

June 25, 2012

COMMISSION VOTING RECORD

DECISION ITEM: SECY-12-0069

TITLE: PROCESS FOR ADDRESSING LATE-BREAKING ISSUES  
DURING A COMBINED LICENSE APPLICATION REVIEW

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 25, 2012.

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



Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko  
Commissioner Svinicki  
Commissioner Apostolakis  
Commissioner Magwood  
Commissioner Ostendorff  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-12-0069

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X	X			X	5/30/12
COMR. SVINICKI	X				X	6/6/12
COMR. APOSTOLAKIS	X				X	6/7/12
COMR. MAGWOOD	X				X	5/25/12
COMR. OSTENDORFF	X				X	5/31/12

**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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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.

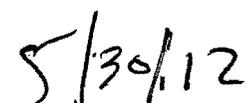
The staff's Approach 1 proposes the use of existing licensing processes. It's labeled 'status quo'; however, as I noted, this option has not been used to date with respect to Fukushima issues. While Approach 1 would allow all existing processes to run their course, those existing processes were not formed 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

  
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Date

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-12-0069 – PROCESS FOR ADDRESSING LATE-BREAKING ISSUES DURING A COMBINED LICENSE APPLICATION REVIEW

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached XX None \_\_\_\_\_

  
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06/6/12  
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Entered on "STARS" Yes  No \_\_\_\_\_

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

In SECY-12-0069, the staff presents options for addressing post-Fukushima or other late-breaking issues that could impact the findings in Title 10 of the Code of Federal Regulations (10 CFR) 52.97, "Issuance of combined licenses" during a combined license (COL) application review. The staff recommends that the Commission approve Approach 1, which the staff defines as the current review process. The staff grounds this recommendation in its conclusion that the current process is the "most readily supported from a legal and policy perspective." My direct experiences in the *Vogtle* and *Summer* COL proceedings also support this view. I approve the staff's recommended Approach 1.

In both the development and subsequent issuance of new requirements or requests for information arising from the NRC's evaluation of the nuclear accident at Fukushima Dai-ichi, the Commission has repeatedly concluded that the NRC's existing authorities and regulatory processes are sufficient and that they readily conform themselves to any safety issues the agency may need to evaluate or address. Our existing processes also align with NRC's Principles of Good Regulation and, consequently, preserve important fundamentals for how NRC has long carried out its important mission. As the staff explains in the SECY paper, the existing process "provides a predictable and thorough licensing process that is open and transparent."

In implementing Approach 1, however, the staff will be requesting additional information about things that are not yet, or, in some instances, that may never become final regulatory requirements. This is a departure from NRC's standard practice. Because the regulatory landscape will continue to be dynamic, the staff should strictly adhere to the information gathering purpose of requests for additional information (RAIs) in order to inform the judgments on any requirements that may become final before a COL is issued. The staff should develop and implement a disciplined, scrutable process for issuing RAIs related to legitimate candidates for regulatory requirements, and should consult with the Office of the General Counsel in its development. As there is potential for tentative regulatory requirements to be modified prior to issuance, the staff's process should attempt to avoid repeated sets of RAIs, issued over time, addressing changing criteria.

With regard to the use of general license conditions, as evidenced by my inclusion in the Commission majority for the *Vogtle* and *Summer* mandatory hearing decisions, I do not support the use of "overly-broad, ill-defined" license conditions, which elevate form over substance. As the staff somewhat understates in the paper, "To the extent the Commission wishes to include a condition at the time of COL issuance that prospectively does not apply 10 CFR 50.109 to future Fukushima-related activities, it would need a sound technical basis. Such a basis may be difficult to develop in the absence of a determination of what the new requirements should be." I agree.

