

## COMMISSIONER MERRIFIELD'S COMMENTS ON COMNJD-99-003

As I stated in my vote on [SECY-98-300](#), I commend Commissioner Diaz for his efforts to guide and expedite the staff's efforts to risk-inform Part 50. His insights regarding risk-informed regulation have been invaluable. In that light, I carefully reviewed COMNJD-99-003 associated with the Commission giving additional consideration to [SECY-98-300](#) and [SECY-99-133](#). Based on my review, I continue to support the staff requirements memorandum (SRM) for [SECY-98-300](#), which was issued on June 8, 1999. Furthermore, I do not support the recommendations in COMNJD-99-003 regarding [SECY-99-133](#). I have articulated my position on [SECY-99-133](#) in my vote of June 2, 1999 and believe that voting on [SECY-99-133](#) should proceed without the additional analyses and public meeting requested in COMNJD-99-003.

As I stated in my vote on [SECY-99-133](#), the final rule is a very important first step in making the Maintenance Rule more effective and risk-informed. But clearly, this is only a first step. The staff has a great deal of work remaining on the development of regulatory guidance. I believe that the guidance development process provides the forum by which any residual concerns pertaining to the ACRS can be resolved. We should not lose sight of the fact that 1) the May 13, 1999 SRM on the Commission's May 5, 1999 Maintenance Rule briefing directs that the draft regulatory guide be reviewed by the ACRS, 2) the Commission will review and approve the final guidance prior to its issuance by the staff, and 3) the final rule will not become effective until the final regulatory guidance is in place. I anticipate and encourage intense Commission scrutiny of the operational implications of such guidance. As expressed by Commissioner McGaffigan, if Commissioner Diaz's concerns of an unbounded process are realized, I will disapprove the final regulatory guide and delay implementation of the rule.

With regard to the OGC backfit analysis proposed in COMNJD-99-003, I believe the backfit analysis provided in the regulatory analysis of [SECY-99-133](#) is sufficient. It is also important to note that May 13<sup>th</sup> SRM directs CRGR review of the draft regulatory guide. Further, I anticipate that the Commission will closely scrutinize this aspect in its review of the final regulatory guidance.

I do not believe that another public meeting regarding the final rulemaking in [SECY-99-133](#) is warranted. The staff has already solicited stakeholder input throughout the rulemaking process and a public Commission meeting was recently held on May 5, 1999. Furthermore, the Commission has directed the staff to work with stakeholders in finalizing regulatory guidance through the use of public meetings and workshops, as appropriate. Having said that, given the importance of the final regulatory guidance, I believe that a public Commission briefing regarding this guidance should be conducted once it has been provided to the Commission for review and approval.

Finally, as discussed in [SECY-98-300](#), and my vote on [SECY-99-133](#), I believe the goal of the agency is to truly risk-inform Part 50, beginning with the scope of the Maintenance Rule. While I wish we were closer to accomplishing this goal, I believe that continued progress toward this goal may not be possible without taking the first step represented by the final rule in [SECY-99-133](#). I believe it is prudent to accept the limited success this final rule represents so that the staff can move forward on the critical next steps of developing regulatory guidance and ultimately risk-informing the scope of the Maintenance Rule.