



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 21, 2009

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0185

TITLE: OPTIONS FOR SECURITY OPENNESS, TRANSPARENCY,
AND REACTOR OVERSIGHT PROCESS IMPROVEMENTS

The Commission (with Chairman Klein disapproving, Commissioners Jaczko and Lyons approving, and Commissioner Svinicki approving in part and disapproving in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of January 21, 2009.

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 Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-08-0185

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN		X			X	1/7/09
COMR. JACZKO	X				X	1/7/09
COMR. LYONS	X				X	12/9/08
COMR. SVINICKI	X		X		X	12/22/08

COMMENT RESOLUTION

In their vote sheets, Chairman Klein disapproved, Commissioners Jaczko and Lyons approved, and Commissioner Svinicki approved Option 1, maintain the status quo, and disapproved Option 2, the staff's recommendation, and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on January 21, 2009.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: CHAIRMAN KLEIN

SUBJECT: SECY-08-0185 – OPTIONS FOR SECURITY
OPENNESS, TRANSPARENCY, AND REACTOR
OVERSIGHT PROCESS IMPROVEMENTS

Approved _____ Disapproved XX Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

4/7/09

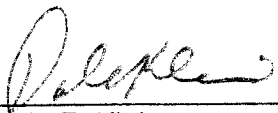
DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments for SECY 08-0185
**Options for Security Openness, Transparency, and Reactor Oversight Process
Improvements**

I would like to thank the staff for providing this paper to assist the Commission in making an informed decision regarding the amount of security-related inspection and licensee performance information that should be made available to the general public. I disagree with the staff's recommendation of Option 2 and support Option 1, to maintain the status quo with regard to the current level of openness and transparency associated with NRC security inspection and licensee performance information. I believe this option strikes a reasonable balance of the public's right to know and the need to protect sensitive information. Staff could not have said it better than what was noted in the SECY paper for Option 1, "that this is a viable, conservative, and reasonable option that balances the need for the public to know that a security inspection activity occurred, while overall licensee performance information and any details associated with NRC security oversight activities that could be useful to an adversary is withheld." I do not believe now is the time to increase the possibility of inadvertently releasing information that could challenge facility security.

I appreciate the staff's efforts to enhance the level of openness and transparency, however I am reminded every time I review the Intelligence Liaison and Threat Assessment Branch Intelligence Update package (conducted biweekly) of a slide that is always present that states, "There continues to be no specific, credible threat directed towards U.S. nuclear facilities or licensed radioactive material. However, there is a general credible threat towards U.S. nuclear facilities or licensed radioactive materials." I carefully considered this statement before making my decision on the quantity of information that should be publicly released.



Dale E. Klein 11/7/09
Date Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: SECY-08-0185 – OPTIONS FOR SECURITY
OPENNESS, TRANSPARENCY, AND REACTOR
OVERSIGHT PROCESS IMPROVEMENTS

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

01/ 7 /2009

DATE

Entered on "STARS" Yes X No _____

**COMMISSIONER GREGORY B. JACZKO'S COMMENTS ON SECY-08-0185
OPTIONS FOR SECURITY OPENNESS, TRANSPARENCY, AND REACTOR
OVERSIGHT PROCESS IMPROVEMENTS**

I approve this paper and would like to commend the staff for their methodical and comprehensive approach to improving transparency in the area of security. Increasing the amount of security-related inspection and licensee performance information available to the general public without jeopardizing security or revealing actual or potential vulnerabilities is a critical goal. Recombining the security cornerstone with the other six cornerstones of the Reactor Oversight Process (ROP) for commercial nuclear power licensees is the right thing to do from a public confidence perspective and will make for a more efficient staff process.

Previous Commissions made good faith decisions following September 11, 2001, to take steps to ensure the agency would not be a source of information that could potentially be useful to an adversary. With the benefit of time, additional staff analysis and investigation, and stakeholder feedback, it is now clear that some of those decisions inadvertently moved the pendulum of withholding information farther than necessary to protect the public. The proposals outlined by the staff go a long way to restoring the proper balance. It is important to remember that this is not a debate whether the public has a right to know about a licensee's performance in the area of security regulations. There should be no question that the public has a right to know the results of the agency's findings. The only time the agency should be limiting this type of information is when it could reveal a vulnerability.

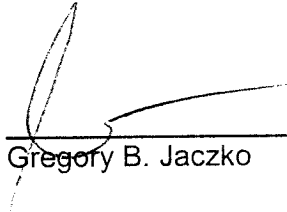
The NRC does have a robust security program and requires prompt compensatory measures when and if a weakness in licensee security programs are identified. The agency is doing its job of inspecting and verifying licensees are in compliance with security regulations, and this vote provides the Commission with a valuable opportunity to demonstrate that fact to the public in a more transparent manner. Public health and safety will be protected through the staff's proposal – information that must be withheld can be done so as classified, safeguards, or even official use only information, and until such time as any specific and generic vulnerabilities have been mitigated. At that point, there is no valid reason to withhold findings from the public.

In addition, if the agency is going to achieve its openness and transparency goals, it must provide a comprehensive picture of both the safety and the security performance of its licensees. That is why I support a hybrid of Options 2 and 3 as outlined in the paper. I approve all of the recommendations with Option 2 – providing additional information in the NRC's Annual Security Report to Congress and NRC's cover letters to security inspection reports; making the security performance indicator (PI) and significance determination processes (SDPs) available for public review; and recombining the safety and security ROP self assessments (SAs), the NRC's annual assessment letters communicating commercial power reactor licensee performance, and the annual ROP public meetings.

