

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



OFFICE OF THE
SECRETARY

November 16, 2010

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0114

TITLE: RECOMMENDATION TO EXTEND THE PROPOSED
RULEMAKING ON SECURITY REQUIREMENTS FOR
FACILITIES STORING SPENT NUCLEAR FUEL AND HIGH-
LEVEL RADIOACTIVE WASTE

The Commission (with Chairman Jaczko and Commissioners Svinicki, Apostolakis, and Ostendorff approving in part and disapproving in part, and Commissioner Magwood approving) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 16, 2010.

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 Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-10-0114

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIP | COMMENTS | DATE |
|-------------------|-------|----------|---------|--------------|----------|----------|
| CHRM. JACZKO | X | X | | | X | 9/29/10 |
| COMR. SVINICKI | X | X | | | X | 11/1/10 |
| COMR. APOSTOLAKIS | X | X | | | X | 9/30/10 |
| COMR. MAGWOOD | X | | | | X | 10/29/10 |
| COMR. OSTENDORFF | X | X | | | X | 10/19/10 |

COMMENT RESOLUTION

In their vote sheets, Chairman Jaczko and Commissioners Svinicki, Apostolakis, and Ostendorff approved in part and disapproved in part, and Commissioner Magwood approved 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 November 16, 2010.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-10-0114 – RECOMMENDATION TO EXTEND
THE PROPOSED RULEMAKING ON SECURITY
REQUIREMENTS FOR FACILITIES STORING SPENT
NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE
WASTE

Approved X (in part) Disapproved X (in part) Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

9/29/10

DATE

Entered on "STARS" Yes x No _____

Chairman Jaczko's Comments on SECY-10-0114
Recommendation to Extend the Proposed Rulemaking on Security Requirements for
Facilities Storing Spent Nuclear Fuel and High-Level Radioactive Waste

I approve in part and disapprove in part the staffs' recommendations in SECY-10-0114. I continue to approve the direction given in my vote for SECY-07-0148 for this important proposed rulemaking. In SECY-07-0148, dated August 28, 2007, the staff clearly provided the Commission a strong framework for developing a proposed rulemaking on independent spent fuel storage installation security requirements. The SRM dated December 18, 2007 also provided clear and specific direction to the staff from the Commission.

The staff has currently provided three options for the Commission's consideration, however, there has been very limited information provided by the staff to support in full any one of the options, including any change to Commission direction from 2007. I continue to believe that the staff should follow the direction given in the December 18, 2007 SRM and continue its aggressive interactions with stakeholders. This should include detailed evaluation of comments received, and as appropriate, briefings for stakeholders that have a need-to-know to help develop further insights into stakeholder concerns. If, as more detailed and substantive comments are received, the staff still believes that a possible change needs to be made to the direction of the rulemaking, a paper should be provided to the Commission within 6 months of issuance of the SRM. The staff should also keep the Commission informed if there are any further delays to the proposed rulemaking schedule.



Gregory B. Jaczko

9/29/10

Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-10-0114 – RECOMMENDATION TO EXTEND
THE PROPOSED RULEMAKING ON SECURITY
REQUIREMENTS FOR FACILITIES STORING SPENT
NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE
WASTE

Approved XX In Part Disapproved XX In Part Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

11/ / 10

DATE

Entered on "STARS" Yes No _____

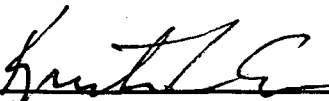
Commissioner Svinicki's Comments on SECY-10-0114
Recommendation to Extend the Proposed Rulemaking on Security Requirements for
Facilities Storing Spent Nuclear Fuel and High-Level Radioactive Waste

I approve in part and disapprove in part the staff's recommendations contained in SECY-10-0114. I appreciate, however, that the staff has taken the prudent step of soliciting the Commission's reaction, at this point, based on significant stakeholder comment already received on this issue. Although, at bottom, I must agree with Commissioner Apostolakis that not enough information has been provided that would support a change, at this time, in the Commission direction provided previously in the Staff Requirements Memorandum (SRM) on SECY-07-0148, neither is it clear whether enough information has been provided to stakeholders to inform comprehensively the comments they have already provided to the staff. Such understanding will come with further engagement between the NRC staff and external stakeholders.

Consequently, I disapprove the staff's recommended option. The staff should, instead, more fully engage stakeholders and should provide the Commission a voting paper within twelve months of the SRM on this paper, describing the status of these efforts and making any recommendations, if justified, for modifying the direction contained in the SRM on SECY-07-0148, accompanied by a more fully developed basis for doing so.

I approve of expanding the rulemaking to include spent nuclear fuel and high-level radioactive waste stored at monitored retrievable storage facilities. I also agree with Commissioner Ostendorff that, due to the complexity of the adversary characteristics guidance that the staff is drafting along with the rule, and the clear benefit of having this draft guidance while assessing the rule requirements, the staff should provide Draft Guide 5033 to the Commission at the same time it provides its recommendation on the proposed rule.

Finally, since I was not serving on the Commission when it acted on SECY-07-0148, I wish to express my support for the following items contained in the SRM on that paper. First, the staff should continue to ensure that the proposed regulation and guidance documents make it clear that these requirements would not impose a new Design Basis Threat. Second, the staff should make available draft regulatory guidance and other draft licensing guidance for deployment during the proposed rule stage to ensure all parties understand the objective, implementation, and scope of the proposed rule.



