



SECRETARY

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

March 9, 2012

COMMISSION VOTING RECORD

DECISION ITEM: SECY-12-0025

TITLE: PROPOSED ORDERS AND REQUESTS FOR
INFORMATION IN RESPONSE TO LESSONS LEARNED
FROM JAPAN'S MARCH 11, 2011, GREAT TOHOKU
EARTHQUAKE AND TSUNAMI

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of March 9, 2012.

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, reading "Annette Vietti-Cook".

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-12-0025

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	2/27/12
COMR. SVINICKI	X				X	3/2/12
COMR. APOSTOLAKIS	X	X			X	2/29/12
COMR. MAGWOOD	X				X	2/29/12
COMR. OSTENDORFF	X	X			X	2/29/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Gregory B. Jaczko

SUBJECT: SECY-12-0025 – PROPOSED ORDERS AND
REQUESTS FOR INFORMATION IN RESPONSE TO
LESSONS LEARNED FROM JAPAN’S MARCH 11,
2011, GREAT TOHOKU EARTHQUAKE AND TSUNAMI

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

5/27/12

DATE

Entered on “STARS” Yes x No _____

**Chairman Jaczko's Comments on SECY-12-0025,
"Proposed Orders and Requests for Information in Response to Lessons Learned from
Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami"**

The rapidly approaching one-year anniversary of the tragic earthquake, tsunami, and nuclear accident in Japan is a poignant reminder of the importance of our work for nuclear safety in the United States. I commend the extraordinary efforts of the NRC staff to thoroughly analyze the issues, prepare draft positions, engage stakeholders, and present a well documented proposal to the Commission; all while accelerating the previously determined schedules.

In the interest of openness, the agency has taken unprecedented efforts to involve stakeholders in the development of the proposed Orders and 10 CFR 50.54(f) letters in SECY-12-0025. I applaud the level of participation from all interested stakeholders, their valuable contributions to help improve our regulatory products, and their willingness to adjust schedules to accommodate tight timelines.

I approve issuance of the proposed Orders on the basis of adequate protection. While the initiating events are of very low likelihood, the events at Fukushima have reinforced that any nuclear accident with public health and safety or environmental consequences is inherently unacceptable to society. It is in that vein that we must require appropriate precautions to minimize the consequences of events traditionally dispositioned as beyond-design-basis accidents, like natural disasters. This concept was advanced by the Near Term Task Force (NTTF) in Recommendation 1 and I believe reevaluation of where accidents fall between design basis, an "extended" design basis, and beyond design basis will be a critical step to ensure a safe, logical, and predictable regulatory structure. I believe the three proposed Orders are prudent actions to address these postulated accidents and I continue to support adoption of all of the NTTF recommendations.

I support the staff's evaluation regarding waiting until February 2013, to require submission of licensee plans for implementing their hardened vent designs to allow time for a Commission decision on the topic of filtered vents. As noted in the SECY, the staff plans to send a policy paper to the Commission in July 2012 which will outline considerations for the addition of filters to the hardened vent designs. I believe it is important that the Commission make a decision on the topic of filtered vents this summer so that licensees will have more certainty and can move forward with implementing their vent designs without fear of NRC changing the requirements.

I do have some concerns over the use of 10 CFR 50.54(f) letters for a number of these Tier 1 actions. 50.54(f) letters are requests for information and at the end of the day, do not require licensees to take action to improve safety at their facilities. Once the agency receives responses to these requests, we will still need some regulatory vehicle to impose any necessary actions to ensure we do not find ourselves in the same situation identified in the NTTF report regarding voluntary industry initiatives and actions taken to address external events which are not required (e.g., IPEEE). I am concerned that this iterative process will allow for additional delay and less efficient use of staff resources, rather than taking a single regulatory action in the form of an Order. For example, the 50.54(f) letter for NTTF Recommendation 9.3 concerning emergency preparedness staffing and communications contains clear and straightforward direction and would not require a two-step regulatory process to implement, so it could also be effectively implemented through an Order.

I am also concerned about the timeframes related to seismic reevaluation. Per the 50.54(f) letter, seismic hazard reanalysis will not be required to be complete until 2013 – 2015, and the

risk assessments will not be required to be complete until 2016 – 2019. I understand the complexity of these seismic analyses and the limited seismic expertise available to perform them, but I simply cannot accept a timeline that puts this issue well into the later part of the decade – without even addressing implementation of any required action. A fundamental lesson from Fukushima was that there was evidence the design-basis protection may not bound the most severe events predicted for the site, and action wasn't taken to address that gap. The latest seismic data from the Central and Eastern United States shows that a number of plants may be exposed to seismic hazards that exceed their safe shutdown earthquake. I fail to see how this situation is any different from this primary lesson from Fukushima regarding appropriate consideration of possible hazards. We must take action on this information in a thoughtful, yet decisive manner. I continue to support completion of this activity within the five year timeframe set by the Commission in SRM-SECY-11-0124.

With respect to applicability of the 50.54(f) letter regarding Recommendation 2.1 for new units at Vogtle, I believe that while there is a general expectation that the newly issued seismic source model would not result in differences in the seismic hazard characterizations, the licensee should still be required to show that the reanalysis does not identify any new hazards. The SECY notes that staff will confirm this position once new software is available; however, I believe this incorrectly places the burden of proof on the NRC staff rather than the licensee. The staff should request that Vogtle Units 3 and 4 respond to the 50.54(f) letter on Recommendation 2.1.

Another important step facing the staff and stakeholders is the development of implementing guidance for these Orders and letters. Both NRC staff and industry stakeholders will benefit from having clearly defined guidance and expectations as early in the process as possible. I encourage staff and stakeholders to pursue the development of guidance with the urgency taken for the development of the Orders and letters. I believe an important piece of the guidance will be the definition of proper quality assurance pedigree assigned to the equipment enhancements. Since events we are addressing are largely beyond-design-basis events, we need not hold licensees to the same quality requirements as safety-related equipment. Reliable, commercial grade equipment would be an appropriate solution, so long as the expectations for 'reliable' are clearly outlined in the guidance documents.

I still strongly believe that all Fukushima-related enhancements should be complete within five years. The events of September 11, 2001, while not related to nuclear facilities, occurred on American soil and the NRC took action to increase the security of nuclear reactors and materials. While the Fukushima accident occurred in another country and under a different regulatory structure, I hope we recognize the importance of applying lessons we learn from this nuclear accident and make necessary safety improvements in the United States. The Tier 1 post-Fukushima items are only the first phase of our regulatory actions. While these were the items the Commission directed to be taken without delay, it is critical not to lose sight of the Tier 2 and Tier 3 items. Tiers 2 and 3 were created to better categorize recommendations from the NTTF report which required competing resources or additional research and review – but they were not categorized as Tier 2 or 3 because they were low priority. The Task Force identified 12 recommendations which were intended to be addressed as a whole, rather than in an overly iterative or piecemeal fashion. To that end, I look forward to the staff's continued work on these items and additional detail to be provided this summer.


Gregory B. Jaczko

2/27/12
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-12-0025 – PROPOSED ORDERS AND
REQUESTS FOR INFORMATION IN RESPONSE TO
LESSONS LEARNED FROM JAPAN’S MARCH 11,
2011, GREAT TOHOKU EARTHQUAKE AND TSUNAMI

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

03/ 2 /12

DATE

Entered on “STARS” Yes No _____

**Commissioner Svinicki's Comments on SECY-12-0025
Proposed Orders and Request for Information in Response to Lessons Learned
from Japan's March 11, 2011, Great Tōhoku Earthquake and Tsunami**

I approve the issuance of the three proposed orders (Enclosures 4, 5, and 6 to SECY-12-0025), subject to these comments. A tremendous amount of work has been achieved by the NRC staff and substantial efforts have been put forward by the NRC's stakeholders in the few months between the submittal to the Commission of SECY-11-0137, "Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned," and today. In this short period, our staff and stakeholders have engaged in more than fifteen public meetings to continue to develop the agency's path forward. As a result, the Commission has before it a very thoroughly examined and considered set of regulatory actions.

I vote from the vantage of having seen my colleagues' votes on SECY-12-0025, so I would also note that the Commission's unanimity in supporting the issuance of this set of regulatory actions (both the proposed orders and draft 50.54(f) request for information letter) likely stands as a testimony to the deliberateness of the NRC's work on these matters. The only substantive divergence appears to center on the selection of a basis for issuance of the orders; a policy determination that has no effect on the implementation of actions compelled under the orders. As Commissioner Apostolakis noted in his vote, "Practically speaking, the requirements imposed by the orders should be the same regardless of whether such proposals are characterized as ensuring adequate protection, redefining adequate protection, or exercising an administrative exemption to the backfit rule." Which of these labels is to be hung on any of the three orders comes down to a policy judgment of whether the staff has sufficiently made the case that "regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public" or, failing that, whether the circumstances merit the Commission availing itself of a rare, but available, administrative exception to its own backfit rule. For my part, I would invoke the administrative exception for each of the three proposed orders laid before the Commission here and direct the staff to issue the orders – compelling the same actions of licensees – but upon this revised basis.

