programs and to determine its feasibility, and report the results and any recommendation for further actions to the Commission.

 11/17/60
Dale E. Klein Date

NOTATION VOTE

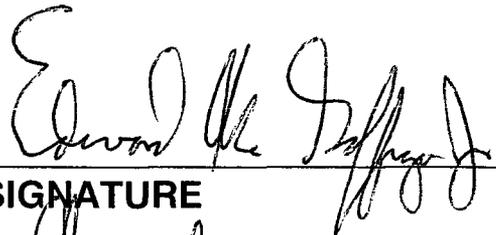
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TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: SECY-06-0200 - RESULTS OF THE REVIEW OF
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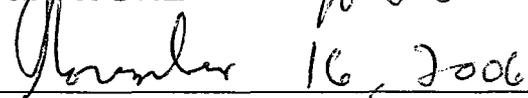
Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE



DATE

Entered on "STARS" Yes No

Commissioner McGaffigan's Comments on SECY-06-0200

I approve the staff's recommendations to proceed with near-term rulemaking and proposed guidance changes as outlined in SECY-06-0200 and attendant Enclosure 2, with two exceptions and one addition.

I join with Commissioner Lyons in disapproving the staff's recommendation, at this time, that the Commission delegate to the staff the ability to approve emergency preparedness (EP) changes that represent a decrease in effectiveness.

Additionally, I do not support the removal of the "near-site" requirement for Emergency Operating Facilities (EOFs), consistent with my votes on SECY-04-0236 (Southern Company) and SECY-05-0172 (Duke Power). I will not repeat those votes here, but the NRC will always need to dispatch a significant team to any site at which an incident of national significance has occurred. The team will need to be properly prepared to interact with the tsunami of State, other agency, and media attention that any such accident will generate. Indeed, the "nuclear phobia" effect may result in any reactor incident getting media coverage at a level similar to the Katrina hurricane. We will end up replicating the near-site EOF, whether we call it that now or not, because the NRC, the licensee, and other governmental players will need to have decision makers proximate to the action and not just as "talking heads" hundreds of miles away. I was in the minority in the two earlier cases and that may be the case here. If so, I would hope that any Commission majority would require, as was done with Southern and Duke, that the existing near-site EOFs be maintained. They would not be sufficient should an accident occur, but they would be a great help nonetheless, and far better than nothing.

One EP-related item not contained in SECY-06-0200, but which I believe merits enhanced Commission support, is the Emergency Response Data System (ERDS) modernization effort. ERDS is the system by which the NRC monitors real-time data from reactor sites and, as such, is a primary Agency resource in any reactor event. According to recent briefings by the staff, the existing ERDS hardware and software has become technically obsolete, costly to support, and less than appropriately reliable. The staff should give the ERDS modernization effort high priority, including any necessary rulemaking activities and data collection approval requests to OMB.

I consider the near-term rulemaking to be sufficiently important and well enough understood so as not to require the development of related rulemaking plans for submittal to the Commission. Instead, the staff should prepare and submit the proposed rule changes for Commission review, using the open and transparent processes consistent with the Staff Requirements Memo for COMNJD-06-0004/COMEXM-06-0006, "Streamlining the NRR Rulemaking Process." This will ensure that the proposed rule, the regulatory analysis, and any backfit analyses are fully public and available to all stakeholders throughout the development process, while potentially allowing these efforts to be completed in two to three years, instead of the four which the staff projects.

I do not approve the staff recommendation to begin activities to develop a new, voluntary, performance-based EP regulatory regimen. I consider such an initiative to be premature technically until after the Agency has gained the necessary insights from the state of the art reactor consequence study (SOARCS), scheduled for completion in 2009 at the earliest. Additionally, I feel that such an effort would result in a diversion of limited EP resources, already constrained by the high priority the Commission has appropriately given to integrated response

activities associated with DHS and other federal agencies.

The impacts of those inter-Agency activities on NRC resources can already be seen, as the staff recently informed the Commission that they had deferred development of several of the assessment tools that would be necessary to support a performance-based regulatory regime until the FY2009 Budget request. The staff has enough to say grace over right now without having to try to devise a new performance-based EP regulatory regime, which would have to be revised again based on the SOARCS results. That effort can wait until after the SOARCS results come in, the near-term rulemaking is complete, and the staff is ready to support the development of the necessary assessment tools.