Finally, although I appreciated the discussion and evaluation of the approaches provided by the staff in the paper, I was put off by repeated references to the extent of administrative requirements that would be necessary to impose a new requirement under various processes or the level of effort needed to issue a requirement. I did not frame my consideration of the different approaches with this factor as a differentiator. As noted by Commissioner Ostendorff in his vote, "[t]he NRC's backfit rule provides regulatory stability, ensures reasoned and

informed agency decisionmaking, and provides transparency in the agency's actions." I expect that under any process for imposing a new requirement, the NRC would subject the proposed requirement to thorough evaluation and scrutiny and would have developed a thoroughly defensible and supported basis for its issuance.

  
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Kristine L. Svinicki                      06/6/12

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Apostolakis  
SUBJECT: SECY-12-0069 – PROCESS FOR ADDRESSING LATE-BREAKING ISSUES DURING A COMBINED LICENSE APPLICATION REVIEW

Approved  X  Disapproved       Abstain      

Not Participating      

COMMENTS: Below       Attached  X  None      



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6/7/12

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**Commissioner Apostolakis' Comments on SECY-12-0069  
Process for Addressing Late-Breaking Issues During a  
Combined License Application Review**

I appreciate the staff's thoughtful consideration of approaches to address late-breaking issues that impact the Commission's ability to make the 10 CFR 52.97 findings required for issuance of a combined license (COL). I approve the staff's recommended use of Approach 1 for such issues that arise during a COL application review. This approach has the benefit of providing an open and transparent resolution of the issues through documentation in the staff's safety evaluation report. Consistent with the comments of Commissioners Magwood and Ostendorff, the staff should, to the extent practical, strive to raise important late-breaking issues before the completion of the mandatory hearing.

I agree with Commissioner Ostendorff's clarification that Approach 1 is appropriate for issues that call into question an applicant's ability to comply with the current requirements, as well as for situations where the Commission imposes new requirements by order on the class of licensees which the COL applicant will join upon license issuance. I also agree with Commissioner Ostendorff that, in the latter situation, the staff will need to determine the most appropriate means of imposing the new requirement on the prospective licensee (e.g., license condition or order). In other words, the three approaches presented by the staff are not mutually exclusive; Approach 1 may be supplemented by a license condition or an order. In addition, I agree with the staff that late-breaking issues that arise after issuance of the staff's SECY paper in support of the mandatory hearing should be addressed on a case-by-case basis.

The staff also addressed the use of a general license condition requiring compliance with all Fukushima-related requirements promulgated after issuance of a COL. I agree with the staff that it would be difficult to develop a sound technical basis for such an approach in the absence of a determination of what the new requirements should be. Using our well-defined and transparent processes for establishing new requirements helps ensure sound technical and policy decisions.

  
George Apostolakis 6/7/12

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MAGWOOD  
SUBJECT: SECY-12-0069 – PROCESS FOR ADDRESSING LATE-BREAKING ISSUES DURING A COMBINED LICENSE APPLICATION REVIEW

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  None \_\_\_\_\_

  
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25 May 2012  
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Entered on "STARS" Yes  No \_\_\_\_\_

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

The Commission has taken a strong and consistent position that the best course of action for addressing any new issues that could affect the required findings for issuing Combined Licenses (such as those associated with the agency's response to Fukushima Daiichi) is to follow the normal, well-established NRC review processes. We have applied this philosophy to good effect thus far and I see no rationale for altering this approach. Staff's analysis supports this view and has done so from the time of the Commission's first vote on a COL application.

As a result, I approve staff's recommendation to follow Approach 1 as outlined in SECY-12-0069. I concur with the staff that Approach 1 is a proven method that will, in most circumstances, prove to be a predictable licensing tool that will provide a clear basis to make findings necessary for decisions on the COL. I also agree with the staff that issues that arise after the issuance of staff's Commission paper (*i.e.*, the "SECY") for the uncontested hearing should be addressed on a case-by-case basis. However, as a general principle, staff should endeavor to raise new issues, at a minimum, before the completion of the mandatory hearing in order to afford applicants and other potential interested parties the greatest opportunity to provide comment.