Various of my colleagues have put forward the case in their votes for utilizing an administrative exception as the basis for issuing one or more of the three orders. There appears to be a majority, at this stage of the deliberation, for issuing the order on spent fuel pool instrumentation under an administrative exception to backfit. I agree. I would extend the same logic, however, to the other two orders, as well. Although I believe strongly that the act of agencies "exempting" themselves from their own rules should be a rare act, and that it may appear to fly in the face of fair play, agencies possess inherent authority to grant exemptions from their own regulations in the face of unique and compelling circumstances.¹ Such circumstances present themselves here. The exigencies and policy imperatives of moving forward with dispatch on this set of prudent and well-reasoned regulatory actions present, in my view, sufficient bases for invoking an administrative exception. There is greater infirmity, I believe, in premature conclusions on the Japan Near-Term Task Force's Recommendation 1 on revisiting the risk-informed defense-

¹ "It is well established that an agency's authority to proceed in a complex area such as car-service regulation by means of rules of general application entails a concomitant authority to provide exemption procedures in order to allow for special circumstances." *Permian Basin Area Rate Cases*, 390 U.S. 747, 784-786 (1968).

in-depth framework for ensuring adequate protection, regarding which the Commission has already directed a holistic review in a notation vote paper to be submitted to the Commission later this year or early next year. I believe the Commission had a sound basis for choosing this course and has been presented with no basis in the intervening months to depart from it.

I am perplexed by the ocean of difference dividing the staff and licensee resource estimates for performing the assessment phase of the seismic re-evaluations. This agency has a wealth of hard-earned knowledge regarding the peril of underestimating the complexity or lack of maturity in certain risk assessment techniques, such as fire probabilistic risk assessment. For example, as a result of these miscalculations, our review of license amendment requests for -- and licensees' transitions to -- NFPA 805 are substantially delayed from NRC's early goals. We will not advance the cause of enhancing seismic safety at nuclear power plants if we repeat that lesson here. If the industry submits an alternative, practical engineering approach that could result in the quicker implementation of plant safety enhancements while enabling plants to complete the assessment within the schedule defined in the 50.54(f) request for information letter (as indicated in their letter of February 28, 2012), the staff should provide an information paper to the Commission containing a determination of whether this approach is acceptable to the staff, or, if not, explaining how continuing with the staff's approach of seismic probabilistic risk assessment provides superior safety benefits on a reasonable timetable.

I also question the completeness of the "justification" statement for the 50.54(f) request for information. Under NRC regulations and guidance, generic information requests issued under 50.54(f) require only a justification statement and a review by the Committee to Review Generic Requirements, rather than a full regulatory analysis. I acknowledge that the 50.54(f) letter addresses these elements. However, this is no ordinary request for information; what we are asking of our licensees will require significant time and resources. In general, we have been well-served by our disciplined approach to regulatory analysis, and we would benefit from a more comprehensive analysis of the benefits to be gained from the information request versus the burdens from its imposition. Furthermore, the Commission's actions regarding the consideration of cumulative effects of regulation and President Obama's Executive Orders on regulatory reform remind us that we should not, in cases like this one, lose sight of the relative benefits and burdens of our regulatory actions. The exigencies and policy imperatives described above may overcome any shortfalls in this particular case, but I encourage the staff in future evaluation phases of the Fukushima lessons-learned effort to maintain a rigorous regulatory analysis process.

Regarding the request for information on emergency preparedness, the NRC's Executive Director for Operations has testified to the Commission, and the Director of the Office of Nuclear Security and Incident Response has emphasized to me in our communications, that the implementation of the Emergency Preparedness rule that was issued last year remains a higher priority than activities associated with Recommendation 9.3. Completing implementation activities associated with the rule we have already promulgated has greater safety significance and also involves the coordinated actions of our partners in State and local governments. Substantial public credibility benefits accrue from continuing these activities as a priority. The staff should follow through on these commitments.

The staff's paper also includes recommendations on applying orders and information requests to the Vogtle combined operating license (COL). However, as Commissioner Magwood notes, the staff does not address the posture of these actions for future COL holders. I agree with Commissioner Magwood, that for COLs issued from this point forward, the orders described in this paper (as applicable) should be issued concurrent with issuance of the COL.

Finally, I join Chairman Jaczko in noting that development of the applicable guidance documents referred to in each order will be key. The NRC staff and managers have assured me, in multiple engagements on the issue, that they are moving forward with the development and completion of this guidance with an urgency equivalent to that used in the development of the proposed orders and request for information. I urge them on in these efforts, as the implementing actions compelled under the orders cannot be carried out efficiently or with certitude in the absence of the shared understanding that finalized guidance documents will provide.



Kristine L. Svinicki

03/2/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-12-0025 – PROPOSED ORDERS AND
REQUESTS FOR INFORMATION IN RESPONSE TO
LESSONS LEARNED FROM JAPAN'S MARCH 11,
2011, GREAT TOHOKU EARTHQUAKE AND TSUNAMI

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

February 29, 2012

DATE

Entered on "STARS" Yes x No _____

Commissioner Apostolakis' Comments on SECY-12-0025
Proposed orders and Requests for Information in Response to Lessons Learned from
Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami

I commend the staff for their hard work to implement the Tier 1 activities, including development of the proposed orders and 50.54(f) letter for Commission consideration under extreme time constraints. I also appreciate the leadership that the Steering Committee has provided. The staff's proposal is buttressed by the language of the FY 2012 appropriations law for the NRC and the accompanying conference report language. These directives from Congress reflect an important policy judgment that the Commission must act promptly on the Tier 1 recommendations.

I approve issuance of the proposed orders subject to the following comments. I do not find compelling the staff's justification for redefinition of adequate protection. Instead, I approve issuing the orders for mitigating strategies and containment vents as necessary to ensure continued adequate protection. Furthermore, I approve the proposed order regarding spent fuel pool instrumentation, but I do not find sufficient justification to impose it as a matter of adequate protection. Therefore, I recommend exercising an administrative exemption from the requirements of the backfit rule (10 CFR 50.109), as part of the basis for this order.

The Commission has broad discretion to determine necessary safety measures on a case-by-case basis using engineering judgment and the relevant technical information available at the time. Each of these proposed orders represents a worthwhile safety improvement. Their issuance is justified from a policy perspective in light of particular and unusual circumstances favoring timely action in response to the lessons learned from the accident at Fukushima Dai-ichi. Practically speaking, the requirements imposed by the orders should be the same regardless of whether such proposals are characterized as ensuring adequate protection, redefining adequate protection, or exercising an administrative exemption to the backfit rule.

Adequate protection is not defined by statute or regulation. It does not mean zero risk or absolute protection. The Commission is charged by statute with deciding what measures are necessary to provide reasonable assurance that the public will be protected. In addition, the Commission has broad authority to set such standards as the Commission deems necessary or desirable to enhance safety beyond the minimum requirements for adequate protection.

The Commission has recognized the importance of regulatory stability and has imposed discipline on regulatory decision making through the backfit rule as well as through issue finality provisions in 10 CFR Part 52. Only once has the Commission concluded that it was appropriate to exempt itself administratively from backfitting requirements. This was done when the Commission imposed the aircraft impact assessment rule on new reactors, including already-certified designs, in response to the specific challenges created by the events of September 11, 2001. Similarly, the events at Fukushima Dai-ichi point to a specific set of challenges warranting regulatory action that is not easily accomplished within the existing framework.

As the staff noted in SECY-12-0025, the events at Fukushima Dai-ichi demonstrate that extreme external events may adversely affect: (i) more than one unit at a site with two or more units, and (ii) multiple safety functions at each of several units located on the same site. The staff also noted that the events at Fukushima highlighted the possibility that extreme natural phenomena could challenge the prevention, mitigation, and emergency preparedness defense-in-depth layers.

While true, the "possibility" that extreme natural phenomena "could challenge" defense-in-depth layers does not, in itself, provide a compelling justification for action under the mantle of

adequate protection. This thought is not inconsistent with the Near-Term Task Force (NTTF) conclusion that "a sequence of events like the Fukushima accident is unlikely to occur in the United States and some appropriate mitigation measures have been implemented, reducing the likelihood of core damage and radiological releases." Also arguably weighing against the need for immediately effective orders based on adequate protection is the fact these proposals are characterized as providing "enhancements" for protection against beyond-design-basis events that are believed to be of very low probability and for which some mitigation capability is already available beyond the multiple layers of protection for design basis events.

More specific factors may distinguish the circumstances that led to the Fukushima accident. For instance, I refer to the considerable under-estimation of the design basis tsunami for Fukushima Dai-ichi. In addition, the decision-making protocols during emergencies at nuclear facilities in the United States differ significantly from those in Japan. While a full comparison of pertinent regulatory requirements and programs could provide additional relevant information, and may do so in time, the staff reasonably recommends that we initiate appropriate action now.

In addition to its technical findings and recommendations, the NTTF also found that the NRC should clarify its regulations and guidance related to adequate protection and the appropriate balancing of defense in depth and risk information (Recommendation 1). The NRC activities related to NTTF Recommendation 1 are ongoing. Thus, to ensure a timely response to the lessons learned from the Fukushima accident, these orders are being undertaken without realizing the benefit of potential improvements to the NRC's regulatory framework. I acknowledge that an unfortunate consequence of taking action now is that the so-called regulatory "patchwork" is perpetuated. Also, it is normally preferable that the implementation guidance be ready and be subjected to comment by all stakeholders before imposing new requirements.

