



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

November 2, 2005

SECRETARY

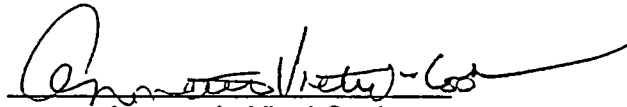
COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0172

TITLE: DUKE POWER COMPANY'S REQUEST TO INCORPORATE
THE OCONEE EMERGENCY OPERATIONS FACILITY INTO
THE EOF SHARED BY CATAWBA AND MCGUIRE
NUCLEAR STATIONS

The Commission (with Chairman Diaz and Commissioners Merrifield and Lyons agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 2, 2005. Commissioners McGaffigan and Jaczko disapproved the paper.

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


Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-05-0172

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	10/5/05
COMR. McGAFFIGAN		X			X	10/26/05
COMR. MERRIFIELD	X				X	10/6/05
COMR. JACZKO		X			X	10/18/05
COMR. LYONS	X				X	10/13/05

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz and Commissioners Merrifield and Lyons approved the staff's recommendation and provided some additional comments. Commissioners McGaffigan and Jaczko disapproved the paper. Subsequently, the comments of a majority of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 2, 2005.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-05-0172 - DUKE POWER COMPANY'S
REQUEST TO INCORPORATE THE OCONEE
EMERGENCY OPERATIONS FACILITY INTO
THE EOF SHARED BY CATAWBA AND
MCGUIRE NUCLEAR STATIONS**

Approved xx ^{w/comments} *[Signature]* Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:

See attached comments.

[Signature]

SIGNATURE
Oct 5, 05

DATE

Entered on "STARS" Yes No

Chairman Diaz's Comments on SECY-05-0172

I approve the proposal by Duke Power Company to incorporate the existing emergency operating facility (EOF) for the Oconee Nuclear Station into the Catawba/McGuire EOF in Charlotte, North Carolina, subject to the following condition: The licensee should maintain the former near-site EOF in Clemson, South Carolina, or an equivalent facility, functional in order to accommodate the NRC site team, if needed. The desire for maintaining functionality of the near-site EOF is addressed in the SECY, was agreed to by the licensee, and is similar to the condition imposed by the NRC on Southern Nuclear Operating Company for that licensee's common EOF for its Hatch, Farley, and Vogtle plants.

In addition, and also consistent with the direction in the SRM for SECY-04-0236 related to the Southern Nuclear Operating Company common EOF proposal, the staff should inform the Commission of any future significant emergency response issues which may impact communication and coordination between the licensee, the public, and County, State, and Federal agencies, especially as they relate to the distance between the Oconee site and the EOF in Charlotte, North Carolina.

NOTATION VOTE

RESPONSE SHEET

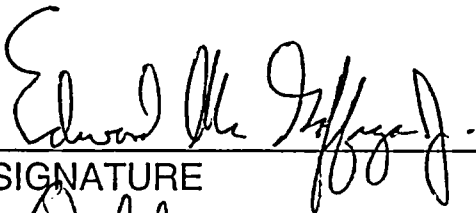
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-05-0172 - DUKE POWER COMPANY'S
REQUEST TO INCORPORATE THE OCONEE
EMERGENCY OPERATIONS FACILITY INTO
THE EOF SHARED BY CATAWBA AND
MCGUIRE NUCLEAR STATIONS**

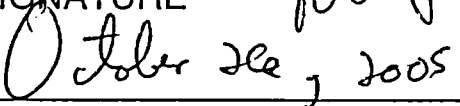
Approved _____ Disapproved ^{w/comments} Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE


DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-05-0172

I join Commissioner Jaczko in disapproving the staff's recommendation that Duke Power Company be allowed to incorporate the existing near-site emergency operations facility (EOF) for the Oconee Nuclear Station located in South Carolina into the Catawba/McGuire EOF located in Charlotte, North Carolina.

This request by Duke Power Company ("Duke") is nearly identical to the one recently approved by the Commission (by a 3 - 2 vote with myself one of those opposed) for Southern Nuclear Operating Company ("Southern") in SECY-04-0236. In my lengthy vote on that earlier action, I recounted the history of the Commission's regulatory stance on combining EOFs and I will not repeat all of it here. With that said, however, it is worth noting that the instant Duke request is very similar to that licensee's earlier request that the Commission disapproved and was sustained by the Courts. *See Duke Power Co. v. NRC*, 770 F.2d 386, 390-91 (4th Cir. 1985). Duke asserted in its current application - with the NRC staff concurring per the instant SECY - that the attributes cited in the rejection of the earlier request had been remedied, using much the same arguments as were advanced in SECY-04-0236.

