



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

May 19, 2008

SECRETARY

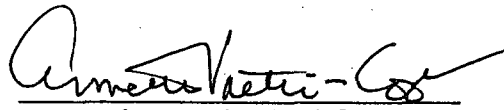
COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0024

TITLE: DELEGATION OF COMMISSION AUTHORITY TO STAFF
TO APPROVE OR DENY EMERGENCY PLAN CHANGES
THAT REPRESENT A DECREASE IN EFFECTIVENESS

The Commission (with Chairman Klein and Commissioners Lyons and Svinicki agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 19, 2008. Commissioner Jaczko disapproved the paper.

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


Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-08-0024

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	4/22/08
COMR. JACZKO		X			X	4/3/08
COMR. LYONS	X				X	3/26/08
COMR. SVINICKI	X				X	5/5/08

COMMENT RESOLUTION

In their vote sheets, Chairman Klein and Commissioners Lyons and Svinicki approved the staff's recommendation and provided some additional comments. Commissioner Jaczko disapproved 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 May 19, 2008.

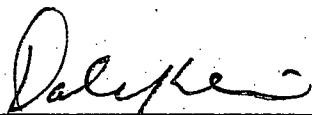
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: SECY-08-0024 – DELEGATION OF COMMISSION
AUTHORITY TO STAFF TO APPROVE OR DENY
EMERGENCY PLAN CHANGES THAT
REPRESENT A DECREASE IN EFFECTIVENESS

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached xx None _____



SIGNATURE

4/22/08

DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments on SECY-08-0024

I approve the staff's proposal in SECY-08-0024 for delegation of authority to the staff to approve or deny emergency plans changes that represent a decrease in effectiveness.

This delegation restores authority to approve emergency plans changes (that represent a decrease in effectiveness) that had been held by the staff prior to the SRM for SECY-06-0220. It does not change the previously existing thresholds for approving such changes, but it would allow for more efficient handling of such requests. As the staff indicates, an NRC staff approval of such a request would be dependent upon a determination that an emergency plan as revised still meets the requirements or standards for protection of the public.

However, the staff made no request or justification for changing the provisions of the SRM for SECY-96-0170 related to emergency operations facility (EOF locations). Therefore, approval of SECY-08-0024 does not change the direction in the SRM for SECY-07-0170 regarding two types of EOF location changes that still require Commission approval.

The public has high interest in emergency preparedness issues, and the importance of interacting with key stakeholders warrants careful treatment of changes in this area. The planned rulemaking to clarify the process for such approvals under 10 CFR 50.54(q) will provide an opportunity for input by the public and industry on any new approaches. However, the staff proposal before the Commission concerns restoration of previously-delegated staff authority, and I do not see a need to delay action on this pending matter.

Moreover, requiring a Commission decision to approve or disapprove these emergency plan changes elevates them above other important safety judgments delegated to the staff (from routine licensing or regulatory actions to matters such as license renewals). Offsite planning is an essential element of adequate protection, but it also constitutes a second or third line of defense for the extremely rare and unlikely circumstance that engineered design features and human capacity to take corrective action have failed. Thus, placing extraordinary restrictions on the staff's review and approval of emergency plan changes appears to be inconsistent with both the normal alignment of delegated staff authority and the structure of NRC's regulatory program. In addition, if policy issues arise during a staff review, the staff notes that it would forward them to the Commission as is normal practice.

In light of these considerations, I do not see a need to place new, special restrictions on the staff's exercise of delegated authority to review and approve/disapprove emergency plan changes or exemption requests related to emergency plans.



Dale E. Klein 04/27/08

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER JACZKO

SUBJECT: SECY-08-0024 – DELEGATION OF COMMISSION
AUTHORITY TO STAFF TO APPROVE OR DENY
EMERGENCY PLAN CHANGES THAT
REPRESENT A DECREASE IN EFFECTIVENESS

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

4/3/08

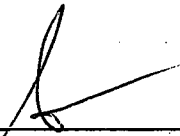
DATE

Entered on "STARS" Yes x No ___

**Commissioner Gregory B. Jaczko's Comments on SECY-08-0024
Delegation of Commission Authority to Staff To Approve or Deny Emergency Plan
Changes That Represent a Decrease in Effectiveness**

I continue to disapprove of the request to delegate to the staff the authority to approve or deny requests from licensees to change their emergency plans in a manner which decreases effectiveness. I continue to believe that this issue will be better informed by seeking stakeholder perspectives on this change of authority as directed in the SRM on SECY-06-0200. This is a vital step to take with something as emotional and complex as emergency preparedness. Rather than making a decision prematurely on an issue that has gotten somewhat confused, I believe we should take our time and get it right. In addition, I know of no urgent need to delegate this authority to the staff. Any licensee desiring to make a change that decreases the effectiveness of their EP plans can clearly petition the Commission for approval to do so.

On a related note, I continue to be unconvinced by staff arguments that doing the legwork necessary to provide information to the Commission is too time consuming and burdensome. I agree the staff's concurrence process for Commission papers is inefficient but the solution to that problem is to improve that staff process, not to avoid providing information to the Commission for decision making purposes. I am, therefore, encouraged that the staff is conducting a lean six sigma review of its concurrence process and I look forward to the efficiency improvements this effort will yield. Inefficiency in the process of preparing and delivering decision papers to the Commission should be resolved expeditiously so that the Commission can continue to play its statutory role as the head of the agency.