There are substantive factors that favor acting under continued assurance of adequate protection for the orders on mitigation strategies and containment vents. These proposed requirements are tied to prior regulatory determinations and firm expectations that protection is warranted in these areas. In addition, I find substantive factors that favor exercising an administrative exemption to the backfit rule for issuance of the order on spent fuel pool instrumentation.

Mitigation Strategies

Following the terrorist attacks of September 11, 2001, the Commission established new security requirements via orders on the basis of adequate protection. Those requirements resulted from new insights regarding potential security events. The subsequent rule promulgated to codify the security orders related to development of mitigation strategies for beyond-design-basis events was also issued as a matter of adequate protection. Similarly, regarding the lessons learned from the Fukushima Dai-ichi accident, the staff agreed with the NTTF that the accident provides new insights into extreme events that warrant enhancements to defense in depth on the basis of adequate protection. In addition, results of NRC inspections conducted immediately after the Fukushima Dai-ichi accident indicated some problems with the availability or functionality of such equipment and revealed that the equipment was not always maintained appropriately or systematically at all sites. This order will further ensure adequate protection in that external events will not compromise the functionality or availability of this equipment for each unit at multi-unit sites.

Containment Vents

The 1989 generic letter, which requested that licensees with a Mark I plant provide notification of their plans to address installation of a hardened vent, reflected an expectation that industry would have means for dealing with the Mark I containment issues arising during some severe accidents. Although the NRC did not impose binding requirements regarding hardened vents, it was prepared to do so for any licensee that did not voluntarily make the suggested plant modifications. The accident at Fukushima bolsters the earlier concerns regarding the Mark I containment design and supports action to ensure that functionality is maintained under extreme conditions. As the staff pointed out, because Mark II containment designs are only slightly larger in volume than Mark I containment designs and use wetwell pressure suppression, it can reasonably be concluded that a Mark II under similar circumstances would have suffered similar consequences. Therefore, it is appropriate to impose the order on both BWR Mark I and II licensees as a matter of ensuring continued adequate protection.

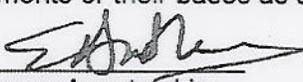
Spent Fuel Instrumentation

As I stated, I support the proposed order regarding spent fuel pool instrumentation, but I do not find sufficient justification at this time to impose it as a matter of adequate protection. Although there may be several benefits to enhanced spent fuel pool instrumentation, the most compelling reason is, as the staff states, the recognition that Fukushima demonstrated the confusion and misapplication of resources that can result from extreme beyond-design-basis external events when more diverse instrumentation is not available. On the other hand, the likelihood of a catastrophic event affecting spent fuel pools in the U.S. remains very low and the imposition of the order on mitigation strategies supplements existing protection for spent fuel pool cooling. Furthermore, as the ACRS pointed out, the overall contribution to risk from spent fuel pools is low. Thus, I find it difficult to support this immediately effective order as necessary for adequate protection. While there are obvious benefits, it would be difficult to assess them in a quantitative or qualitative manner, particularly in a short time frame. Therefore, the Commission should take the rare step of exercising an administrative exemption from the backfit rule in support of the issuance of this order.

Conclusion

Overall, I find that these three orders contain sound and common-sense proposals. They could rest on one or more regulatory bases. At the very least, they enhance protection of public health and safety in mitigating the consequences of beyond-design-basis external events. Moreover, the staff has had extensive interaction with stakeholders as the development of these proposals has proceeded. I am unaware of any significant comment that these proposed actions are not warranted.

My vote reflects my conclusion that unusual and particular circumstances favor issuance of the proposed orders for mitigating strategies and containment vents as needed for ensuring continued adequate protection, as well as the order on spent fuel pool instrumentation as enhanced protection under an administrative exemption to the backfit rule. These are specific case-by-case determinations. Even though these orders are to be made immediately effective, they are premised on the need for prompt action to complete the necessary analysis and ensure timely implementation of these safety improvements. Eventually, some of these proposals will lead to rulemaking with appropriate adjustments in the requirements or their bases as a result of further study.


George Apostofakis
2/29/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MAGWOOD
SUBJECT: SECY-12-0025 – PROPOSED ORDERS AND
REQUESTS FOR INFORMATION IN RESPONSE TO
LESSONS LEARNED FROM JAPAN’S MARCH 11,
2011, GREAT TOHOKU EARTHQUAKE AND TSUNAMI

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

29 February 2012

DATE

Entered on “STARS” Yes No _____

**Commissioner Magwood's Comments on SECY-12-0025,
"Proposed Orders and Requests for Information in
Response to Lessons Learned from Japan's March 11, 2011
Great Tōhoku Earthquake and Tsunami"**

Staff's efforts in response to the nuclear safety impacts of Great Tōhoku Earthquake and Tsunami of March 11, 2011 have been exemplary. Both in its initial response to the tsunami as it threatened the U.S. West Coast and in assessing the potential for impacts of the damage to the Fukushima Dai-ichi nuclear plant to U.S. citizens both here and abroad and in its diligent efforts to evaluate the lessons learned from Fukushima and engage stakeholders in order to suggest measures to further improve nuclear safety in the United States, the staff has established a new high bar in its already very laudable history of performance. In particular, I thank the chairman and members of the Steering Committee and the Director and members of the Japan Lessons Learned Project Directorate (JLD) for their impressive efforts to date.

To begin, I think it important to recognize the effectiveness of the structure staff has created to deal with the highly complex matters before us. While some believed that responding to the Fukushima disaster was a matter of simply approving the relatively high-level recommendations of the Near-Term Task Force (NTTF), staff leadership understood immediately the complexities facing the NRC, its licensees, and its stakeholders as the significant regulatory issues at play are evaluated. I believe that this approach demonstrates the ability of the NRC to respond swiftly and responsibly to emerging challenges without sacrificing the quality of our work or the comprehensive stakeholder interaction upon which the most effective regulatory actions are based.

I recommend that, as time permits and the immediate urgencies of the staff's work are addressed, the Chairman of the Steering Committee lead an effort to consider how the work processes created to respond to the Fukushima lessons learned might best be incorporated into the agency's normal work practices.

That said, I also believe we need to remain wary of the impacts these efforts may have on our ongoing regulatory efforts. As soon as practical, the work of the Steering Committee and the JLD should be absorbed into the normal work of the agency and prioritized as appropriate. As important as it is to implement changes based on Fukushima lessons learned, not every item in staff's recommended course of action is necessarily more important than all other nuclear safety efforts pursued by this agency. Segregating these activities in the early stages—particularly the Tier 1 activities—is entirely appropriate; but the sooner all post-Fukushima activities come into balance with the NRC's overall regulatory agenda, the more nuclear safety overall will benefit.

With regard to the matter at hand, I believe it important that the events of Fukushima be viewed in appropriate context. The pursuit of proper levels of nuclear safety is an endeavor that is based on both scientific analysis and hard experience. We have learned much from every nuclear incident and it is the task of NRC and other regulatory agencies around the globe to review all such incidents, learn the right lessons, and

make the right adjustments in response. For example, the U.S. approach to emergency preparedness was formulated in the aftermath of Three Mile Island. Moreover, the ability of U.S. plants to respond to extreme conditions was bolstered by changes made in the wake of the September 11, 2001 terrorist attacks. Appropriate regulatory responses to these and other events have helped NRC establish a nuclear safety framework that is now second to none in the world. Experience tells us much if we are willing to listen.

Today, we must listen to the experience suffered by our friends and colleagues in Japan and take critical steps to assure that no such incident ever occurs in this country. I therefore approve staff's recommended course of action and the accelerated schedule it has proposed, provided staff's proposal is modified as detailed below.

Proposed Orders

With respect to the three orders proposed by staff, I support their swift issuance. As a general matter, many of the requirements detailed in these orders are prudent, common sense activities that the agency may have required as lessons were continually learned from examination of operating experience. However, I note that staff has advocated that these measures be implemented on the basis that they are all needed to assure the adequate protection of the public. After careful analysis, I find that each suggested action must be considered individually.

Mitigating Strategies Order

First, staff has recommended a suite of activities under an "Order Modifying Licensees with regard to Requirements for Mitigating Strategies for Beyond-Design-Basis External Events." Staff believes it appropriate that these measures be taken as a step toward redefining the level of protection considered adequate in the United States.

However, the NTF and the staff have held throughout the saga of Fukushima that U.S. plants are and remain safe. I agree with this earlier assessment and believe that the regulatory oversight, plant operation, personnel training, and available equipment, procedures, and resources separate the operation of U.S. nuclear power plants from most others. We should not assume that a similarly situated U.S. plant under similar conditions would have necessarily suffered the same fate as Fukushima. Nor should we assume that a U.S. nuclear power plant would have been permitted to operate as situated and configured as was Fukushima Daiichi in the first place. In the year since the tsunami, no technical information or analysis has been performed that would support the conclusion that any U.S. nuclear power plants are at this time unsafe.

