



SECRETARY

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

June 18, 2015

COMMISSION VOTING RECORD

DECISION ITEM: SECY-15-0046

TITLE: REQUEST FOR APPROVAL OF STAFF  
RECOMMENDATION TO AUTHORIZE INDIAN POINT  
NUCLEAR GENERATING; JAMES A. FITZPATRICK  
NUCLEAR POWER PLANT; NINE MILE POINT NUCLEAR  
STATION; AND R.E. GINNA NUCLEAR POWER PLANT TO  
USE SECTION 161A PREEMPTION AUTHORITY

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 18, 2015.

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 blue ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook  
Secretary of the Commission

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Burns  
Commissioner Svinicki  
Commissioner Ostendorff  
Commissioner Baran  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-15-0046

RECORDED VOTES

	<u>APRVD</u>	<u>DISAPRVD</u>	<u>ABSTAIN</u>	<u>NOT PARTICIP</u>	<u>COMMENTS</u>	<u>DATE</u>
CHRM. BURNS	X				X	5/22/15
COMR. SVINICKI	X					6/10/15
COMR. OSTENDORFF	X					4/07/15
COMR. BARAN	X				X	6/10/15

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary

**FROM:** Chairman Burns

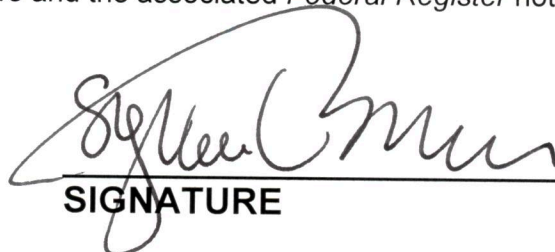
**SUBJECT:** SECY-15-0046: Request for Approval of Staff Recommendation to Authorize Indian Point Nuclear Generating; James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station; and R.E. Ginna Nuclear Power Plant to Use Section 161A Preemption Authority

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:** Below  X  Attached  X  None \_\_\_\_\_

I approve the authorization for use of Atomic Energy Act Section 161A preemption authority by Entergy at its Indian Point and James A. Fitzpatrick nuclear power plants and by Exelon at its Nine Mile Point and R. E. Ginna nuclear power plants. I authorize the Director of the Office of Nuclear Reactor Regulation to complete the required license amendment actions and issue the draft Final Confirmatory Orders included in SECY-15-0046, subject to the attached edit being made to each of the Orders. I approve finalization and issuance of the letter to the Governor of New York and staff coordination with SECY to support issuance of the letter concurrent with issuance of the final Confirmatory Orders and the associated *Federal Register* notice.

  
\_\_\_\_\_  
**SIGNATURE**

**22 May 2015**

\_\_\_\_\_  
**DATE**

Entered on "STARS" Yes  x  No \_\_\_\_\_

Point with the conditions specified therein. The facilities are located on the owner's site in Westchester County, New York.

II.

By application dated August 20, 2013 as supplemented by letters dated November 21, 2013, and May 13 and July 24, 2014, and citing letters dated April 27 and October 27, 2011, and January 4, 2012, Entergy requested, under Commission Order EA-13-092, that under the provisions of Section 161A of the Atomic Energy Act of 1954, as amended, the Commission permit the transfer, receipt, possession, transport, import, and use of certain firearms and large-capacity ammunition-feeding devices by security personnel who protect a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission. Section 161A confers on the Commission the authority to permit a licensee's security personnel to possess and use firearms, ammunition or devices, notwithstanding local, State, and certain Federal firearms laws (including regulations) that may prohibit such possession and use.

On review of the Entergy application for Commission authorization to use Section 161A preemption authority at Indian Point, the NRC staff has found the following:

- (1) Entergy's application complies with the standards and requirements of Section 161A and the Commission's rules and regulations set forth in 10 CFR Part 73, "Physical Protection of Plants and Materials";
- (2) There is reasonable assurance that the facilities will operate in conformance to the application; the provisions of the Atomic Energy Act of 1954, as amended; and the rules and regulations of the Commission;

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-15-0046: Request for Approval of Staff Recommendation to Authorize Indian Point Nuclear Generating; James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station; and R.E. Ginna Nuclear Power Plant to Use Section 161A Preemption Authority

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached \_\_\_\_\_ None XX

  
\_\_\_\_\_  
SIGNATURE

06/10 /15  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-15-0046: Request for Approval of Staff Recommendation to Authorize Indian Point Nuclear Generating; James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station; and R.E. Ginna Nuclear Power Plant to Use Section 161A Preemption Authority

Approved  X  Disapproved   Abstain

Not Participating

COMMENTS: Below   Attached   None  X

*W. Ostendorff*   
SIGNATURE

*4/7/15*   
DATE

Entered on "STARS" Yes   No

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

SUBJECT: SECY-15-0046: Request for Approval of Staff Recommendation to Authorize Indian Point Nuclear Generating; James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station; and R.E. Ginna Nuclear Power Plant to Use Section 161A Preemption Authority

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached XX None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

6/10/15  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes XX No \_\_\_\_\_

**Commissioner Baran's Comments on SECY-15-0046, "Request for Approval of Staff Recommendation to Authorize Indian Point Nuclear Generating; James A. Fitzpatrick Nuclear Power Plant; Nine Mile Point Nuclear Station; and R.E. Ginna Nuclear Power Plant to Use Section 161A Preemption Authority"**

Entergy Nuclear Operations and Exelon Generation Company have requested to use the preemption authority granted to the Commission under Section 161A of the Atomic Energy Act at Indian Point, Fitzpatrick, Nine Mile Point, and Ginna. The NRC staff found that the firearms, weapons, and devices identified by the licensees are currently in use at the four sites, are necessary for the protection of the facilities and associated special nuclear materials, and are subject to state law that would restrict the possession and use of such firearms, weapons, and devices at the plants. The staff has determined that the requests for preemption authority meet the requirements of the designation order,<sup>1</sup> Section 161A, and applicable NRC regulations and recommends that the Commission approve the requests.

