



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

January 10, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-04-0229

TITLE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS' 10 CFR 26.6 EXEMPTION REQUEST

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of January 10, 2005.

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

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

SECY NOTE: THIS VOTING RECORD WILL BE RELEASED TO THE PUBLIC 5
WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE
PETITIONER.

VOTING SUMMARY - SECY-04-0229

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	1/5/05
COMR. McGAFFIGAN	X				X	12/14/04
COMR. MERRIFIELD	X					12/13/04

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on January 10, 2005.

SECY NOTE: THIS VOTING RECORD WILL BE RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE PETITIONER.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-04-0229 - INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' 10 CFR 26.6 EXEMPTION REQUEST**

Approved xx ^{w/edits} WJ Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:

Approved subject to edits to IBEW correspondence. See attached.

WJ
SIGNATURE
Jan 5, 05
DATE

Entered on "STARS" Yes No _____

NOTE: TO BE RELEASED 5 WORKING DAYS AFTER DISPATCH OF THE LETTER TO PETITIONER.



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

Mr. Tom Dalzell, Esq.
International Brotherhood of Electrical Workers
AFL-CIO, Local 1245
PO Box 4790
3063 Citrus Circle
Walnut Grove, CA 94596

SUBJECT: DENIAL OF EXEMPTION REQUEST

Dear Mr. Dalzell:

In a letter dated September 24, 2002, the U.S. Nuclear Regulatory Commission (NRC) updated the International Brotherhood of Electrical Workers (IBEW) on the status of its earlier exemption request dated January 26, 1993, as supplemented December 6, 1993, stating the NRC had decided to address it in the larger revision to 10 CFR Part 26.

By letter dated January 26, 1993, IBEW requested that the NRC exempt from random drug testing certain clerical employees at Diablo Canyon Nuclear Power Plant (Diablo Canyon) who have unescorted access to the protected area (PA) only, but not the vital areas (VAs) of the plant, do not have access to radiologically controlled areas (RCAs), and who are not required to staff the plant's emergency response center (ERC).

On December 6, 1993, IBEW supplemented this modified request by letter, noting that it incorporated by reference the record submitted in its initial exemption request of March 13, 1990. IBEW also noted the licensee's plans to implement substantial changes in its security system at Diablo Canyon in early 1994. IBEW stated that PG&E planned to expand the boundaries of the VAs and control entry by card-keyed turnstiles rather than card-keyed doors. According to IBEW, these changes would further limit access to the VAs by preventing personnel from "tailgating" through the card-keyed doors. The staff determined that these changes were completed in early to mid-1994.

~~After careful review of IBEW's modified exemption request and the applicable criteria in 10 CFR 26.6 for acting on exemption requests, the NRC is denying the request for the reasons set forth below.~~

~~In the post September 11, 2001, threat environment, to reduce the risk of an insider threat and maintain the public health and safety and the common defense and security, the NRC has placed an increased emphasis on the reliability and trustworthiness of nuclear power plant (NPP) workers who have unescorted access to the PA, including clerical workers who perform safety-related tasks. Clerical workers' trustworthiness and reliability are crucial because of the safety-related work they perform, the safety equipment they may have access to in the PA, and~~

the close proximity to files located in this area which may contain safeguards or other sensitive information. For example, at Diablo Canyon, clerical workers who perform safety-related work and who have access to the PA update procedures, regulatory files of the plant, and personnel information for processing security clearances and access authorizations, including correspondence with the NRC and the FBI. In addition, these clerical workers who have unescorted access to the PA also maintain important technical drawings and design files and generally have access to plant design and layout information.

Random drug testing helps provide assurance that clerical workers who perform safety-related work and who have access to the PA are trustworthy and reliable. Substance abuse may make a clerical worker who performs safety-related work and has unescorted access to the PA more susceptible to coercion by a terrorist to commit acts of radiological sabotage than are other individuals. A clerical worker who performs safety-related work who is a substance abuser may be more easily persuaded due to substance abuse to cooperate, actively or passively, as an insider with a terrorist in an attempted sabotage of a NPP.

Second, granting your request would not be in the public interest. To assure that nuclear power plants are operated safely and to maintain public health and safety and the common defense and security, the reliability and trustworthiness of clerical workers with unescorted access to the PA who perform safety-related tasks are of paramount importance. It has been widely recognized that substance abuse can impair workplace behavior and reduce cognitive and physical task performance reliability while increasing the likelihood of accidents.

For these reasons, IBEW's request is being denied. If you have any questions regarding this matter, please contact Dr. Garmon West, Jr., Section Chief, Licensee Personnel Security Section, Division on Nuclear Security, Office of Nuclear Security and Incident Response. Dr. West can be reached at 301-415-0211.

Sincerely,

Roy P. Zimmerman, Director
Office of Nuclear Security Incident Response

For the Letter to IBEW, Att. 1 to SECY-04-0229, alternative language for insertion between the 4th and last paragraph:

After careful review of IBEW's modified exemption request and the applicable criteria in 10 CFR 26.6 for acting on exemption requests, the NRC is denying the request for the reasons set forth below.