One final thought that is not ready for rulemaking or guidance at this time, but that needs to be discussed with and among the States, concerns protective actions following any declaration of site area emergency. I have participated in at least one emergency exercise a year for the past decade. I have come to learn that the States have widely varying preplanned actions at the declaration of a site area emergency by the licensee. This is true even for States sharing a single 10-mile plume emergency planning zone. For example, some immediately begin to evacuate parks and schools within the 2-mile EPZ subzone. Most, however, do not take any protective measures at this stage. In my ten years on the Commission, there has been only one declared site area emergency at an operating reactor (LaSalle, February 20, 2006), and it occurred shortly after midnight local time and was probably an overcall in terms of the emergency action level. It was over before dawn, so action during a site area emergency during daylight hours is not something with which we or the States have practical experience, except in exercises that rarely involve political level decision makers at the State level and do not adequately capture the media frenzy level likely to besiege the Governor(s).

A daytime site area emergency at a reactor facility will - with the full panoply of modern instantaneous communications devices now available - pose a tremendous problem for a Governor whose current plan calls for no protective measures at site area emergency. Several hundred non-essential workers will be sent home from the affected site. The media will quickly learn that this is happening and will ask the obvious question of why the licensee is protecting its workers and yet the Governor is taking no steps to protect nearby populations, especially schools. This simply may not be a sustainable position if the site area emergency is not quickly de-escalated, especially as the media learns that other States begin protective measures at the site area emergency declaration.

As I said above, this is not ready for rulemaking or guidance at this time. But the States should be aware of the disparity among them and should think about the implications of modern instant communications on their plans.


Edward McGaffigan, Jr. 11/16/06
(Date)

NOTATION VOTE

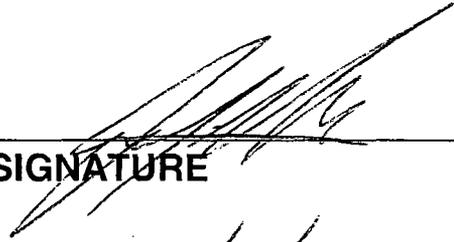
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: SECY-06-0200 - RESULTS OF THE REVIEW OF
EMERGENCY PREPAREDNESS REGULATIONS
AND GUIDANCE

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

4/25/06

DATE

Entered on "STARS" Yes No

Commissioner Merrifield's Comments on SECY-06-0200
"Results of the Review of Emergency Preparedness Regulations and Guidance"

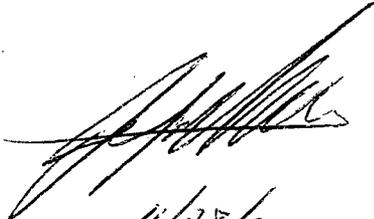
I approve the staff's recommendation to develop a rulemaking plan and the associated guidance changes for the emergency planning regulations in the short term. I also approve the recommendation to begin initial activities to develop a new voluntary performance-based emergency planning regulatory regimen as an alternative to the current regulations, although I believe this endeavor will take a significant amount of time and effort to complete, and thus should be given a low priority compared to other work in the reactor arena. Any actual performance-based EP rulemaking effort should be deferred until the short term goal of codifying the recent EP orders is achieved.

At this time, I do not approve delegating to the staff the authority to approve changes to a licensee's emergency plan that results in a decrease in effectiveness, or "DIE", as the staff calls it. Regarding acronyms, I have long tried to persuade the staff to use fewer of them when describing nuclear systems, structures and components, or programs developed by the NRC or our licensees. I must confess, this is the most distasteful and inappropriate acronym I have run across during my tenure on the Commission. Why does this 3-word phrase need to be reduced to an acronym, and even if there needs to be an acronym, why would the staff use the term "die" in connection with emergency planning? Could staff use the word "reduction" instead? I hope the staff will strive to use fewer acronyms in the future, and when such tools are needed as shorthand to describe complex technical systems or processes. I hope the staff will be more sensitive when developing acronyms, and our senior managers will ensure that this does not happen again. As for a change to an emergency plan that results in a real reduction in effectiveness, I believe such changes should be extremely rare. In fact, I do not recall hearing of any such changes during my time on the Commission. Therefore, I see no need to delegate the authority for approving such changes to the staff at this time. If the staff can provide the Commission with a sound basis for making this change, similar to delegations of authority for 10 FR 50.59 (changes tests or experiments) or 10 CFR 50.12 (security plans) in Management Directive 9.27 (Organization and Functions - Office of Nuclear Reactor Regulation), I might be willing to reconsider.