Accordingly, I authorize the use of Section 161A preemption authority by Entergy at Indian Point and Fitzpatrick and by Exelon at Nine Mile Point and Ginna. I authorize the Director of the Office of Nuclear Reactor Regulation to complete the required license amendment actions and to issue the draft final confirmatory orders included in SECY-15-0046, subject to the attached edit being made to each of the orders. I approve issuance of the notification letter to the Governor of New York, subject to the attached edits, and staff coordination with SECY to support the issuance of the letter concurrent with the issuance of the final confirmatory orders and associated *Federal Register* notice.

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<sup>1</sup> The designation order issued by the staff on June 5, 2013, designated a limited class of facilities as eligible to apply for Commission authorization to use the authority of Section 161A. The reactors at Indian Point, Fitzpatrick, Nine Mile Point, and Ginna are all covered by the designation order.



Point with the conditions specified therein. The facilities are located on the owner's site in Westchester County, New York.

II.

By application dated August 20, 2013 as supplemented by letters dated November 21, 2013, and May 13 and July 24, 2014, and citing letters dated April 27 and October 27, 2011, and January 4, 2012, Entergy requested, under Commission Order EA-13-092, that under the provisions of Section 161A of the Atomic Energy Act of 1954, as amended, the Commission permit the transfer, receipt, possession, transport, import, and use of certain firearms and large-capacity ammunition-feeding devices by security personnel who protect a facility owned or operated by a licensee or certificate holder of the Commission that is designated by the Commission. Section 161A confers on the Commission the authority to permit a licensee's security personnel to possess and use firearms, ammunition or devices, notwithstanding local, State, and certain Federal firearms laws (including regulations) that may prohibit such possession and use.

On review of the Entergy application for Commission authorization to use Section 161A preemption authority at Indian Point, the NRC staff has found the following:

- (1) Entergy's application complies with the standards and requirements of Section 161A and the Commission's rules and regulations set forth in 10 CFR Part 73, "Physical Protection of Plants and Materials";
- (2) There is reasonable assurance that the facilities will operate in conformance to the application; the provisions of the Atomic Energy Act of 1954, as amended; and the rules and regulations of the Commission;

The Honorable Andrew M. Cuomo  
Governor of New York  
Albany, NY 12224

Dear Governor Cuomo:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to informing you ~~that of an action~~ the Commission is taking to granting a limited class of NRC-licensed facilities in the State of New York permission to use the preemption authority granted to the Commission under Section 161A of the Atomic Energy Act of 1954 (AEA), as amended ~~(42 United States Code § 2201a)~~. This authority permits the licensee to transfer, receive, possess, transport, import, and use certain weapons, ammunition and other devices notwithstanding ~~local~~, State, local, and certain Federal firearms laws ~~(including regulations)~~ that would otherwise prohibit such actions.

The NRC is taking this action to ensure the continued implementation of effective physical security strategies maintenance of the necessary security posture at designated NRC-licensed facilities in advance of a final rulemaking on this matter. A letter dated May 31, 2013, informed you of the Commission's intent to implement its authority under Section 161A ~~of the Atomic Energy Act of 1954, as amended~~, through the issuance of Orders in advance of a final rulemaking on this matter. Subsequently, on June 5, 2013, the Commission issued an order ~~(Enforcement Action 13-092) entitled, "Order Designating an Interim Class of NRC-Licensed Facilities that are Eligible to Apply to the Commission for Authorization to use the Authority Granted Under the Provisions of Section 161A of the Atomic Energy Act of 1954, as Amended."~~ A copy of this order is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML13121A459.

~~The order designating~~ Indian Point Nuclear Generating, James A. FitzPatrick Nuclear Power Plant, Nine Mile Point Nuclear Station, and R. E. Ginna Nuclear Power Plant, as eligible to apply to the Commission for authorization to use Section 161A preemption authority. In response to the order, the licensees of the above designated facilities submitted to the Commission a request that the NRC grant the authority to use Section 161A at these designated facilities. The Commission has reviewed these requests and is approving the use of Section 161A preemption authority at these facilities.

The NRC's granting of this authority will be documented in a confirmatory order issued separately to each of the above facilities ~~by the appropriate NRC licensing office. These confirmatory orders will be issued~~ in accordance with established NRC processes.

If you have any questions on this matter, please contact me or Christiana Lui, Director of the NRC's Division of Security Policy in the Office of Nuclear Security and Incident Response at (301) 287-3598.

Sincerely,

Stephen G. Burns

DRAFT