Kristine L. Svinicki 11/1/10

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Apostolakis

SUBJECT: SECY-10-0114 – RECOMMENDATION TO EXTEND THE PROPOSED RULEMAKING ON SECURITY REQUIREMENTS FOR FACILITIES STORING SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE


Approved X (in part) Disapproved X (in part) Abstain _____

Not Participating _____

COMMENTS: Below X Attached _____ None _____

I approve including monitored retrievable storage installations for consideration as part of this rulemaking effort. Otherwise, I disapprove staff's recommendations in this paper. Not enough information has been provided that would support a change in the Commission direction provided in SRM-SECY-07-0148.

Staff should develop the technical basis and the proposed rulemaking to develop risk-informed, performance-based security requirements as directed in SRM-SECY-07-0148 with extensive stakeholder involvement. Additionally, staff should provide the Commission a paper in 12 months on the status of its efforts as they relate to staff's recommendations contained in SECY-07-0148 and as approved by the Commission in the associated Staff Requirements Memorandum.



SIGNATURE

9/30/10

DATE

Entered on "STARS" Yes X No _____

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MAGWOOD
SUBJECT: SECY-10-0114 – RECOMMENDATION TO EXTEND
THE PROPOSED RULEMAKING ON SECURITY
REQUIREMENTS FOR FACILITIES STORING SPENT
NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE
WASTE

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

29 October 2010

DATE

Entered on "STARS" Yes No _____

Commissioner Magwood's comment on SECY-10-0114-Recommendation to Extend the Proposed Rulemaking on Security Requirements for Facilities Storing Spent Nuclear Fuel and High-Level Radioactive Waste

I approve in part and disapprove in part the staff's recommendation in SECY-10-0114. I approve including monitored retrievable storage installations for consideration as part of this rulemaking effort. I disapprove the staff's recommendation to extend the proposed rulemaking on security requirements for facilities storing spent nuclear fuel and high level waste.

I appreciate the fact that the staff came to the Commission for further direction regarding whether the current direction for rulemaking on security requirements for facilities storing spent nuclear fuel and high-level waste is appropriate given stakeholder input. I believe it is very important to consider stakeholders input and obtain clarification early in the process. However, I understand that the staff has not yet had a meaningful engagement with stakeholders who commented on the draft regulatory basis document to gain full understanding of the basis for the comments and thus enable a determination as to whether a change in the technical approach for the rule is warranted. Given this, I do not believe we are in a position to consider a change to the previous Commission direction provided in SRM-SECY-0148. For that reason, I disapprove the staff's recommendation to reassess the technical approach for the rule and extend the timeline for the rulemaking. I agree with my colleagues that the staff should proceed to fully engage stakeholders to understand the basis for their comments on the technical basis and, within 12 months, provide the Commission an analysis of the comments. Should staff determine that changes to the current direction are warranted, staff should also provide options and a recommendation for the path forward.



William D. Magwood, IV

10/29/10

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-10-0114 – RECOMMENDATION TO EXTEND
THE PROPOSED RULEMAKING ON SECURITY
REQUIREMENTS FOR FACILITIES STORING SPENT
NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE
WASTE

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

10/19/11

DATE

Entered on "STARS" Yes No

Commissioner Ostendorff's Comments on SECY 10-0114, "Recommendation to Extend the Proposed Rulemaking on Security Requirements for Facilities Storing Spent Nuclear Fuel and High Level Radioactive Waste"

First and foremost, I want to emphasize that the staff is taking the appropriate course of action by assessing whether the current direction for the rulemaking on security requirements for facilities storing spent nuclear fuel and high level waste is appropriate given stakeholder feedback. It is extremely important that the NRC continue to be an open, transparent regulator by actively engaging stakeholders and fully evaluating the implications of their perspectives.

I approve in part and disapprove in part of the staff's recommendation to extend the proposed rulemaking on security requirements for facilities storing spent nuclear fuel and high level waste.

I understand that the staff has not yet had an opportunity to engage with stakeholders who commented on the technical basis for the rule to fully understand the basis for the comments and make a determination as to whether a change in the technical approach for the rule is warranted. Therefore, it would be premature to change the technical approach for the rule or determine which policy issues previously evaluated should be reassessed. For consistency sake, the staff should not reevaluate the issues that were very thoroughly contemplated previously by the staff and decided upon by the Commission in 2007 unless our stakeholders provide convincing new information to support an alternative approach.

Also, while the staff's analysis of Option 3 indicates that the option would likely extend the schedule for the proposed rule for 24 to 30 months, I believe it is premature to determine whether an extension of the rule's timeline is appropriate given that the staff has not fully engaged stakeholders to determine the degree of any needed changes to the technical basis.

For these reasons, I disapprove of the staff's recommendation to reassess the technical approach for the rule at this time and extend the timeline for the rulemaking.

I approve of the staff's recommendation to fully engage stakeholders to understand the basis for the comments received on the technical basis and provide to the Commission within 12 months an analysis and recommended technical approach. This analysis should also include the staff's recommended timeline for the rule. Due to the complexity of the adversary characteristics guidance that the staff is drafting along with the rule and because this guidance will be a driver for the rule requirements, the staff should provide the Commission with Draft Guide 5033 with its recommendation on the technical approach for the rule.

I approve of expanding the rulemaking to include spent nuclear fuel and high level waste stored at MRSs. Since the security requirements for MRSs are intertwined with the requirements for independent spent fuel storage locations (ISFSIs), I agree this would be most efficient, recognizing that a change in these requirements may be needed if and when a specific MRS

design is proposed by an applicant. To the extent possible, the staff should consider the distinctions between these facilities which may be relevant to this rule-making.