Option 2 stops short of combining the safety and security action matrices in the Reactor Oversight Process now, proposing that step wait until FY2011. I understand the staff's hesitation about rushing to what is the natural last step in this process and therefore, I also approve the option 3 in the longer term, to fully integrate the security cornerstone with that of the other six ROP cornerstones. I agree that the best approach to such a change is to develop the guidance the staff will need to correctly make the breadth of non-sensitive security information that goes into the security cornerstone publicly available. The staff should take the time necessary to develop guidance and train the staff on the appropriate way to redact reports and complete the effort to make the process transparent. This last piece may take longer and will require resources on an ongoing basis to implement, resources the Commission must allocate through future budget processes.

However, the most important step we can take now is to internally reincorporate security findings into the ROP action matrix for the purposes of having a true comprehensive picture of the safety and security performance of licensees. Doing so is crucial to ensuring our regulatory treatment of licensees is appropriate. The result of doing this now before the necessary foundation has been laid to enable the agency to release security findings will be that the public action matrix may not fully reflect the real-time performance of licensees. That is no different, however, from the current situation in which security is not factored in at all. The staff should clearly communicate to the public that with this change, the public action matrix may not fully reflect any given plant's actual ROP column, but they can be assured that the agency is taking a comprehensive look at each licensees overall performance to determine the appropriate level of oversight necessary to ensure adequate protection.

I am confident that the public will see this initiative for what it is – a proactive effort on the part of the NRC to return to a level of openness that is required of a public government agency, done in a thoughtful manner that in no way jeopardizes public health and safety.



Gregory B. Jaczko 11/7/09
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-08-0185 – OPTIONS FOR SECURITY
OPENNESS, TRANSPARENCY, AND REACTOR
OVERSIGHT PROCESS IMPROVEMENTS

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____


Peter B. Lyons

SIGNATURE

12/ 9 /08

DATE

Entered on "STARS" Yes X No _____

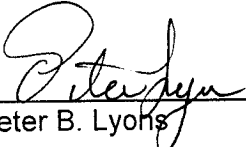
Commissioner Lyons' Comments for SECY 08-0185
**Options for Security Openness, Transparency, and Reactor Oversight Process
Improvements**

I would like to thank the staff for producing this paper that in my opinion succinctly lays out three options for Commission evaluation. As I reviewed the options presented in the paper I reflected on the balance necessary to assure that the NRC's strategic goals, safety and security, are not undermined by our desires to improve our organizational effectiveness objective. Openness and transparency are worthy objectives for a regulatory agency; however, they could result in providing useful information to those seeking to do us harm. Therefore, as I am advocating that the NRC adopt option 2 to increase the amount of information provided, I do so cautiously with the understanding that this transition needs to be slow and deliberate.

The staff needs to establish clear guidance so that individuals can implement these new policies without the use of expert judgment. This includes both the determination that the specific issue has been corrected or compensated and the determination that the information is suitable for release. In the case of issues requiring more public discussion, such as the inattentive security guards, sufficient management oversight should be provided to assure that the information released, including the aggregate of previously released information, does not inappropriately release sensitive information.

Regarding the staff's proposal to apply this methodology to other inspection/oversight programs, the staff needs to carefully coordinate with other parties, such as Agreement States, to assure that the limits of these changes are fully understood.

Regarding future implementation of option 3, I consider the routine redaction of security inspection reports to be an impractical solution. The redaction process is labor intensive and subject to inadvertent releases of information due to both human performance errors and through the cumulative effects of individual pieces of information released over time. Further, I do not see significant benefit to external stakeholders that would warrant the risk and expense assumed by this option.


Peter B. Lyons 12/7/08
Date

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-08-0185 – OPTIONS FOR SECURITY
OPENNESS, TRANSPARENCY, AND REACTOR
OVERSIGHT PROCESS IMPROVEMENTS

Approved In-Part Disapproved In-Part Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

12/22/08

DATE

Entered on "STARS" Yes No ___

Commissioner Svinicki's Comments on SECY-08-0185
"Options for Security Openness, Transparency, and Reactor Oversight Process
Improvements"

I approve Option 1, which is to maintain the *status quo*. I thank the staff for the careful consideration they have given to this matter, but I cannot support their recommended option (Option 2). I believe that in cases where use of "reasonable judgment" is necessary in reaching a conclusion or professional consensus on the relative usefulness of non-classified, non-safeguards, or non-SUNSI information to a potential adversary planning or conducting a hostile act against a regulated activity, deference must be given to our highest and most solemn Constitutional duty – providing for the common defense.

I acknowledge that the additional restrictions on the release of certain information, put in place after September 11, 2001, have been a source of criticism in some quarters. It is also true, however, that it will likely never be possible to identify, with specificity, which elements of the United States government's security response to the terrorist attacks have been most directly responsible for no further successful attacks having been prosecuted in the ensuing years. Consequently, I am willing to believe that the appropriate balance between the public's need to know specific details about security vulnerabilities and the need to withhold this information from those who would do this Nation harm, has already been struck and, for this reason, I do not support further changes.



Kristine L. Svinicki

12/2208