I do, however, support the staff recommendation to address ambiguities in the regulations concerning what sort of emergency plan change constitutes a reduction in effectiveness. As I understand the current process, a licensee may spend time preparing a submittal for what they believe may be a reduction in effectiveness of their emergency plan, only to have the NRC determine upon review that the change is not a decrease in effectiveness. On the other hand, a licensee may determine a change to the emergency plan does not constitute a decrease in effectiveness, and therefore would not submit the change to the NRC for approval prior to implementing the change, only to find out later through an NRC inspection that they are in violation of the regulations because the change was indeed a reduction in effectiveness. Providing clarification as to what sort of change constitutes a reduction in effectiveness would save both NRC and licensees resources that could best be spent elsewhere.

One other area on which I will offer comment is the proposal to revise the regulations to allow a multi-plant licensee to consolidate the individual plant emergency operations facilities, as long as the licensee can demonstrate it can cope with an emergency at any of the associated facilities. I applaud the staff proposal. After touring Southern Nuclear's consolidated emergency operating facility for the Farley, Hatch, and Vogtle nuclear plants in Birmingham, Alabama, I believe there is a benefit to having senior managers at the corporate level available

to respond to emergencies, especially for licensees of multiple plants. Having the facility located at the corporate office, where a large number of knowledgeable, experienced nuclear managers are always available, allows the licensee to form teams to man the facility around the clock during emergencies. The facility has the ability to monitor all significant plant parameters, and coupled with today's state-of-the-art communications capabilities, allows the facility to respond to plant emergencies, regardless if the plant is located 2 miles or 200 miles from the site.



11/28/06

NOTATION VOTE

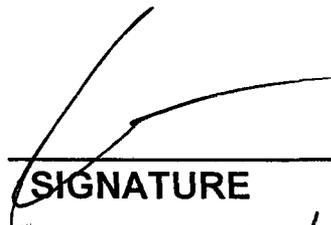
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: SECY-06-0200 - RESULTS OF THE REVIEW OF
EMERGENCY PREPAREDNESS REGULATIONS
AND GUIDANCE

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE
Let 26/06

DATE

Entered on "STARS" Yes X No ___

**Commissioner Gregory B. Jaczko's Comments on SECY-06-0200
Results of the Review of Emergency Preparedness Regulations and Guidance**

I applaud the staff's efforts to reach out to a diverse group of stakeholders over the last two years as an integral part of performing a comprehensive evaluation of the radiological emergency preparedness program. The staff found that this program is effective but could be improved and for the most part I approve the staff's recommendations contained in this paper. The proposed regulatory changes will make both short term incremental enhancements to emergency preparedness around nuclear power plants and have the potential to result in significant long term improvements. The relationships staff have built with state and local officials and other stakeholders during the process of developing this paper will serve the agency well into the future.

I approve of the first set of changes the staff proposes in this paper involving better incorporating security based events into drills and exercises and emergency action levels. These changes are crucial in the post-September 11, 2001, environment. The Commission has approved these changes and codifying them into requirements is the logical next step. I would encourage the staff to build in flexibility as to the frequency of security based exercises. The initial proposal is that one of the biennial exercises conducted during a 6-year cycle should have a security based scenario. It may be beneficial for some plants to conduct security based exercises more frequently than every six years and therefore that option should be built into the requirements. The staff should also ensure that these events involve a spectrum of simulated releases to ensure that emergency responders have an opportunity to gain experience with differing timing, duration and severity of simulated releases.

I approve of the first of the staff's other emergency preparedness (EP) related recommendations which involves amending the regulations in 50.47 and Appendix E to require compensatory means to notify the public of an incident at a nuclear power plant in the event the primary notification system fails. Such a step would allow the agency to better resolve issues such as the repeated failure of the siren system at Indian Point nuclear power plant by requiring licensees to take advantage of new technologies and implement a backup notification capability, although I believe that this recommendation could be best achieved for the long term by moving to a performance-based regulatory framework recommended by the staff.

I strongly support the staff's second recommendation which involves changing the agency's regulations to require periodic review and updating of evacuation time estimates. This issue gets to the heart of one of the biggest public confidence problems facing these programs. The agency currently requires licensees to develop estimates of how long evacuations would take to complete during different times of day, days of the week, and weather conditions. Stakeholders around many nuclear power plants have raised concerns that these estimates are wrong and that evacuation plans will therefore not work. This belief is based on a misunderstanding of what the current EP program is set up to accomplish. There is no specific evacuation time requirement in NRC regulations. These estimates are simply to inform the type of protective action recommendations that would be made depending upon the incident and the length of time it would take to evacuate. Stakeholders, however, have raised valid concerns about these estimates, because some have not been updated in decades. Therefore, I fully support more stringent maintenance requirements for these evacuation time estimates and approve the

triggers for doing the updates suggested by the staff including every ten years, when emergency planning zone (EPZ) populations change by 10 percent or more, and when there are major changes to the infrastructure around the plants. Better evacuation time estimates will yield better protective action recommendations. This recommendation is also comprehensively dealt with by moving to a performance based regulatory framework.