I stated that I was unpersuaded in my January 28, 2005 vote (SECY-04-0236) and I remain unpersuaded, although this is a somewhat closer call because Oconee is 125 miles from the proposed EOF, compared to distances two and three times greater in the Southern case.

In my vote on SECY-04-0236, I noted that Harold Denton, President Carter's personal representative at Three Mile Island during the 1979 accident, needed to be on the scene and in nearby Harrisburg and that Mr. Denton himself had recently declared that the change in the last quarter century in media technology (the advent of 24 - hour cable news, etc.) would enormously complicate event response today. Also in my previous vote, I stated:

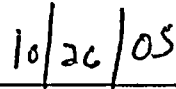
The tragic events of September 11, 2001 and the media responses for subsequent incidents since then have increasingly demonstrated the burdens inherent in the Lead Federal Agency duties that will fall to the NRC following an emergency at any of our licensees. Discharging those duties will be challenging enough under any circumstances.

The very recent events associated with Hurricane Katrina, especially those in Louisiana where New Orleans and Baton Rouge are separated by only 80 miles, have only strengthened my view that attempting to discharge Lead Federal Agency duties 125 miles away from an ongoing emergency in a different State would not be a defensible strategy. Yes, the licensee plans to retain legacy space for an NRC near-site team and, yes, communications technology has improved and will continue to improve. Nonetheless, I continue to hold to the position that I first stated in 1998 (SECY-98-274):

"Following a plant emergency, the national media will fight for the closest site proximity, and instant and repeated access to those representing the Agency."

This was again most vividly demonstrated during Hurricane Katrina. The representatives of the media will not remain in Charlotte, North Carolina during an event of National Significance ongoing 125 miles away in South Carolina. They also will not remain at any Joint Information Center, even a local one, if the personnel there are largely just members of the NRC, government, and licensee public affairs organizations. Seeing no decision makers in the

locality, the media will take their portable video cams and go looking for those who are still local, whoever they are, wherever they are, and however inaccurate they are. The lurid but thankfully erroneous accounts of shootouts, murder, and multiple atrocities in the New Orleans Superdome are instructive and on point, as were the nationally promulgated predictions of venomously toxic sludge and 10,000 dead. In any event that results in the NRC becoming the Lead Federal Agency, the additional factors concerning nuclear radiation would be a "force multiplier" to similar fears and rumors.



Edward McGaffigan, Jr.

Date

NOTATION VOTE

RESPONSE SHEET

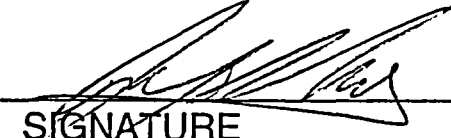
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-05-0172 - DUKE POWER COMPANY'S
REQUEST TO INCORPORATE THE OCONEE
EMERGENCY OPERATIONS FACILITY INTO
THE EOF SHARED BY CATAWBA AND
MCGUIRE NUCLEAR STATIONS**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comment.



SIGNATURE

10/6/05

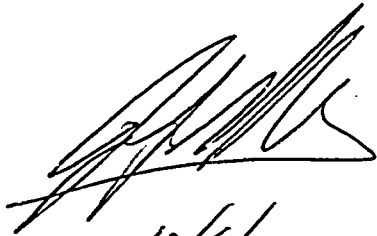
DATE

Entered on "STARS" Yes No

**Commissioner Merrifield's Vote on SECY-05-0172
Duke Power Company's Request to Incorporate the Oconee Emergency Operating
Facility into the EOF Shared by Catawba and McGuire Nuclear Stations**

I approve the staff recommendation to incorporate the Oconee Emergency Operations Facility (EOF) into the EOF that currently houses the Catawba and McGuire EOFs in Charlotte, North Carolina. I believe the licensee has adequately addressed the concerns expressed by the Commission in the 1984 denial of Duke's previous proposal to incorporate the Oconee EOF into the Charlotte EOF, by making provisions to ensure adequate interface with Federal, State, and local emergency management organizations.

