May 14, 2004

COMMISSION VOTING RECORD

DECISION ITEM: SECY-04-0032

TITLE: PROGRAMMATIC INFORMATION NEEDED FOR
APPROVAL OF A COMBINED LICENSE WITHOUT
INSPECTIONS, TESTS, ANALYSES AND ACCEPTANCE
CRITERIA

The Commission (with all Commissioners agreeing) approved in part and disapproved in part the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 14, 2004.

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
OGC
EDO
PDR

VOTING SUMMARY - SECY-04-0032

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X	X			X	4/7/04
COMR. McGAFFIGAN	X	X			X	4/30/04
COMR. MERRIFIELD	X	X			X	4/29/04

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved in part and disapproved in part the staff's recommendation and provided additional comments. The Commission approved the staff's proposed categorization of programs into five areas with modified Categories C and D. Beyond Categorization, the Commission disapproved the remainder of the staff proposal including the staff recommendation concerning procedure-level information. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 14, 2004.

Commissioner Comments on SECY-04-0032

<u>Chairman Diaz</u>

In the SRM of 9/11/2002, the Commission approved a limited use of ITAAC . The staff proposal in SECY-04-0032 would require ITAAC for a much broader range of programs and greater detail on these programs than the Commission intends. The staff's extensive experience with the licensing, license amendment, and design certification processes have served us well for many years. That experience should enable the staff to make well informed decisions on the scope and level of detail of the information needed for licensing findings, consistent with the Commission's objective to resolve issues at the COL stage.

Therefore, I approve categorization of programs into five areas; however, Categories C and D need to be modified to clarify that ITAAC are to be used only to address those aspects of program implementation that are needed to make an appropriate licensing decision "... that there is reasonable assurance that the facility will be constructed and operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's regulations", per 10CFR52.97(a). The information needed to determine the acceptability of the program itself should be provided and reviewed at the COL stage.

Beyond Categorization, I disapprove the remainder of the staff proposal including the staff recommendation concerning procedure-level information. Sufficient justification demonstrating the need for this level of information was not provided by the staff.

The phrase, "... the program and its implementation are fully described in the application..." in the SRM of 9/11/02, may have been misinterpreted by the staff to encourage increased reliance on programmatic ITAACs beyond what I believe the Commission intends and the regulations require. In this context, "fully described" should be understood to mean that the program is clearly and sufficiently described in terms of the scope and level of detail to allow a reasonable assurance finding of acceptability. Required programs should always be describe at a functional level and at an increased level of detail where implementation choices could materially and negatively affect the program effectiveness and acceptability.

In any case, I believe that procedure-level information should not be necessary. The fact that, in the past, some procedures were reviewed and inspected as part of initial Part 50 licensing, does not constitute a need to obtain similar procedures for a licensing determination under Part 52. License amendments under 50.92 which are "guided by the [same] considerations which govern the issuance of initial licenses ..." do not routinely involve prior review or inspection at the procedure level. In addition, the approval of Design Acceptance Criteria (DAC) for standard designs (applicable to both the Design Certification stage and presumably the COL stage) appears be a another demonstration that licensing findings can be made without procedure-level information.

The staff should work with interested stakeholders to achieve specificity in the information that is necessary to make appropriate findings with respect to program adequacy at the COL stage. In a similar manner, the staff should establish the information on program implementation, if any, that is necessary to make the appropriate licensing findings.

<u>Commissioner McGaffigan</u>

I fully concur with the Chairman and Commissioner Merrifield in disapproving the staff's recommendation to require licensees to submit procedure-level information for certain programs to obviate the need for inspections, tests, analyses and acceptance criteria (ITAAC).

In my vote on SECY-02-0067, I stated that I was deeply skeptical about the need for programmatic ITAAC outside of emergency planning. Indeed, I stated that I would currently oppose any such programmatic ITAAC. In his vote on that paper, (then) Chairman Meserve presented a detailed analysis of the regulatory and legislative history of 10 CFR Part 52 and made a compelling case that ITAAC "were intended to be very narrow" and "should not sweep so broadly as the staff has proposed."

The staff was directed in the SRM on SECY-02-0067 to continue interacting with stakeholders and to propose to the Commission recommendations concerning programmatic ITAAC "in some very limited areas."

The current paper provides these staff recommendations, and while I clearly do not agree with one of its central recommendations, it has served the intended purpose by clearly highlighting why the staff continues to support a broad array of programmatic ITAAC in potentially nine different programs, far beyond the Commission's vision that they might be necessary in some very limited areas outside of emergency planning, if at all. The heart of the matter is the staff's interpretation of the words "fully describe" in the SRM on SECY-02-0067 to encompass a broad range of procedural detail that the industry has correctly pointed out could not possibly be available at the COL stage, nor, as my colleagues point out, is such information needed for approval of a COL without ITAAC.

I also fully concur with Commissioner Merrifield's point that there is no inconsistency between this unanimous Commission position and the inspection of procedure-level information about various programs prior to fuel loading. As I wrote in my vote on SECY-02-0067, our inspection "processes have worked well historically, work well today, and should work well for COL facilities approaching initial operations without being supplemented by any programmatic ITAAC." As former Chairman Meserve and I also pointed out in our previous votes, the burden of proof will be on the staff, if it must exercise its enforcement authority to assure program implementation is adequate, to demonstrate that such action is necessary.

Having reviewed attachments 1 and 2 in detail, I want to make clear that I believe the nine programs, for which the staff believes programmatic ITAAC are still required, will all fall in category C. On page 13 of attachment 2, for example, the staff states that "a fundamental assumption for the proposed rule (an ongoing Part 52 amendment rulemaking) was that ITAAC for training would be a condition of a COL." That's an assumption that I do not share, nor was such as assumption consistent with the Commission's previously stated expectations on programmatic ITAAC, let alone the SRM that will be drafted on this paper. The Commission's decision on this paper will therefore need to be reflected in the final Part 52 amended rule.

I recommend that the Commission should direct the staff to complete its work on the information necessary for the COL application for each of the programs for which the staff had previously assumed ITAACs would be required (fire protection, training, quality assurance during operation, fitness for duty, access authorization, radiation protection, physical security,

licensed operator, and reportability programs) by December 31, 2005, and present its results to the Commission. Several industry consortia have approached DOE for cost-sharing support for potential COL applications, with submittal as early as 2007. The sooner this critical matter is clarified the better for potential applicants expending potentially significant resources on draft COL applications.

Commissioner Merrifield

I disapprove the staff's recommendation to require licensees to submit procedure-level information for certain programs to obviate the need for inspections, tests, analyses and acceptance criteria (ITAAC). I agree with the Chairman that procedure-level information discussed by the staff should not be necessary for making a reasonable assurance finding of acceptability of an applicant's programs. As the paper does not address the requirements for contents of the final safety analysis report (FSAR), our decision on SECY-04-0032 should not be interpreted to decide the scope of information required by our regulations to be included in that document.

The staff should not interpret this vote as precluding continued inspection of procedure-level information prior to fuel loading. The staff should continue the practice of inspecting relevant licensee procedures and programs in a similar manner as was done in the past and consistent with applicable inspection programs. The staff should also continue to ensure, consistent with the inspection and enforcement processes, that licensees address pertinent issues prior to fuel loading. To allow the staff to complete the necessary inspections, procedure-level information that has typically not been docketed for staff review should continue to be made available to NRC inspectors with sufficient time to allow the inspectors to complete the necessary inspections and resolve any issues.

I approve the categorization of programs proposed by the staff subject to the changes identified in the Chairman's vote.