The third change suggested by the staff would allow multi-plant licensees to consolidate emergency operations facilities. I can not support this recommendation. I have twice voted against the establishment of multi-state, multi-plant emergency operations facilities during my tenure - those involving Southern Nuclear Operating Company and Duke Power Company. I have opposed these exemptions to our regulations requiring "near-site" facilities to coordinate emergency response efforts because I do not believe we have adequately investigated the effects that locating facilities 100 to 200 miles away have on these operations and on coordination with State and local government officials and the public. Therefore, I believe the Commission should continue to address each such change on a case-by-case basis to ensure that emergency response strategies will adequately cope with an emergency at any of the associated plants. I would be willing to reexamine this issue in the context of a performance-based approach to EP.

While I am sympathetic to the staff's goals in their fourth recommendation - to change the regulation (50.54q) dealing with licensee changes to emergency plans that decrease their effectiveness - I do not approve it at this time. This regulation provides a good illustration of why the staff's recommendation to move to a performance-based approach (which I address below) is appealing. Under the current regulatory structure, licensees are required to keep a record of all plan changes that do not decrease effectiveness and to seek Commission approval of all plan changes that do result in a decrease in effectiveness. This program has led the staff to compile a long list of examples of changes and created a labor intensive review of plan updates. The procedural necessity to focus on every specific update could be alleviated if licensees were simply judged on their ability to achieve the desired outcome of emergency planning. Until such time as a performance-based regime is in place, however, I see no alternative but continuing to require licensees to provide this information to the Commission.

I approve of the staff's fifth recommendation to incorporate time lines for making notifications regarding an emergency into the regulations. These time lines are important, have been established and implemented, and should be codified into regulatory requirements.

I also approve change number six which would establish functional requirements for emergency responders as opposed to the more procedural requirements currently contained in 10 CFR 50 and Appendix E. This change appears to be a logical step in the direction of the staff's final recommendation for the longer-term development of a less procedural, performance based emergency preparedness regime.

Finally, I also support the staff's proposal to develop performance-based emergency preparedness regulations. I have been concerned that the agency needs to better define what reasonable assurance of adequate protection means in the context of emergency preparedness. Sections 50.47 and Appendix E of our regulations detail 16 planning standards that must be met both for licensees, and also serve as the goal for state and local governments because language in the Homeland Security Department's regulations states that these regulations "apply insofar as FEMA is considered to State and Local Governments" (44 CFR

350.5 (a)). These planning standards are good, but they and their associated guidance such as NUREG-0654/FEMA-REP-1 from 1980, are mostly procedural and based on an understanding of technology and emergency management that is now three decades old.

I believe emergency preparedness is now mature enough that we can do a better job of adding more specificity into our regulations to define what constitutes an acceptable level of preparedness and response capabilities. Technological advances, improved understanding of radiological materials, and reorganizations at the federal level for dealing with emergencies have taken place. It is a good time to clarify overall goals for all of the different organizations involved to be able to do their jobs as efficiently and effectively as possible.

Specifically, the NRC has a responsibility to do more to provide our federal, state, and local partners with easier access to the nuclear expertise we possess. As DHS's own regulations read the NRC should:

“Participate with FEMA in assisting State and Local governments in developing their radiological emergency plans, evaluating exercises to test plans, and evaluating the plans and preparedness.” (44 CFR Part 351.21)

I believe the best way to do this is to embrace the development of the performance-based regime recommended by staff and work to develop a performance-based definition of reasonable assurance. The agency has defined performance-based requirements as those that have a measurable or calculable outcome. In general, a performance-based regulatory approach focuses on results as the primary basis for regulatory decision-making. The way I understand the proposal in the paper, the staff would continue their dialogue with all stakeholders about what the standard should be, quantify the protection that emergency preparedness plans and procedures result in, and then propose codifying these results into regulations that are objective and measurable.

I do not know what these new performance-based regulations would look like. They may focus on an evacuation time standard, an amount of dose that should be prevented, a maximum dose that can be received, or some other factor. Because they would be performance-based, licensees, state and local governments, and communities would have more flexibility to address their own challenges and develop their own unique solutions to meet the reasonable assurance definition.