Although IBEW's modified exemption request for clerical workers is more limited than was its initial exemption request, IBEW did not limit its modified exemption request to clerical workers performing only non-safety-related work. NRC strongly believes that its interest in public safety clearly justifies random testing of clerical workers with unescorted access to the protected area whose work or activities may adversely affect safety and security. In its exemption request, IBEW did not establish that the clerical workers it wished to have exempted from random testing do not engage in any safety-related work. This reason alone justifies denial of the IBEW's exemption request.

Further, in the threat environment since September 11, 2001, the NRC has taken many significant steps to reduce the risk of an insider threat and maintain the public health and safety and the common defense and security. One of those steps involves additional considerations regarding individuals who are granted unescorted access to the nuclear power plant PA. Clerical workers with unescorted access to the PA routinely pass through security check points, traverse areas containing safety and security hardware, and handle plant drawings and design documents. Random drug testing of clerical workers is a key means of meeting the NRC's responsibilities for safety and security because of the work that clerical workers may perform, safety equipment that they have access to in the PA, and the close proximity to files located in the PA which may contain safeguards and other sensitive information. For example, at Diablo Canyon clerical workers with unescorted access to the PA may have access to PA update procedures, regulatory files of the plant, and personnel information for processing security clearances and access authorizations, including correspondence with the NRC and the FBI. These clerical workers may maintain important technical drawings and design files and generally have access to plant design and layout information. Substance abuse makes it less likely that a clerical worker with unescorted access to the protected area will perform predictably, in accordance with required procedures, and will provide reliable and accurate information.

Moreover, substance abuse may make a worker, clerical or otherwise, who has unescorted access to the PA more susceptible to coercion by a terrorist to commit acts of radiological sabotage than are other individuals. A clerical worker who is a substance abuser may be more easily persuaded due to substance abuse to cooperate, actively or passively, as an insider with a terrorist in an attempted sabotage of a NPP.

Granting your request would not be in the public interest. It has been widely recognized that substance abuse can impair workplace behavior and reduce cognitive and physical task performance reliability while increasing the likelihood of accidents. To assure that nuclear power plants are operated safely and to maintain public health and safety and the common defense and security, the reliability and trustworthiness of clerical workers with unescorted access who perform safety-related tasks or may compromise safety and security are of paramount importance.

NOTATION VOTE

RESPONSE SHEET

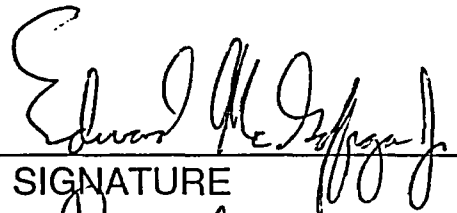
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-04-0229 - INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS' 10 CFR 26.6 EXEMPTION
REQUEST**

Approved ^{w/comments} X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE
December 14, 2004

DATE

Entered on "STARS" Yes X No _____

NOTE: TO BE RELEASED 5 WORKING DAYS AFTER DISPATCH
OF THE LETTER TO PETITIONER.

Commissioner McGaffigan's Comments on SECY-04-0229

I strongly approve the recommendation by the staff to deny the 10 CFR 26.6 exemption request by the International Brotherhood of Electrical Workers (IBEW).

I previously stated my opposition to the IBEW request, which proposed to exempt certain clerical workers with unescorted access to a nuclear power plant Protected Area (PA), but not any Vital Area (VA), from random drug testing, in my vote on SECY-00-0022 in April 2000. At that time, I opposed the exemption on a reactor safety basis, noting that:

- (1) The scope for random testing was unchanged from when Part 26 was first promulgated,
- (2) In numerous cases, reactors had been tripped and safety systems challenged due to events that initiated in the PA instead of a VA, and
- (3) the majority view in the nuclear industry was that any testing scope reduction would result in an increase in risk or vulnerability.

The IBEW request was filed well before the events of September 11, 2001. Since that date, the NRC has taken many significant steps to reduce the threat of terrorist attacks on licensed facilities as part of the Agency's responsibility to maintain the public health and safety, and also common defense and security. One of those steps involves increasing the emphasis on assuring the reliability and trustworthiness of all individuals who are granted unescorted access to the nuclear power plant PA. Random drug testing is an important element of the measures taken to reduce the risk that an insider might contribute to an attack. Clerical workers routinely pass through security check points, traverse areas containing safety and security hardware, and handle plant drawings and design documents.

Thus, on the bases of both reactor safety and security, I consider clerical workers not to be appropriate for the exemption requested by the IBEW.

Indeed, I do not consider this a close call. As I said in 2000, I appreciated the Office of the General Counsel's calling litigative risks to our attention. But this is a case where we should run those risks in order to maintain power reactor safety and security. After 9/11/01, I can not imagine any court overruling us.



NOTATION VOTE

RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-04-0229 - INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' 10 CFR 26.6 EXEMPTION REQUEST**

Approved Disapproved Abstain

Not Participating

COMMENTS:

No additional comments.



SIGNATURE
12/13/04

DATE

Entered on "STARS" Yes No

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