The staff also analyzed whether the Commission should include a generic license condition requiring compliance with all post-Fukushima-related regulations and orders. I agree with the staff that such a generic requirement is not advisable. While imposing a generic license condition may provide a satisfying display of regulatory muscle, I do not believe that it would make a significant positive difference in the operational safety of new units. Indeed, this approach may unintentionally negate the clear, regulatory bases established by the staff's disciplined work.

As the Commission has stated previously, a license condition prepared in advance of the development of all post-Fukushima requirements would lack clarity and nuclear safety is not advanced by the imposition of overly-broad, ill-defined requirements. Furthermore, a generic license condition would limit the flexibility necessary to ensure that new requirements are implemented on carefully-considered schedules that take into account the cumulative impact on safe operations.

The NRC has worked very hard over many years to assure that its regulatory processes are clear and predictable. Staff's recommendation preserves this important progress.

  
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William D. Magwood, IV    Date 5/25/12

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER OSTENDORFF  
**SUBJECT:** SECY-12-0069 – PROCESS FOR ADDRESSING LATE-BREAKING ISSUES DURING A COMBINED LICENSE APPLICATION REVIEW

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached  X  None \_\_\_

W. Ostendorff  
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5/31/12  
DATE

Entered on "STARS" Yes  X  No \_\_\_

**Commissioner Ostendorff's Comments on SECY-12-0069,  
"Process for Addressing Late-Breaking Issues during a  
Combined License Application Review"**

I appreciate the staff's thoughtful review of the most appropriate way to handle late-breaking issues during the review of a combined license (COL) application. I approve staff's recommendation to follow Approach 1 in the circumstances outlined below. I also join with Commissioner Magwood in calling on the staff to strive to bring forth these important late-breaking matters prior to the completion of the mandatory hearing.

For those late-breaking issues that call into question an applicant's ability to comply with the *current* regulatory requirements, engaging the applicant prior to licensing under Approach 1 would be appropriate. Determining the applicant's compliance with the current regulations is necessary for the staff to make a licensing decision and, therefore, dispositioning the matter in the staff's safety evaluation report is most appropriate.

Circumstances may arise (e.g., September 11th attacks, the Fukushima accident), however, where the Commission determines that *new* requirements are needed, in addition to our current regulations. The Commission may choose to impose these new requirements by order in advance of the rulemaking process. For those circumstances where the Commission issues an order to entire classes of licensees, where the order will eventually be codified as a regulation, and an applicant (upon issuance of a license) will join that class of licensees subject to the order, the staff may also follow Approach 1. Although requests for additional information (RAIs) are normally only issued where there is an existing regulatory basis for the request, to rigidly prevent the staff from engaging the applicant on important issues and prospective requirements prior to licensing would represent a departure from our Principles of Good Regulation. While there is the possibility that the licensing process may be delayed by following Approach 1 here, the significant gains made in openness, clarity, and efficiency support following the staff's recommended approach for these circumstances. Further, because predictability and reliability are key components to being an effective regulator, the staff must strive to ensure consistency in their review.

Although Approach 1 allows the staff and the Commission to thoroughly and openly address new issues in the licensing review, Approach 1 does not necessarily bind the applicant to new requirements. Mindful of the gap that can exist prior to the codification of new requirements if RAIs are the only approach used, staff should consider the most appropriate way to tie down new requirements either during or after the licensing process—through orders, license conditions, or other appropriate mechanisms.

Finally, I want to address the general license condition. As the Commission stated in our *Vogtle* mandatory hearing decision, "Nuclear safety is not advanced by imposing overly-broad, ill-defined requirements." A general license condition requiring compliance with all Fukushima-related regulations and orders is not only unnecessary and unworkable, it would also represent the subtle erosion of the backfit rule. The NRC's backfit rule provides regulatory stability, ensures reasoned and informed agency decisionmaking, and provides transparency in the agency's actions. As I stated in my vote for SECY-12-0025, "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 keeping with the agency's Principles of Good Regulation, and consistent with the decisions in the *Vogtle* and *Summer* mandatory hearings, I cannot support a general Fukushima license condition.