Gregory B. Jaczko, 4/3/08
Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-08-0024 – DELEGATION OF COMMISSION
AUTHORITY TO STAFF TO APPROVE OR DENY
EMERGENCY PLAN CHANGES THAT
REPRESENT A DECREASE IN EFFECTIVENESS

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



Peter B. Lyons

SIGNATURE

31 26 /08

DATE

Entered on "STARS" Yes No

Commissioner Lyons' Comments on SECY-08-0024

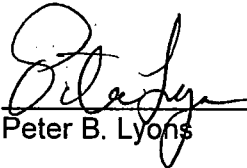
I approve the staff's recommendation that it be delegated the authority to approve or deny proposed emergency plan changes that represent decreases in the effectiveness of a licensee's emergency plan. This approval is subject to the following comments and conditions.

When these changes may represent a reduction in effectiveness of a licensee's emergency plan, the plan must still meet the requirements of 10 CFR 50.47(b) and Appendix E to 10 CFR 50. Any reduction below these requirements requires an exemption from the regulations.

Because of the highly visible nature of emergency preparedness issues and the importance of interacting with key stakeholders on these changes, the approval or denial authority is authorized for the Director (or designated Acting Director) of the Office of Nuclear Reactor Regulation (NRR) and may not be further delegated. This will align the NRR Director's authority to approve these changes with the authority already in place to approve more significant licensing or regulatory actions (e.g., construction permits, operating licenses, license renewals, exemptions from regulations, and license transfers), thus maintaining consistency in the licensing process. I believe that authority at this level provides the necessary oversight for appropriate coordination with key stakeholders and will ensure that policy issues are identified and communicated to the Commission.

My vote does not alter the requirement that Commission approval would be necessary for any reduction in the effectiveness of a licensee's emergency plan that requires an exemption from the requirements of 10 CFR 50.47(b) and Appendix E to 10 CFR 50. I believe that this provides adequate involvement of the Commission in reductions in effectiveness decisions.

This vote does not change earlier Commission direction in the SRM for SECY-96-0170, dated September 18, 1996, that requires Commission approval for relocation of an emergency operations facility, if it is located more than 25 miles from the nuclear power plant site.


Peter B. Lyons 3/26/08
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-08-0024 – DELEGATION OF COMMISSION
AUTHORITY TO STAFF TO APPROVE OR DENY
EMERGENCY PLAN CHANGES THAT
REPRESENT A DECREASE IN EFFECTIVENESS

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None


SIGNATURE

5/05/08
DATE

Entered on "STARS" Yes No

Commissioner Svinicki's Comments on SECY-08-0024

I approve the staff's recommendation that it be delegated the authority to approve or deny proposed emergency plan changes that represent decreases in the effectiveness of a licensee's emergency plan. However, I would limit this delegation to circumstances where the request for a decrease in effectiveness would not require an exemption from 10 CFR 50.47(b) or Appendix E to 10 CFR Part 50. I agree with Commissioner Lyons that Commission approval is still necessary for any reduction in the effectiveness of a licensee's emergency plan that requires an exemption from these requirements.

I also support the condition stipulated by Commissioner Lyons that the delegation of authority to approve or deny proposed emergency plan changes that represent decreases in the effectiveness of a licensee's emergency plan shall be to the Director (or designated Acting Director) of the Office of Nuclear Reactor Regulation (NRR) and may not be further delegated.


As a Commissioner who was not present for the consideration of staff's previous request for delegation of this same authority, I find the prior history on this matter worthy of comment. In its response to SECY-06-0200, the Commission unanimously denied staff's proposal to delegate to the staff the authority to approve emergency plan changes that would represent a decrease in effectiveness. As I interpret it, the prevailing view was that the staff had failed to provide sufficient or compelling justification for why such a change was needed or would represent an improvement upon the current situation. Confusion in this matter was subsequently compounded by conflicting interpretations of whether NRR had long held this delegation, or at least, had behaved as if it did.

In the current paper (SECY-08-0024), staff has put forward three arguments in support of granting the delegation. First, the paper states that staff has "significant technical expertise and knowledge in the EP [emergency planning] field." While I should rather hope this is the case -- both in the field of emergency planning and in all other matters that staff brings to the Commission -- staff's expertise and knowledge is not a reason to remove matters from the Commission's consideration. Consequently, this argument does not compel.

Second, the paper states that emergency plan change requests that are evaluated at the staff level "are more efficient because it eliminates the process step of forwarding it to the Commission, thus allowing a more timely response to the licensee." While, to a certain extent merely stating the obvious, taken to its extreme, this logic could be used to argue for the elimination of Commission involvement in all matters, as Commission consideration and deliberation will always require the addition of some increment of time. Although I am certain this was not staff's intended point, the second argument -- in addition to being somewhat disconcerting to this reader -- also does not compel on the issue of the delegation.

The third argument is, in my view, the only persuasive point made in the paper in support of the delegation and it is, in fact, strong enough to secure my support for the recommendation. The third point argues that establishing staff authority to approve or deny proposed emergency plan changes that represent decreases in the effectiveness of a licensee's emergency plan "will align the staff's authority to approve such changes with the Commission's delegation of authority to staff already in place" for both routine and more significant licensing and regulatory actions "thus maintaining consistency in the licensing process." In my opinion, this argument is logical, well-reasoned, and well-documented in the staff's proposal. On this basis, I approve the proposed delegation (or, more properly, re-delegation) to the Director of NRR of the authority to approve or deny

proposed emergency plan changes that represent decreases in the effectiveness of a licensee's emergency plan with the conditions so stipulated above.

 5/5/08
Kristine L. Svinicki 5/05/08