As I noted in my vote on SECY-04-0236 (Southern Company's request to combine the Farley, Hatch, and Vogtle plants), I continue to support revising 10 CFR Part 50 to make the requirements for EOFs more performance-based so that other multi-plant licensees may consolidate their EOFs, if those licensees can demonstrate their emergency response strategies will adequately cope with an emergency at any of the associated plants.



12/6/05

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER JACZKO

SUBJECT: **SECY-05-0172 - DUKE POWER COMPANY'S
REQUEST TO INCORPORATE THE OCONEE
EMERGENCY OPERATIONS FACILITY INTO
THE EOF SHARED BY CATAWBA AND
MCGUIRE NUCLEAR STATIONS**

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: See attached comments.



SIGNATURE

12/15/05

DATE

Entered on "STARS" Yes X No _____

**Commissioner Jaczko's Vote on SECY-05-0172
Duke Power Company's Request to Incorporate the Oconee Emergency Operations
Facility into the EOF Shared by Catawba and McGuire Nuclear Stations**


I disapprove of the proposal by Duke Power Company to incorporate the Oconee Emergency Operations Facility into the emergency operations facility (EOF) shared by Catawba and McGuire Nuclear Stations.

I appreciate the efforts of the licensee to discuss this action with State officials and the efforts of the staff to ensure effective communications by observing a dual-site drill and interviewing officials. I continue to believe, however, that prior to a Commission decision regarding the granting of an exemption to locate a "near-site" facility 120 miles from the nuclear power plant, and involving emergency response coordination among multiple States and potentially multiple sites, the Commission should request a thorough analysis of the implications of this proposed action.

As I stated in my vote on SECY-04-0236, Southern Nuclear Operating Company's proposal to establish a common Emergency Operating Facility at its Headquarters, granting an exemption to the Commission's regulations require that the Commission be satisfied that a consolidated EOF will not present an undue risk to the health and safety of the public. In light of the complexity of the coordination of emergency response efforts and the Commission's lack of direction on this subject, I simply am not able to make this finding for this proposal.

This consolidated EOF request raises additional concerns. There are notable public perception issues associated with high-level officials, including some responsible NRC officials, located at a facility over 120 miles away and in a different state from where the event is occurring. Additionally, the ability (or lack thereof) of the NRC to inform the public through the use of the media would seemingly be hampered by this common EOF, as media visibility will most likely be focused on near-site locations.

Finally, I am concerned that while there may be circumstances in which a common EOF does make sense, the Commission has failed to set any standards or limits on the emerging practice of exempting "near-site" facilities from requirements that they be located near the site. Therefore, the Commission should continue to review these requests on a case-by-case basis.



Gregory B. Jaczko

1/21/98

Date

NOTATION VOTE

RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-05-0172 - DUKE POWER COMPANY'S
REQUEST TO INCORPORATE THE OCONEE
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THE EOF SHARED BY CATAWBA AND
MCGUIRE NUCLEAR STATIONS**

Approved x Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached.



SIGNATURE

10/13/05

DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Lyons' Comments on SECY-05-0172


I approve the proposal by Duke Power Company to incorporate the existing emergency operating facility (EOF) for the Oconee Nuclear Station into the Catawba/McGuire EOF in Charlotte, North Carolina, subject to the below two conditions. I believe that the two conditions set forth below, when met, will provide a necessary and sufficient regulatory basis to approve this proposal.

Further, I commend the licensee's effort to take advantage of communications technology improvements to enhance their EOF capability and their engagement of the several State and Local authorities in supporting their request.

1) The former near-site EOF in Clemson, South Carolina, should maintain functionality to accommodate 10 members of an NRC site-team (as already committed to by the licensee) to include communications equipment adequate to support site-team coordination with other NRC, licensee, Federal, State, and Local responders implementing the National Response Plan for an event at the Oconee site.

2) Prior to placing the new EOF (in the Duke Energy Center building) into service, the licensee should demonstrate the integrated capability and functionality of the new EOF with the TSC, NRC site-team facility, NRC Incident Response Centers, and other Federal, State, and Local coordination centers as appropriate, during the next scheduled emergency plan exercise. The staff states that much of this individual system capability is either expected, anticipated, intended, or committed to. A system-by-system commissioning test program would not be expected to fully demonstrate integrated EOF capability under near real-time conditions with the new equipment and expected enhancements.

In addition, consistent with past Commission direction in similar matters, the staff should inform the Commission of any future significant emergency response issues which may reduce the effectiveness of communication and coordination between the licensee, the public, and Local, State, and Federal agencies.


10/13/05