

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: Chairman Gregory B. Jaczko  
SUBJECT: SECY-12-0069 – PROCESS FOR ADDRESSING LATE-BREAKING ISSUES DURING A COMBINED LICENSE APPLICATION REVIEW

Approved  X  Disapproved  X  Abstain

Not Participating

COMMENTS: Below   Attached  X  None

  
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SIGNATURE

5/30/12  
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DATE

Entered on "STARS" Yes   No

**Chairman Jaczko's Comments on SECY-12-0069,  
"Process for Addressing Late-Breaking Issues During a Combined License  
Application Review"**

The NRC had been reviewing the combined license (COL) applications for Vogtle and Summer for several years when the accident at Fukushima occurred in March 2011. The Commission's Near-Term Task Force (NTTF) issued its report in July 2011. That fall, the Commission conducted mandatory hearings for the Vogtle and Summer licenses. The Commission approved a prioritization of actions from the NTTF recommendations in late 2011, concurrent with ongoing Commission review of the Vogtle and Summer COLs. The Commission was faced with a dilemma – how to address ongoing review of Fukushima lessons learned using the new Part 52 one-step licensing process.

Following standard agency processes, in which the staff would go back and reassess this new information, might have led to a significant delay in the issuance of these COLs. Rather, the Commission decided to not address Fukushima lessons learned and acted upon the Vogtle COL in February 2012. However, just days later, the NRC staff's presented a set of proposed orders and requests for information to the Commission for consideration. In early March 2012, the Commission approved issuance of those orders and requests, and subsequently approved the Summer COL decision in late March – partially incorporating the orders and requests for information into the licensing process.

In retrospect, we needed to adjust our normal licensing process to account for Fukushima in our first COLs, and because of the unfortunate timing, we had to use different processes for each COL. For Vogtle, we used what the staff presents as Approach 3 in this paper, and for Summer we used a combination of Approach 2 and Approach 3. This is not surprising. Our licensing process had never before been applied to authorize both the construction and operation of a new reactor, much less while we are still learning the lessons of a catastrophic nuclear accident. We can and should be open to adapting our process to these circumstances. This paper is an important step in creating stability in our licensing process going forward and I commend the staff for the short turn-around in presenting it to the Commission.

Each of the options presented by the staff involves benefits and drawbacks. As always, I believe it's the job of the Commission to review those pros and cons and determine which option is the best public policy. After reviewing those options, I continue to believe the best way to ensure safety, inspire public confidence, and promote regulatory efficiency, timeliness, and stability is to impose a license condition in each COL that requires implementation of all Fukushima safety enhancements before operation. This would apply a simple, logical, and consistent standard to all new COL holders. Had we originally crafted a license condition which would capture future Fukushima requirements, every COL, from the beginning, would have the same commitment.

A fundamental issue in this debate is the safety standard we will apply to new reactors. I believe new reactors should be held to a higher standard than those designed and constructed decades ago. It is this higher standard that I am advocating with my position on this issue. In a much overused analogy, cars never used to have seat belts or airbags, and we did not require retrofit, but we do require all cars going forward to have this higher standard of protection. The only way to ensure that all new reactors are held to the higher safety standard is to include the license condition I have proposed. This is because, once a license is issued, the provisions of 10 CFR 50.109, known as the backfit rule, begin to apply.

The backfit rule was largely enacted to relieve licensees from making expensive modifications and retrofits to as-built reactors. But for a plant still being constructed, applying the backfit approach doesn't make sense. There should be ample opportunity to make changes during construction that might not be feasible for an operating reactor. Because the backfit rule does not apply before licensing, there is no requirement to perform the backfit cost analysis to the licensing condition I have proposed.

The staff's Approach 1 proposes the use of existing licensing processes. It's labeled 'status quo'; however, as I noted, this option has not been used to date with respect to Fukushima issues. While Approach 1 would allow all existing processes to run their course, those existing processes were not formed for such a unique and significant challenge as Fukushima has presented us. This approach oversimplifies the problem. While for the moment, we've issued the first set of orders and requests for information, the agency continues to evaluate additional Fukushima-related enhancements. When the next COL is presented to the Commission for approval, those evaluations will be somewhere in-process and closer to resolution. In reality, choosing Approach 1 will necessitate also combining it with Approach 2 or Approach 3 for those in-process enhancements, unless the agency intends to wait until all post-Fukushima evaluations are done prior to issuing the next license. As such, this is a significant drawback to Approach 1, as it doesn't solve the problem of ambiguity of method and it does nothing to issue licenses in a timely and predictable manner.

Approach 3 proposes issuing orders after a license is issued. The most significant drawback to this approach is that requirements imposed through orders would need to pass the backfit rule. As noted above, I do not believe the backfit rule should apply for Fukushima enhancements for new reactors.

Issuing a license without a placeholder for Fukushima enhancements defies common sense. This is widely viewed by the public as typical government bureaucracy – where the government can't make a common sense public policy decision because of the need to follow rigid practices that weren't created with this type of significant nuance in mind. I see a license condition as the best of both worlds. It allows the industry to move forward and receive their licensee, while assuring the American people that the plant will only operate once lessons learned from Fukushima have been incorporated to the satisfaction of the Commission. Without a binding requirement in the license, we know from past experience that licensees may be relieved from compliance based on the cost considerations of the backfit rule.

To this end, I approve the use of a license condition per Approach 2. The staff should draft a license condition, to be incorporated into each subsequent COL, which captures the outcomes of the actions directed by the Commission in response to Fukushima (SECY-11-0137) and exempts the application of the backfit rule for those actions. This license condition should ensure the forthcoming agency actions are implemented prior to fuel load for any COL licensee.

  
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Gregory B. Jaczko

5/30/12  
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Date