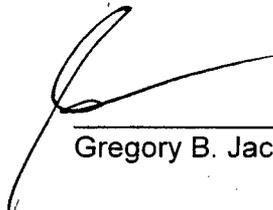
This regime could also potentially be implemented in a graded approach. We should ensure that the same amount of protection is afforded to citizens around all nuclear power plants and to do that we may need to apportion emergency preparedness resources and efforts at all levels based upon factors such as the size of EPZ populations. Having the flexibility to tailor efforts in such a fashion would be an improvement over the current system which does not adequately recognize that each plant and each community are different. Because the NRC and DHS regulations are mostly one-size-fits all, they do not take into account the fundamental principles of emergency management that all disasters are local and that each community is unique.

Having a national dialogue with stakeholders about this initiative will make it more likely the agency could successfully make dramatic changes to protective action recommendations, if we find that to be necessary in the future. For instance, the preliminary results of the Sandia

evacuation and protective action recommendation studies that the NRC has funded over the past few years show that in certain emergencies resulting in releases of radiological materials – such as short duration or “puff” releases – it may be better for people to shelter in place rather than attempt to evacuate. There is, however, a widespread perception that radiological emergency preparedness is equivalent to evacuation. Because there is such a belief among many members of the public that evacuation is the best option for a radiological emergency, any discussion about sheltering is seen as an admission that emergency plans will not work. Rather than focusing on the best way to achieve our common goal of protecting the public, the dialogue ends abruptly and results in a loss of public confidence. By making clear the ultimate performance measures we strive to meet, we are more likely to be able to gain the support of the very people that we need to listen, believe, and follow instructions to shelter in place – if in fact that is the safest course of action for a given scenario.

Just the discussion of this type of proposal will be extremely valuable. Public participation in the debate would allow concerned citizens to have their views heard and considered, and would provide them with additional information about the efforts undertaken every day by licensees, and state, local, and federal government personnel to keep them safe.

Therefore, while I have no preconceived notions of what a performance-based regime will look like, I applaud the staff’s efforts to pursue enhancements to emergency preparedness through this type of regulatory change.



Gregory B. Jaczko Date 1/26/08

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-06-0200 - RESULTS OF THE REVIEW OF
EMERGENCY PREPAREDNESS REGULATIONS
AND GUIDANCE

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

10/27/06

DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Lyons' Comments on SECY-06-0200

I approve the staff's recommendations to proceed with the development of a rulemaking plan and proposed guidance changes and to begin stakeholder outreach activities related to a possible performance-based emergency preparedness (EP) regulatory regimen, subject to the comments below. I disapprove the staff's recommendation, at this time, that the Commission delegate to the staff the ability to approve emergency plan changes that represent a decrease in effectiveness.

I believe the staff's rulemaking recommendation is a necessary step to comprehensively and coherently bring together the many changes in EP regulatory guidance over the past five years. This should help to improve regulatory stability in this important 'cornerstone' of safety. I note that most of the rulemaking proposals fall into the above category, with only a few enhancements that are not already being implemented. Acknowledging this difference, I support a rulemaking plan that establishes a higher priority for consideration of new enhancements, relative to those enhancements already in place. The rulemaking process will also provide appropriate opportunities for public input on the several proposals for which such input is not reflected in the staff's public outreach summaries.

Regarding the staff's recommendation that the Commission delegate the ability to approve emergency plan changes that represent a decrease in effectiveness, I am not adequately informed by the staff's paper to make a judgement at this time. However, I would entertain such a recommendation in the future with more discussion of the nature of such changes, the extent of efficiencies that could be gained, and stakeholder perspectives.

I approve the staff's recommendation to begin outreach activities to explore the concept of a voluntary performance-based EP regulatory regimen, although I believe the rulemaking noted above should be given a higher priority. I note that the staff has had good success with EP performance indicators (PIs) as a licensee assessment tool within the Reactor Oversight Process (ROP), and the present recommendation suggests advancing this concept into the underlying EP regulatory framework and raises the possibility of extending it to encompass performance attributes of offsite response organizations. I am not yet convinced that substantive improvements in licensee or offsite emergency response performance, above current performance levels, can be achieved using such a regimen. The advantages of performance measures are best achieved when they measure an adequate number of valid performance attributes objectively, consistently, predictably, and without unintended consequences or vulnerability to manipulation. I am concerned that it may not be possible to develop a sufficient number of performance measures having the above attributes to allow replacement of the existing EP regulatory framework. Finally, I have a general concern with extending NRC performance measures to off-site performance not fully within the control of licensees. I note that no external input has yet informed this recommendation and that any such initiative must be fully partnered with the Department of Homeland Security (DHS). However, I am willing to approve initial staff activities to explore this concept, starting with engaging DHS and then holding one or more public stakeholder meetings followed by a recommendation to the Commission on any resulting plan going forward.


Peter B. Lyons 10/27/06
Date