One would expect considerable technical analyses be conducted before determining that a new standard of protection is needed, but none has been presented. We have not been presented with analyses that elucidates how the proposed orders might, for example, substantively reduce core damage frequencies or large early releases. A

cornerstone of effective regulation is the ability to clearly explain the benefits of changes. This remains to be done.

Moreover, many of the actions anticipated in this order dance close to the line between actions needed to assure the protection of the reactor core and managing severe accidents that result from beyond-design basis events. This is precisely the ground the NTTF recommended we engage under its "Recommendation 1." The Commission rightly decided to defer this highly philosophical discussion to later to allow the agency to focus on the matter of addressing nuclear safety. At present, I believe that the regulatory basis for the Mitigating Strategies Order should be reviewed in that context and therefore do not at this time support the staff's proposed declaration that the level of adequate protection be revised.

Until the appropriate analysis has been completed and the stakeholders and public have an opportunity to comment, I believe we risk a capricious circumvention of the discipline put in place under the Backfit Rule. If we are to remain a predictable, reliable, and credible regulator, we must base our decisions—especially those as important as those before us today—on careful, sober, detailed technical analyses.

Nevertheless, I find the specific actions recommended in the Mitigating Strategies Order to be prudent responses to the lessons of Fukushima. Industry has already accepted that some action must be taken and is developing comprehensive proposals that will increase the capability of nuclear power plants to mitigate extreme beyond-design-basis external events. I also believe it possible that analysis would eventually support the implementation of staff's proposed changes on either an adequate protection or cost-benefit basis. Moreover, although the Commission has previously stated that it will exercise its authority to issue an administrative exemption from its Backfit Rule only in extremely rare circumstances, I believe that the events at Fukushima present the appropriate circumstances for issuing an exemption. As the Near-Term Task Force concluded, "a sequence of events like the Fukushima accident is unlikely to occur in the United States." However, this event, though unlikely, had an extreme impact. In this respect, the events at Fukushima are similar to the events of September 11 which prompted the Commission's only previous use of an administrative exemption (for the aircraft impact rule).

Therefore, I approve issuance of this order (as modified by these comments) under an exemption from the Backfit Rule pending further analysis in the context of NTTF Recommendation 1. The staff should revise Section III of the order to reflect a Commission decision to issue the orders under an administrative exemption to the Backfit Rule.

Reliable Hardened Containment Vents Order

While staff has not had the opportunity to complete the full scope of analysis to support a finding that the "Order Modifying Licenses with Regard to Reliable Hardened Containment Vents," this order represents well-trod ground. Hardened vents have been

in place in U.S. plants with BWR Mark I containments for many years. However, inspections performed in the aftermath of Fukushima demonstrated that a wide variance exists with regard to the reliability of these vents. Further, for reasons that today appear specious, neither the NRC nor industry prompted action to install such vents on plants with BWR Mark II containment.

The importance of the reliable operation of such vents during emergency conditions has been known in the U.S. for two decades and this understanding has been reinforced by the clear lesson of Fukushima. I support staff's recommendation and approve that this order be issued in order in support of adequate protection subject to the edits provided in the attached.

Reliable Spent Fuel Pool Instrumentation Order

Regarding the "Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation," I find it reasonable that all nuclear power plants operating in the United States should have a reliable means of remotely monitoring a wide-range of spent fuel pool levels to support effective prioritization of event mitigation and recovery actions in the event of an extreme beyond-design-basis external event. Many plants currently apply instrumentation that provides more information about pool levels than is required under the applicable regulations and can point to various benefits associated with the availability of this additional information.

However, I do not believe that the additional information operators would obtain as a result of this order represents a need that should prompt us to redefine the level of adequate protection. Nevertheless, I believe that incorporation of these features would have a positive impact on protection of public health and safety. As the staff states, Fukushima demonstrated the confusion and misapplication of resources that can result from extreme beyond-design-basis external events when more diverse instrumentation is not available. Therefore, I suggest that, given the obvious benefits of this order, these reasonable measures be issued under an administrative exemption from the backfit requirements and that the staff should revise Section III of the Order accordingly.

Requests for Information

Perhaps the clearest of lessons from the disaster at the Fukushima Daiichi nuclear plant is that it is absolutely vital to understand as fully as possible the hazards facing each nuclear power plant. The requests for information regarding NTF recommendations 2.1 and 2.3 are appropriate toward assuring that each plant is configured appropriately for the seismic and flooding risks endemic to its location.

However, a less clear but no less important lesson of Fukushima is that there is a danger in focusing too exclusively on one hazard. Days before the March 11, 2011 earthquake, I met with officials from Japan's Nuclear Safety Commission and received a comprehensive overview of Japan's very impressive effort to raise the bar regarding

seismic safety in the aftermath of the July 2007 earthquake that struck near the Kashiwazaki-Kariwa nuclear power station. Japanese experts had developed impressive new models and analysis techniques and many Japanese plants had implemented or planned measures to harden their facilities against potential seismic activity.

With the benefit of hindsight, we may now judge that this effort was incomplete in that the lesson Japanese officials learned from the Kashiwazaki-Kariwa earthquake was both too narrow and misdirected.

I visited the Kashiwazaki-Kariwa plant soon after the earthquake and found that despite the significant damage caused to non-nuclear facilities on the site, the nuclear plant itself emerged largely unscathed. Last year's earthquake in central Virginia similarly punished local buildings and other non-nuclear structures, but caused negligible damage to the North Anna plant, which was restarted after detailed inspections.

The more appropriate lesson to learn from the Kashiwazaki-Kariwa earthquake may have been to recognize the need to assess the full range of natural hazards for each plant rather than implement a laser-like focus on seismic—particularly since experience demonstrated that the robust nature of nuclear power plant structures makes them far less vulnerable to seismic activity than most other manmade constructs. A serious, in-depth review of all the hazards facing nuclear plants might have highlighted the tsunami threat that challenged the Fukushima Daiichi plant.

The ACRS highlighted this need in its review of the agency's post-Fukushima activities in its October 13, 2012 letter to the Commission, stating that “[a]ctions related to NTF Recommendation 2.3 should be expanded to assure that the walkdowns address the integrated effects of severe storms as well as seismic and flooding events.” Staff has, instead, relegated the evaluation of hazards beyond seismic and flooding to “Tier 2” and developed an approach that focuses considerable effort on seismic and flooding.

All analysis to date, as well as my personal observations during a visit to the Fukushima Daiichi plant in January 2012, indicates that the lessons of the past hold—seismic events of the nature experienced to date do not compromise the safety of western light water reactors. The damage at the Fukushima plant that led to the meltdowns was, by all accounts thus far, caused by the tsunami rather than the earthquake.

Obviously, that is not to suggest that seismic hazards should not be assessed. Far from it, this is an important effort that should be completed for each plant. However, practical experience demonstrates that other natural hazards may be more important for some plants in the U.S. Plants in the southeastern U.S., for example, may face greater challenges from extreme hurricanes than from seismic events. Plant operators in the southwest should perhaps be more concerned with extremely high temperature events than either earthquakes or floods.

We must learn the correct lessons from experience. I believe that Fukushima teaches us to keep seismic hazards in perspective and evaluate the threats that matter for each plant. Therefore, I recommend two adjustments to the requests for information:

- 1) The seismic analyses required by the Requests for Information should be prioritized and proceed in a flexible manner. Plants in areas known to be more seismically active should be required to complete work on the schedule anticipated by the staff. Other plants should be permitted greater latitude for the purpose of completing higher priority assessments.
- 2) The other natural hazards analyses currently covered in Tier 2 should be restored to Tier 1 priority. Work should be prioritized on a plant-by-plant basis and walkdowns and assessments completed on an early schedule.

With regard to the request for information associated with NTF Recommendation 9.3, concerning preparedness for multiunit events, I am fully supportive and have no comments.

COL Licensees

As the Commission stated in the decision on the Vogtle Mandatory Hearing, CLI-12-2, the NRC has "in place well-established regulatory processes by which to impose any new requirements or other enhancements that may be needed." At the time we issued CLI-12-2, we stated that we would determine the applicability of any new post-Fukushima requirements as the staff's justification for each requirement was developed and based upon our evaluation of that justification.

We have now reached this stage and staff has recommended that various elements of the orders discussed above apply to the Vogtle license. This is appropriate and I fully support this approach. However, staff has not addressed the matter of COL licenses subsequent to Vogtle in SECY-12-0025. I believe it must.

Although, as discussed above, I do not believe the staff has yet provided the analytical basis required to demonstrate that these orders are necessary for adequate protection, I do find that the requirements contemplated by these orders are prudent, reasonable measures that will result in an increase in overall protection of public health and safety. I therefore recommend that the orders associated with SECY-12-0025 that staff has developed for the Vogtle plant be applied to all subsequent COL holders that apply the certified AP1000 design, including relevant elements of the orders associated with Tier 1 Recommendations 4.2 and 7.1 and the request for information associated with Tier 1 Recommendation 9.3. For COLs issued subsequent to Vogtle, the Director of the Office of New Reactors or the Director of the Office of Nuclear Reactor Regulation, as appropriate, should be directed to issue the applicable post-Fukushima orders and requests for information to these licensees concurrent with the issuance of the COLs. Any specific issues related to a subsequent individual COL application should be

addressed in the adjudicatory order addressing the mandatory hearing for that application.

