



SECRETARY

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

June 18, 2015

COMMISSION VOTING RECORD

DECISION ITEM: SECY-15-0048

TITLE: REQUEST FOR APPROVAL OF STAFF  
RECOMMENDATION TO AUTHORIZE BABCOCK AND  
WILCOX NUCLEAR OPERATIONS GROUP-LYNCHBURG  
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 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-15-0048

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-15-0048: Request for Approval of Staff Recommendation Babcock and Wilcox Nuclear Operations Group-Lynchburg 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 Babcock and Wilcox Nuclear Operations Group, Inc. (B&W NOG) at the B&W NOG-Lynchburg facility. I authorize the Director of the Office of Nuclear Material Safety and Safeguards to complete the required license amendment actions and issue the draft Final Confirmatory Order included in SECY-15-0048, subject to the attached edit. I approve finalization and issuance of the letter to the Governor of Virginia 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.



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**SIGNATURE**

**22 May 2015**

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**DATE**

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

Commission Order EA-13-092, under the provisions of Section 161A of the Atomic Energy Act of 1954, as amended. Section 161A confers on the Commission the authority to permit a licensee's security personnel to transfer, receive, possess, transport, import, and use certain firearms, ammunition or devices, notwithstanding local, State, and certain Federal firearms laws, including regulations, that may prohibit such conduct.

Upon review of the B&W NOG application for Commission authorization to use Section 161A at B&W NOG-L, the NRC staff has found the following:

- (1) The B&W NOG 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 facility will operate in conformance with the application; the provisions of the Atomic Energy Act of 1954, as amended; and the rules and regulations of the Commission;
- (3) There is reasonable assurance that the activities permitted by the Commission authorization to use Section 161A preemption authority is consistent with the protection of public health and safety, and that such activities will be conducted in compliance with the Commission's regulations and the requirements of this Confirmatory Order;
- (4) The issuance of Commission authorization to use Section 161A preemption authority will not be inimical to the common defense and security or to the health and safety of the public; and

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-15-0048: Request for Approval of Staff Recommendation Babcock and Wilcox Nuclear Operations Group-Lynchburg 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-15-0048: Request for Approval of Staff  
Recommendation Babcock and Wilcox Nuclear  
Operations Group-Lynchburg to Use Section 161A  
Preemption Authority

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

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

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

*Commissioner 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-15-0048: Request for Approval of Staff  
Recommendation Babcock and Wilcox Nuclear  
Operations Group-Lynchburg 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-15-0048, "Request for Approval of Staff Recommendation to Authorize Babcock and Wilcox Nuclear Operations Group-Lynchburg to Use Section 161A Preemption Authority"**

Babcock and Wilcox has requested to use the preemption authority granted to the Commission under Section 161A of the Atomic Energy Act. Security personnel at B&W already possess enhanced weapons, which is permitted under Federal law because each security guard has been deputized by the local Sheriff's department. B&W is seeking preemption authority to provide regulatory certainty for the use of its enhanced weapons and B&W has indicated to the staff that if it is granted preemption authority it intends to apply for enhanced weapons authority. Preemption authority is a necessary first step for B&W to potentially receive enhanced weapons authority from NRC. The NRC staff found that the firearms, weapons, and devices identified by B&W are currently in use at the B&W Category I fuel cycle facility in Lynchburg, Virginia, are necessary for the protection of the facility and associated special nuclear materials, and are subject to Federal law that would restrict the possession and use of such firearms, weapons, and devices at the plants, absent the continued deputation of the security force by the local Sheriff's department. The staff has determined that the request for preemption authority meets 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 B&W at the Category I fuel cycle facility in Lynchburg, Virginia. I authorize the Director of the Office of Nuclear Material Safety and Safeguards to complete the required license amendment actions and to issue the draft final confirmatory order included in SECY-15-0048, subject to the attached edit being made to the order. I approve issuance of the notification letter to the Governor of Virginia, 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 B&W Category 1 fuel cycle facility in Lynchburg, Virginia is covered by the designation order.



Commission Order EA-13-092, under the provisions of Section 161A of the Atomic Energy Act of 1954, as amended. Section 161A confers on the Commission the authority to permit a licensee's security personnel to transfer, receive, possess, transport, import, and use certain firearms, ammunition or devices, notwithstanding local, State, and certain Federal firearms laws, including regulations, that may prohibit such conduct.

Upon review of the B&W NOG application for Commission authorization to use Section 161A at B&W NOG-L, the NRC staff has found the following:

- (1) The B&W NOG 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 facility will operate in conformance with the application; the provisions of the Atomic Energy Act of 1954, as amended; and the rules and regulations of the Commission;
- (3) There is reasonable assurance that the activities permitted by the Commission authorization to use Section 161A preemption authority is consistent with the protection of public health and safety, and that such activities will be conducted in compliance with the Commission's regulations and the requirements of this Confirmatory Order;
- (4) The issuance of Commission authorization to use Section 161A preemption authority will not be inimical to the common defense and security or to the health and safety of the public; and

The Honorable Terry McAuliffe  
Governor of Virginia  
Richmond, Virginia 23219

Dear Governor McAuliffe:

On behalf of the U.S. Nuclear Regulatory Commission (~~Commission or~~ NRC), I am ~~writing to~~ informing you ~~that of an action~~ the Commission is ~~taking to~~ granting the Babcock and Wilcox Nuclear Operations Group-Lynchburg (B&W ~~NOG-L~~), an NRC-licensed facility located within the Commonwealth of Virginia, 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~~). That 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.

A letter dated May 31, 2013, informed your office of the Commission's intent to implement its authority under Section 161A ~~of the AEA~~, 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 under Accession No. ~~ML13121A459~~.

~~The Order~~ designat~~ing~~ed B&W ~~NOG-L~~ as eligible to apply to the Commission for authorization to use Section 161A preemption authority. In response to the Order, on April 24, 2014, B&W ~~NOG~~ submitted an application to the Commission requesting that it authorize the use of Section 161A preemption authority at the B&W ~~NOG-L~~ facility in Lynchburg, Virginia. The Commission has reviewed the B&W ~~NOG~~ application and approved its request to use Section 161A preemption authority at this facility.

The granted authority will be documented in a confirmatory order that will be issued by the Office of Nuclear Material Safety and Safeguards following the issuance of this letter.

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

Sincerely,

Stephen G. Burns

DRAFT