


June 7, 1999

MEMORANDUM TO: Nils J. Diaz
FROM: Edward McGaffigan, Jr. /S/
SUBJECT: COMNJD-99-003 - ADDITIONAL CONSIDERATIONS FOR RESOLUTION OF SECY-98-300 AND SECY-99-133

As we discussed this morning, I have considered your request for "additional considerations for resolution of [SECY-98-300](#) and [SECY-99-133](#)." I respect the tremendous effort which you have put into our deliberations on these issues. Unfortunately, however, I do not support further delay in completing the staff requirements memorandum (SRM) on SECY-98-300 nor do I believe that the information which you propose to obtain and the public meeting which you propose to hold in the subject memorandum are needed to decide on the staff proposals in SECY-99-133.

I am honestly perplexed as to the relevance of either the proposed ACRS or OGC taskings to completion of [SECY-98-300's SRM](#). The staff asked in that paper that the Commission approve an initiative to risk-inform the scope of 10 CFR 50.65, the maintenance rule. The Commission has been unanimous in approving that recommendation for some time and in supporting an accelerated schedule for submission of a rulemaking plan. I believe that it is time to give the staff that direction.

In your votes on SECY-98-300 you have raised an additional issue, namely the final rule language for [10 CFR 50.65\(a\)\(4\)](#). Pursuant to the May 13, 1999 SRM on the Commission's May 5, 1999 Maintenance Rule briefing, SECY-99-133 is now before us and should be the place to deal with any 50.65(a)(4) issues. I note that this paper has been made publicly available while we vote on it. I believe that the May 5th Commission briefing has already provided both the Commission and the public with extraordinary insight into the staff's efforts to finalize the rule language and develop draft guidance.

Having reviewed SECY-99-133, I am prepared to vote on it by tomorrow and do not find any need for the material you are proposing to request before voting. The material you are proposing to request from ACRS is relevant only to the guidance document which the staff, working publicly with stakeholders, intends to develop (a revision of Regulatory Guide 1.160 which endorses a revision to [NUMARC 93-01](#) ). I believe that you may be taking an extreme interpretation of ACRS's previous comments. I do not believe that ACRS or the staff is arguing for an endless, unbounded search of all possible combinations of low risk-significant SSCs that might in combination be risk-significant. Certainly ACRS should clarify the issue of which combinations of non-high risk-significant SSCs they are most concerned be captured in the risk-informed evaluation process for determining the scope of (a)(4) assessments laid out in the proposed final rule text of SECY-99-133. The May 13th SRM already directs ACRS review of the draft regulatory guide and already directs a public comment process on the draft guide.

With regard to the OGC backfit analysis proposed to be obtained, I regard the backfit analysis provided in the regulatory analysis (attachment 2) of SECY-99-133 more than sufficient to make the case that there is a substantial increase in the overall protection of public health and safety as a result of the modification to the maintenance rule. If any further backfit issues arise in the guidance development process, the May 13th SRM already directs CRGR review of the draft regulatory guide.

As we discussed this morning, I am much more optimistic than you that this guidance development process will go smoothly. Both staff and stakeholders need to bear in mind that this rule will be implemented under the new integrated oversight process. As SECY-99-133 points out, "violations of the maintenance rule will be evaluated by the significance determination process" (SDP) of the new oversight process. This SDP process will ensure that only the failure to evaluate, or inadequate evaluation of, truly risk-significant maintenance configurations will result in an inspection finding that affects NRC scoring of a cornerstone. As Harold Ray pointed out at the May 5th Commission briefing, this de facto should limit the search for combinations of non-high risk-significant SSCs in the risk-informed evaluation process of 50.65(a)(4). Finally, I note that the May 13th SRM insures that the Commission will review the final regulatory guide to implement this rule change. A public Commission briefing could well be very useful at that time. If your worst fears of an endless, unbounded process are realized, I will join you and other Commissioners in disapproving the final regulatory guide and thereby delaying implementation of the rule. I just have a very different expectation about the likelihood of that outcome.

In sum, I believe that both completing the SRM on SECY-98-300 and voting on SECY-99-133 can and should proceed without further delay and without the additional analyses and public meeting you have requested.

cc: Chairman Jackson
Commissioner Dicus
Commissioner Merrifield
EDO
OGC
SECY