It is likely that future regulations will include modifications of the Orders that reflect continued lessons learned. The approach of action I suggest would ensure a consistent approach to imposing future regulatory changes or modified orders on all COL licensees while obviating the need to individually amend each license as modifications are implemented.

The Commission instituted post-September 11 security regulations under similar circumstances. The interim orders were imposed on licensees via order (rather than by, for example, license conditions) because the Commission recognized that the requirements might evolve over time, and that for the purposes of ensuring that licensees comply with the most up to date regulatory requirements, orders were the preferred regulatory tool.

Fuel Cycle Facilities

Regarding the applicability of post-Fukushima measures to fuel cycle facilities, I appreciate the staff's efforts in this area and encourage the timely completion of the ongoing inspection activities. However, I believe that any actions taken in this regard that result in any changes in design basis for any facility must be approved by the Commission. Thus, if staff believes any such changes are needed, it should provide a notation vote paper to the Commission as soon as practical.

Concluding Remarks

Finally, I encourage staff to continue to monitor and assess information associated with the review of the challenges and problems faced by the Fukushima Daiichi plant and its operators after the March 11, 2011 earthquake and tsunami. Should any new information arise that has bearing on any aspect of SECY-12-0025, staff should provide this information to the full Commission as soon as possible along with any recommendation if necessary.

 2/29/12

William D. Magwood, IV Date

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ALL OPERATING BOILING WATER	)	Docket Nos. (as shown in Attachment 1)
REACTOR LICENSEES WITH MARK I AND	)	License Nos. (as shown in Attachment 1)
MARK II CONTAINMENTS	)	EA-12-XXX
)	

**ORDER MODIFYING LICENSES
WITH REGARD TO RELIABLE HARDENED CONTAINMENT VENTS
(EFFECTIVE IMMEDIATELY)**

I.

The Licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities." Specifically, these Licensees operate boiling-water reactors (BWRs) with Mark I and Mark II containment designs.

II.

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height, which inundated the Fukushima Dai-ichi Nuclear Power Plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan, and significantly affected the infrastructure and industry in the northeastern coastal areas of Japan.

When the earthquake occurred, Fukushima Dai-ichi Units 1, 2, and 3 were in operation and Units 4, 5, and 6 were shut down for routine refueling and maintenance activities. The Unit 4 reactor fuel was offloaded to the Unit 4 spent fuel pool. Following the earthquake, the three operating units automatically shut down and offsite power was lost to the entire facility. The emergency diesel generators (EDGs) started at all six units providing alternating current (ac) electrical power to critical systems at each unit. The facility response to the earthquake appears to have been normal.

Approximately 40 minutes following the earthquake and shutdown of the operating units, the first large tsunami wave inundated the site, followed by additional waves. The tsunami caused extensive damage to site facilities and resulted in a complete loss of all ac electrical power at Units 1 through 5, a condition known as station blackout (SBO). In addition, all direct current electrical power was lost early in the event on Units 1 and 2, and for ~~for~~ **after** some period of time at the other units. Unit 6 retained the function of one air-cooled EDG. Despite their actions, the operators lost the ability to cool the fuel in the Unit 1 reactor after several hours, in the Unit 2 reactor after about 70 hours, and in the Unit 3 reactor after about 36 hours, resulting in damage to the nuclear fuel shortly after the loss of cooling capabilities.

Operators first considered using the facility's hardened vent to control pressure in the containment within an hour following the loss of all ac power at Unit 1. The Emergency Response Center began reviewing accident management procedures and checking containment venting procedures to determine how to open the containment vent valves without power.¹ ~~However,~~ **Ultimately,** without adequate core and containment cooling, primary containment (drywell) pressure and temperature in Units 1, 2, and 3 substantially exceeded the design values for the containments. When the operators attempted to vent the containments, they were

¹ See Institute of Nuclear Power Operations (INPO) report "INPO 11-005, *Special Report on the Nuclear Accident at the Fukushima Daiichi Nuclear Power Station, Revision 0*," issued November 2011, p. 72

significantly challenged ~~in~~ opening the hardened wetwell (suppression chamber) vents because of complications from the prolonged SBO, and high radiation fields that impeded access.

At Fukushima Dai-ichi Units 1, 2, 3, and 4, venting the wetwell involved opening motor- and air-operated valves. Similar features are used in many hardened vent systems that were installed in U.S. BWR Mark I containment plants following issuance of Generic Letter (GL) 89-16, "Installation of a Hardened Wetwell Vent." In the prolonged SBO situation that occurred at Fukushima, operator actions were not possible from the control room because of the loss of power, and the loss of pneumatic supply pressure to the air-operated valves. The resultant delay in venting the containment precluded early injection of coolant into the reactor vessel. The lack of coolant, in turn, resulted in extensive core damage, high radiation levels, hydrogen production and containment failure. The leakage of hydrogen gas into the reactor buildings ~~precipitated~~ ~~resulted in~~ explosions in the secondary containment buildings of Units 1, 3, and 4, and the ensuing damage to the facility contributed to the uncontrolled release of radioactive material to the environment.

Fukushima Dai-ichi Units 1, 2, 3, and 4 use the Mark I containment design; however, because Mark II containment designs are only slightly larger in volume than Mark I containment designs and use wetwell pressure suppression, it can reasonably be ~~concluded~~ ~~conjectured~~ that a Mark II under similar circumstances ~~would~~ ~~may~~ have suffered similar consequences.

Following the events at the Fukushima Dai-ichi nuclear power plant, the NRC established a senior-level agency task force referred to as the Near Term Task Force (NTTF). The NTTF was tasked with conducting a systematic and methodical review of the NRC regulations and processes and determining if the agency should make additional improvements to these programs in light of the events at Fukushima Dai-ichi. As a result of this review, the NTTF developed a comprehensive set of recommendations, documented in SECY-11-0093,

"Near-Term Report and Recommendations for Agency Actions Following the Events in Japan," dated July 12, 2011. These recommendations were enhanced by the NRC staff following interactions with stakeholders. Documentation of the staff's efforts is contained in SECY-11-0124, "Recommended Actions To Be Taken Without Delay From the Near-Term Task Force Report," dated September 9, 2011, and SECY-11-0137, "Prioritization of Recommended Actions To Be Taken in Response to Fukushima Lessons Learned," dated October 3, 2011.

As directed by the Staff Requirements Memorandum (SRM) for SECY-11-0093, the NRC staff reviewed the NTF recommendations within the context of the NRC's existing regulatory framework and considered the various regulatory vehicles available to the NRC to implement the recommendations. SECY-11-0124 and SECY-11-0137 established the staff's prioritization of the recommendations based upon the potential safety enhancements.

Current regulatory requirements and existing plant capabilities allow the NRC to conclude that a sequence of events such as the Fukushima Dai-ichi accident is unlikely to occur in the U.S. Therefore, continued operation and continued licensing activities do not pose an imminent threat to public health and safety. However, **the importance of reliable operation of hardened vents during emergency conditions was already well established and this understanding has been reinforced by the clear lessons of Fukushima. Hardened vents have been in place in U.S. plants with BWR Mark I containments for many years but a wide variance exists with regard to the reliability of the vents. Additionally, hardened vents are not required on plants with BWR Mark II containments although as discussed above, Mark II containments are only slightly larger than Mark I.**

~~NRC's assessment of new insights from the events at Fukushima Dai-ichi leads the staff to conclude that additional requirements must be imposed on Licensees to increase the capability of nuclear power plants to mitigate beyond design-basis external events. These additional requirements~~ **Reliable hardened venting systems in BWR facilities with Mark I and Mark II containments** are needed to **ensure that** ~~provide~~ adequate protection ~~to~~ **of** public health and safety **is maintained**, ~~as set forth in Section III of this Order.~~

In SRM-SECY-11-0137, the Commission directed the NRC staff to take certain actions and provided further guidance including directing the staff to consider filtered vents. The staff has determined that there are policy issues that need to be resolved before any regulatory action can be taken to require Licensees to install filtered vents. These policy issues include consideration of severe accident conditions in the design and operation of the vent, the addition of filters to hardened reliable vents—**systems**, and consideration of vents in areas other than primary containment. However, the NRC has also determined that Licensees should promptly begin the implementation of short-term actions relating to reliable hardened vents and to focus these actions on improvements that will assist in the prevention of core damage. As such, this Order requires Licensees to take the necessary actions to ~~install~~ **ensure that they have** reliable hardened venting systems in BWR facilities with Mark I and Mark II containments to ~~assist~~ **enhance** strategies relating to the prevention of core damage. With respect to the policy issues discussed above, the NRC staff plans to submit a Policy Paper to the Commission in July 2012.

Additional details on an acceptable approach for complying with this Order will be contained in final Interim Staff Guidance (ISG) scheduled to be issued by the NRC in August 2012. This guidance will also include a template to be used for the plan that will be submitted in accordance with Section IV, C.1 below.

III.

Reasonable assurance of adequate protection of the public health and safety and assurance of the common defense and security are ~~the~~ fundamental NRC regulatory objectives. Compliance with NRC requirements plays a critical role in giving the NRC confidence that Licensees are maintaining an adequate level of public health and safety and common defense and security. While compliance with NRC requirements presumptively assures adequate

protection, new information may reveal that additional ~~requirements~~ **enhancements** are warranted. In such situations, the Commission may act in accordance with its statutory authority under Section 161 of the Atomic Energy Act of 1954, as amended, to require Licensees to take action in order to ~~protect~~ **assure continued adequate protection of** health and safety and common defense and security.

To protect public health and safety from the inadvertent release of radioactive materials, the NRC's defense-in-depth strategy includes multiple layers of protection: (1) prevention of accidents by virtue of the design, construction and operation of the plant, (2) mitigation features to prevent radioactive releases should an accident occur, and (3) emergency preparedness programs that include measures such as sheltering and evacuation. The defense-in-depth strategy also provides for multiple physical barriers to contain the radioactive materials in the event of an accident. The barriers are the fuel cladding, the reactor coolant pressure boundary, and the containment. These defense-in-depth features are embodied in the existing regulatory requirements and thereby provide adequate protection of public health and safety.

The events at Fukushima Dai-ichi highlight the possibility that extreme natural phenomena could challenge the prevention, mitigation and emergency preparedness defense-in-depth layers. At Fukushima, ~~limitations in time and unpredictable conditions associated with the accident~~ **a variety of challenges, some of which are not yet clearly known**, significantly challenged attempts by the responders to preclude core damage and containment failure. ~~In particular~~ **One item that is known is that under that particular set of circumstances**, the operators were unable to successfully operate the containment venting system. The inability to reduce containment pressure inhibited efforts to cool the reactor core. If additional backup or alternate sources of power had been available to operate the containment venting system remotely, or if certain valves had been more accessible for manual operation, the operators at Fukushima may have been able

to depressurize the containment earlier. This, in turn, could have allowed operators to implement strategies using low-pressure water sources that may have limited or prevented damage to the reactor core. Thus, the events at Fukushima demonstrate that reliable hardened vents at BWR facilities with Mark I and Mark II containment designs are important to maintain core and containment cooling.

~~Accordingly, the NRC has concluded that there is a need to redefine the level of protection of public health and safety regarded as adequate under the provisions of the backfit rule, 10 CFR 50.109(a)(4)(iii), and is requiring Licensee actions to meet the new level of protection. In addition, pursuant to 10 C.F.R. 2.202, the NRC finds that the public health, safety and interest require that this Order be made immediately effective.~~

The Commission has determined that ~~adequate protection of public health and safety requires that all operating BWR facilities with Mark I and Mark II containments~~ should have a reliable hardened venting capability for events that can lead to core damage. These new additional requirements provide greater ensure mitigation capability consistent with the overall defense-in-depth philosophy, and therefore greater assurance that the challenges posed by severe external events to power reactors do not pose an undue risk to public health and safety. Consistent with the provisions of the backfit rule, 10 CFR 50.109(a)(4), and to provide the Commission with reasonable assurance that the public health and safety will continue to be adequately protected, the Commission has concluded that ~~reasonable assurance of adequate protection of public health and safety,~~ all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order.

IV.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202, "Orders," and 10 C.F.R. Part 50, IT IS HEREBY ORDERED, ~~EFFECTIVE IMMEDIATELY~~, THAT ALL LICENSES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER ARE MODIFIED AS FOLLOWS:

- A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the license. These Licensees shall promptly start implementation of the requirements in Attachment 2 to the Order and shall complete full implementation **no later than two (2) refueling cycles following the submittal of the overall integrated plan, as required in Condition C.1. (schedule to be issued in August 2012), or December 31, 2016, whichever comes first.**
- B. 1. All Licensees shall, within **twenty (20) days** of the date of this Order, notify the Commission (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensees' justification for seeking relief from or variation of any specific requirement.
2. Any Licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely affect the safe and secure operation of the facility must notify the Commission, within **twenty (20) days** of this

Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

- C.
1. All Licensees shall, **by February 28, 2013**, submit to the Commission for review an overall integrated plan including a description of how compliance with the requirements described in Attachment 2 will be achieved.
 2. All Licensees shall provide an initial status report **sixty (60) days** following issuance of the final ISG, and at **six (6)-month intervals** following submittal of the overall integrated plan, as required in Condition C.1, which delineates progress made in implementing the requirements of this Order.
 3. All Licensees shall report to the Commission when full compliance with the requirements described in Attachment 2 is achieved.

Licensee responses to Conditions B.1, B.2, C.1, C.2, and C.3 above shall be submitted in accordance with 10 C.F.R. § 50.4, "Written Communications."

The Director, Office of Nuclear Reactor Regulation may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V.

In accordance with 10 C.F.R. § 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this

Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to answer or to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order.

If a hearing is requested by a Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), the licensee or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at

hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at

<http://www.nrc.gov/site-help/esubmittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/esubmittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the

NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike,

Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants.

Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A

REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

Eric J. Leeds, Director
Office of Nuclear Reactor Regulation

Dated this ____ day of March 2012

OPERATING BOILING WATER REACTOR LICENSES
WITH MARK I AND MARK II CONTAINMENTS

Browns Ferry Nuclear Plant, Unit 1 Tennessee Valley Authority Athens, AL Docket No. 50-259 License No. DPR-33	BWR-Mark I
Browns Ferry Nuclear Plant, Unit 2 Tennessee Valley Authority Athens, AL Docket No. 50-260 License No. DPR-52	BWR-Mark I
Browns Ferry Nuclear Plant, Unit 3 Tennessee Valley Authority Athens, AL Docket No. 50-296 License No. DPR-68	BWR-Mark I
Brunswick Steam Electric Plant, Unit 1 Carolina Power and Light Southport, NC Docket No. 50-325 License No. DPR-71	BWR-Mark I
Brunswick Steam Electric Plant, Unit 2 Carolina Power and Light Southport, NC Docket No. 50-324 License No. DPR-62	BWR-Mark I
Columbia Generating Station, Unit 2 Energy Northwest Richland, WA Docket No. 50-397 License No. NPF-21	BWR-Mark II
Cooper Nuclear Station Nebraska Public Power District Brownville, NE Docket No. 50-298 License No. DPR-46	BWR-Mark I

Dresden Nuclear Power Station, Unit 2 Exelon Generation Co., LLC Morris, IL Docket No. 50-237 License No. DPR-19	BWR-Mark I
Dresden Nuclear Power Station, Unit 3 Exelon Generation Co., LLC Morris, IL Docket No. 50-249 License No. DPR-25	BWR-Mark I
Duane Arnold Energy Center FPL Energy Duane Arnold, LLC Palo, IA Docket No. 50-331 License No. DPR-49	BWR-Mark I
Edwin I. Hatch Nuclear Plant, Unit 1 Southern Nuclear Operating Co. Baxley, GA Docket No. 50-321 License No. DPR-57	BWR-Mark I
Edwin I. Hatch Nuclear Plant, Unit 2 Southern Nuclear Operating Co. Baxley, GA Docket No. 50-366 License No. NPF-5	BWR-Mark I
Fermi, Unit 2 The Detroit Edison Co. Newport, MI Docket No. 50-341 License No. NPF-43	BWR-Mark I
Hope Creek Generating Station, Unit 1 PSEG Nuclear, LLC Hancock Bridge, NJ Docket No. 50-354 License No. NPF-57	BWR-Mark I
James A. FitzPatrick Nuclear Power Plant Entergy Nuclear Operations, Inc. Scriba, NY Docket No. 50-333 License No. DPR-59	BWR-Mark I

LaSalle County Station, Unit 1
Exelon Generation Co., LLC
Marseilles, IL
Docket No. 50-373
License No. NPF-11

BWR-Mark II

LaSalle County Station, Unit 2
Exelon Generation Co., LLC
Marseilles, IL
Docket No. 50-374
License No. NPF-18

BWR-Mark II

Limerick Generating Station, Unit 1
Exelon Generation Co., LLC
Limerick, PA
Docket No. 50-352
License No. NPF-39

BWR-Mark II

Limerick Generating Station, Unit 2
Exelon Generation Co., LLC
Limerick, PA
Docket No. 50-353
License No. NPF-85

BWR-Mark II

Monticello Nuclear Generating Plant, Unit 1
Northern States Power Company
Monticello, MN
Docket No. 50-263
License No. DPR-22

BWR-Mark I

Nine Mile Point Nuclear Station, Unit 1
Nine Mile Point Nuclear Station, LLC
Scriba, NY
Docket No. 50-220
License No. DPR-63

BWR-Mark I

Nine Mile Point Nuclear Station, Unit 2
Nine Mile Point Nuclear Station, LLC
Scriba, NY
Docket No. 50-410
License No. NPF-69

BWR-Mark II

Oyster Creek Nuclear Generating Station, Unit 1
Exelon Generation Co., LLC
Forked River, NJ
Docket No. 50-219
License No. DPR-16

BWR-Mark I

Peach Bottom Atomic Power Station, Unit 2
Exelon Generation Co., LLC
Delta, PA
Docket No. 50-277
License No. DPR-44

BWR-Mark I

Peach Bottom Atomic Power Station, Unit 3
Exelon Generation Co., LLC
Delta, PA
Docket No. 50-278
License No. DPR-56

BWR-Mark I

Pilgrim Nuclear Power Station
Entergy Nuclear Operations, Inc.
Plymouth, MA
Docket No. 50-293
License No. DPR-35

BWR-Mark I

Quad Cities Nuclear Power Station, Unit 1
Exelon Generation Co., LLC
Cordova, IL
Docket No. 50-254
License No. DPR-29

BWR-Mark I

Quad Cities Nuclear Power Station, Unit 2
Exelon Generation Co., LLC
Cordova, IL
Docket No. 50-265
License No. DPR-30

BWR-Mark I

Susquehanna Steam Electric Station, Unit 1
PPL Susquehanna, LLC
Salem Township, Luzerne Co., PA
Docket No. 50-388
License No. NPF-22

BWR-Mark II

Susquehanna Steam Electric Station, Unit 2
PPL Susquehanna, LLC
Salem Township, Luzerne Co., PA
Docket No. 50-387
License No. NPF-14

BWR-Mark II

Vermont Yankee Nuclear Power Plant, Unit 1
Entergy Nuclear Operations, Inc.
Vernon, VT
Docket No. 50-271
License No. DPR-28

BWR-Mark I

REQUIREMENTS FOR RELIABLE HARDENED VENT SYSTEMS
AT BOILING-WATER REACTOR FACILITIES WITH
MARK I AND MARK II CONTAINMENTS

1. Hardened Containment Venting System (HCVS) Functional Requirements

Boiling-Water Reactor (BWR) Mark I and Mark II containments shall have a reliable hardened vent to remove decay heat and maintain control of containment pressure within acceptable limits following events that result in the loss of active containment heat removal capability or prolonged Station Blackout (SBO). The hardened vent system shall be accessible and operable under a range of plant conditions, including a prolonged SBO and inadequate containment cooling.

- 1.1 The design of the HCVS shall consider the following performance objectives:
 - 1.1.1 The HCVS shall be designed to minimize the reliance on operator actions.
 - 1.1.2 The HCVS shall be designed to minimize plant operators' exposure to occupational hazards, such as extreme heat stress, while operating the HCVS system.
 - 1.1.3 The HCVS shall also be designed to minimize radiological consequences that would impede personnel actions needed for event response.
- 1.2 The HCVS shall include the following design features:
 - 1.2.1 The HCVS shall have the capacity to vent the steam/energy equivalent of 1 percent of licensed/rated thermal power (unless a lower value is justified by analyses), and be able to maintain containment pressure below the primary containment design pressure.
 - 1.2.2 The HCVS shall be accessible to plant operators and be capable of remote operation and control, or manual operation, during sustained operations.
 - 1.2.3 The HCVS shall include a means to prevent inadvertent actuation.
 - 1.2.4 The HCVS shall include a means to monitor the status of the vent system (e.g., valve position indication) from the control room or other location(s). The monitoring system shall be designed for sustained operation during a prolonged SBO.
 - 1.2.5 The HCVS shall include a means to monitor the effluent discharge for radioactivity that may be released from operation of the HCVS. The monitoring system shall provide indication in the control room or other location(s), and shall be designed for sustained operation during a prolonged SBO.
 - 1.2.6 The HCVS shall include design features to minimize unintended cross flow of vented fluids within a unit and between units on the site.

- 1.2.7 The HCVS shall include features and provision for the operation, testing, inspection and maintenance adequate to ensure that reliable function and capability are maintained.
- 1.2.8 The HCVS shall be designed for pressures that are consistent with maximum containment design pressures as well as dynamic loading resulting from system actuation.
- 1.2.9 The HCVS shall discharge the effluent to a release point above main plant structures.

2. Hardened Containment Venting System Quality Standards

The following quality standards are necessary to fulfill the requirements for a reliable HCVS:

- 2.1 The HCVS vent path up to and including the second containment isolation barrier shall be designed consistent with the design basis of the plant. These items include piping, piping supports, containment isolation valves, containment isolation valve actuators and containment isolation valve position indication components.
- 2.2 All other HCVS components shall be designed for reliable and rugged performance that is capable of ensuring HCVS functionality following a seismic event. These items include electrical power supply, valve actuator pneumatic supply and instrumentation (local and remote) components.

3. Hardened Containment Venting System Programmatic Requirements

- 3.1 The Licensee shall develop, implement, and maintain procedures necessary for the safe operation of the HCVS. Procedures shall be established for system operations when normal and backup power is available, and during SBO conditions.
- 3.2 The Licensee shall train appropriate personnel in the use of the HCVS. The training curricula shall include system operations when normal and backup power is available, and during SBO conditions.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-12-0025 – PROPOSED ORDERS AND
REQUESTS FOR INFORMATION IN RESPONSE TO
LESSONS LEARNED FROM JAPAN’S MARCH 11,
2011, GREAT TOHOKU EARTHQUAKE AND TSUNAMI

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___

M. Ostendorff
SIGNATURE

2/29/12
DATE

Entered on “STARS” Yes X No ___

Commissioner Ostendorff's Comments on SECY-12-0025, "Proposed Orders and Requests for Information in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Tsunami"

I approve, in part, issuing these three specific orders, which represent an important milestone in this agency's response to the Near-Term Task Force (NTTF) recommendations. I disapprove, however, the basis for the proposed orders, as noted below. Nevertheless, I appreciate the diligent efforts of the Fukushima Steering Committee, the Japan Lessons-Learned Project Directorate, and the many NRC staff and stakeholders involved in this significant body of work.

In approving these orders, it is important for me to note that I remain confident in the NTTF's original conclusions that "continued operation and continued licensing activities do not pose an imminent risk to public health and safety." I firmly believe that U.S. nuclear plants are safe and that these actions will appropriately increase their defenses, including against very unlikely extreme natural phenomena.

Orders on Mitigating Strategies (Enclosure 4) and Hardened Vents (Enclosure 5)

In Enclosures 4 and 5, the staff proposes orders requiring development of strategies to deal with beyond-design-basis external events, as well as orders requiring reliable, hardened vents for all Boiling Water Reactor (BWR) licensees with Mark I and Mark II containments. The staff recommends issuance of these orders under the 10 C.F.R. § 50.109(a)(4)(iii) exception to the Backfit Rule: "defining or redefining" the level of adequate protection. While I agree that the requirements in these orders should be based on the concept of adequate protection, I am not persuaded that we are "defining or redefining" the level of protection regarded as adequate.

Although adequate protection determinations are made on a case-by-case basis, the NRC does have historical precedence. The NRC has generally "defined or redefined" adequate protection by implementing generic requirements that establish a new minimum level of protection through the rulemaking process. On the other hand, when significant new information from unexpected events shows that compliance with current regulatory requirements is not enough, the NRC has historically used plant-specific actions, like orders. The NRC has generally considered these plant-specific actions to be "necessary to ensure" adequate protection (exception 10 C.F.R. § 50.109(a)(4)(ii) of the Backfit Rule). In the cases here, the NRC is not "raising the bar" on the level of adequate protection; instead, these orders supplement existing requirements and codify current regulatory expectations and should be considered under exception § 50.109(a)(4)(ii), to ensure adequate protection.

The NRC's post-September 11th orders required, in part, additional equipment to mitigate beyond-design-basis events. These orders were promulgated on the basis of assuring the continuation of adequate protection. The staff's proposed orders on mitigation strategies expand upon the post-9/11 framework by incorporating operating experience and lessons-learned from the Fukushima accident. Similarly, the hardened vent orders clarify current regulatory expectations by incorporating lessons-learned from Fukushima. The accident at Fukushima vividly illustrated the consequences of both unreliable vents and overly restrictive operational limits, which prevented earlier venting during an accident, contrary to U.S. practices. Further, the hardened vent orders codify current regulatory expectations by incorporating the extensive

operating experience and risk insights with BWR Mark I and Mark II containment integrity over the past three decades. For instance, NRC regulations have not been updated to reflect hardened vent insights from Generic Letter 89-16 or the additional enhancements for venting in station black-out-like conditions following the September 11th orders and rulemakings.

Therefore, because we are ensuring adequate protection, I approve issuance of the orders provided in Enclosures 4 and 5 under the 10 C.F.R. § 50.109(a)(4)(ii) exception to the Backfit Rule, as revised in the attached. I find that issues of “defining or redefining” adequate protection are better suited to follow-on rulemakings that would include public stakeholder and ACRS input, should such rulemakings prove necessary. In addition, I believe the Commission’s review of the forthcoming staff paper that addresses NTTF Recommendation 1 offers a more fitting policy forum to globally assess redefining regulatory requirements for beyond-design-basis events.

Orders on Spent Fuel Pool Instrumentation (Enclosure 6)

In Enclosure 6, the staff proposes orders requiring enhanced spent fuel pool instrumentation based again upon the “defining or redefining” adequate protection exception to the Backfit Rule. I am not, however, persuaded that these new requirements rise to the level of adequate protection. While I agree that reliable and available instrumentation is important for plant personnel to effectively prioritize emergency actions, I do not believe that the operating experience from Fukushima showed that the absence of spent fuel pool instrumentation resulted in radiological consequences. In addition, the measures that would be implemented for the order on mitigating strategies will further reduce the already low risk posed by spent fuel pools by reducing the risk of severe reactor accident conditions.

Because the staff has not provided a determination that these orders constitute a cost-justified substantial increase in protection to public health and safety, the only basis for issuing these orders at this time would be use of an alternative to the Backfit Rule. In this instance, an administrative exemption is appropriate. Commission action exempting itself from its own binding regulations should be a rare occurrence that takes place only in special circumstances or when the underlying NRC action to be exempted is necessary. In the final Statement of Consideration for the Aircraft Impact Assessment Rule, the only official use of the administrative exemption, the Commission stated that it “will continue to be an extremely rare action to be taken only if regulatory considerations strongly favor taking such administrative exemption.” Consideration of Aircraft Impacts for New Nuclear Power Reactors, 74 Fed. Reg. 28,112, 28,144 (June 12, 2009). It is my judgment that the orders for enhanced spent fuel instrumentation are necessary and that the events at Fukushima demonstrate the type of rare underlying occurrence where an administrative exemption is acceptable. Based upon my many years of nuclear propulsion plant operations, I know that a lack of reliable instrumentation can cause confusion and be a significant distraction that may adversely impact safe operations. In my view, given the significant radiological inventory in a typical spent fuel pool, spent fuel pools should have reliable instrumentation. Therefore, in the absence of a regulatory requirement, and in this rare occurrence, I approve the use of an administrative exemption to the Backfit Rule. The staff should revise the orders accordingly and resubmit them to the Commission for approval.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ALL POWER REACTOR	)	Docket Nos. (as shown in Attachment 1)
LICENSEES AND HOLDERS	)	License Nos. (as shown in Attachment 1) or
OF CONSTRUCTION PERMITS IN	)	Construction Permit Nos. (as shown in
ACTIVE OR DEFERRED STATUS	)	Attachment 1))
)	
	)	EA-12-XXX

**ORDER MODIFYING LICENSES
WITH REGARD TO REQUIREMENTS FOR MITIGATION STRATEGIES
FOR BEYOND-DESIGN-BASIS EXTERNAL EVENTS
(EFFECTIVE IMMEDIATELY)**

I.

The Licensees and construction permits (CP) holders¹ identified in Attachment 1 to this Order hold licenses and CPs issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation and/or construction of nuclear power plants in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," and Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

II.

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height, that inundated the Fukushima Dai-ichi Nuclear Power Plant site.

¹ CP holders, as used in this Order, includes CPs, in active or deferred status, as identified in Attachment 1 to this Order (i.e., Watts Bar, Unit 2; and Bellefonte, Units 1 and 2)

NRC is requiring additional defense-in-depth measures at licensed nuclear power reactors so that the NRC can continue to have reasonable assurance of adequate protection of public health and safety in mitigating the consequences of a beyond-design-basis external event.

The strategies and guidance developed and implemented by Licensees or CP holders in response to the requirements imposed by this Order will provide the necessary capabilities to supplement those of the permanently installed plant structures, systems, and components that could become unavailable following beyond-design-basis external events. These strategies and guidance will enhance the safety and preparedness capabilities established following September 11, 2001, and codified as 10 CFR 50.54(hh)(2). In order to address the potential for more widespread effects of beyond design basis external events, this Order requires strategies with increased capacity to implement protective actions concurrently at multiple units at a site. The strategies shall be developed to add multiple ways to maintain or restore core cooling, containment and SFP cooling capabilities in order to improve the defense-in-depth of licensed nuclear power reactors.

~~Accordingly, the NRC has concluded that there is a need to redefine the level of protection of public health and safety regarded as adequate under the provisions of the backfit rule, 10 CFR 50.109(a)(4)(iii), and is requiring Licensee or CP holder action to meet that new level of protection. In addition, pursuant to 10 CFR 2.202, the NRC finds that the public health, safety and interest require that this Order be made immediately effective.~~

The Commission has determined that ensuring adequate protection of public health and safety requires that power reactor Licensees and CP holders develop, implement and maintain guidance and strategies to restore or maintain core cooling, containment, and SFP cooling capabilities in the event of a beyond-design-basis external event. These new requirements provide a greater mitigation capability consistent with the overall defense-in-depth philosophy, and, therefore, greater assurance that the challenges posed by beyond-design-basis external

events to power reactors do not pose an undue risk to public health and safety. In order to provide reasonable assurance of adequate protection of public health and safety, all operating reactor licenses and CPs under Part 50 identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. All combined licenses (COLs) under Part 52 identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 3 to this Order.

Accordingly, the NRC has concluded that these measures are necessary to ensure adequate there is a need to redefine the level of protection of public health and safety regarded as adequate under the provisions of the backfit rule, 10 CFR 50.109(a)(4)(iii), and is requiring Licensee or CP holder action to meet that new level of protection. In addition, pursuant to 10 CFR 2.202, the NRC finds that the public health, safety and interest require that this Order be made immediately effective.

IV.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Parts 50 and 52, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSES AND CONSTRUCTION PERMITS IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER ARE MODIFIED AS FOLLOWS:

- A. 1. All holders of CPs issued under Part 50 shall, notwithstanding the provisions of any Commission regulation or CPs to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the CP. These CP holders shall complete full implementation **prior to issuance of an operating license.**

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
ALL OPERATING BOILING WATER	)	Docket Nos. (as shown in Attachment 1)
REACTOR LICENSEES WITH MARK I AND	)	License Nos. (as shown in Attachment 1)
MARK II CONTAINMENTS	)	EA-12-XXX
)	

**ORDER MODIFYING LICENSES
WITH REGARD TO RELIABLE HARDENED CONTAINMENT VENTS
(EFFECTIVE IMMEDIATELY)**

I.

The Licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities." Specifically, these Licensees operate boiling-water reactors (BWRs) with Mark I and Mark II containment designs.

II.

On March 11, 2011, a magnitude 9.0 earthquake struck off the coast of the Japanese island of Honshu. The earthquake resulted in a large tsunami, estimated to have exceeded 14 meters (45 feet) in height, which inundated the Fukushima Dai-ichi Nuclear Power Plant site. The earthquake and tsunami produced widespread devastation across northeastern Japan, and significantly affected the infrastructure and industry in the northeastern coastal areas of Japan.

accidents by virtue of the design, construction and operation of the plant, (2) mitigation features to prevent radioactive releases should an accident occur, and (3) emergency preparedness programs that include measures such as sheltering and evacuation. The defense-in-depth strategy also provides for multiple physical barriers to contain the radioactive materials in the event of an accident. The barriers are the fuel cladding, the reactor coolant pressure boundary, and the containment. These defense-in-depth features are embodied in the existing regulatory requirements and thereby provide adequate protection of public health and safety.

The events at Fukushima Dai-ichi highlight the possibility that extreme natural phenomena could challenge the prevention, mitigation and emergency preparedness defense-in-depth layers. At Fukushima, limitations in time and unpredictable conditions associated with the accident significantly challenged attempts by the responders to preclude core damage and containment failure. In particular, the operators were unable to successfully operate the containment venting system. The inability to reduce containment pressure inhibited efforts to cool the reactor core. If additional backup or alternate sources of power had been available to operate the containment venting system remotely, or if certain valves had been more accessible for manual operation, the operators at Fukushima may have been able to depressurize the containment earlier. This, in turn, could have allowed operators to implement strategies using low-pressure water sources that may have limited damage to the reactor core. Thus, the events at Fukushima demonstrate that reliable hardened vents at BWR facilities with Mark I and Mark II containment designs are important to maintain core and containment cooling.

~~Accordingly, the NRC has concluded that there is a need to redefine the level of protection of public health and safety regarded as adequate under the provisions of the backfit rule, 10 CFR 50.109(a)(4)(iii), and is requiring Licensee actions to meet the new level of protection. In addition, pursuant to 10 C.F.R. 2.202, the NRC finds that the public health, safety and interest~~

~~require that this Order be made immediately effective.~~

The Commission has determined that ensuring adequate protection of public health and safety requires that all operating BWR facilities with Mark I and Mark II containments have a reliable hardened venting capability for events that can lead to core damage. These new requirements provide greater mitigation capability consistent with the overall defense-in-depth philosophy, and therefore greater assurance that the challenges posed by severe external events to power reactors do not pose an undue risk to public health and safety. To provide reasonable assurance of adequate protection of public health and safety, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order.

Accordingly, the NRC has concluded that these measures are necessary to ensure adequate there is a need to redefine the level of protection of public health and safety regarded as adequate under the provisions of the backfit rule, 10 CFR 50.109(a)(4)(iii), and is requiring Licensee actions to meet the new level of protection. In addition, pursuant to 10 C.F.R. 2.202, the NRC finds that the public health, safety and interest require that this Order be made immediately effective.

IV.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R. § 2.202, "Orders," and 10 C.F.R. Part 50, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER ARE MODIFIED AS FOLLOWS:

- A. All Licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this