

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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AFFIRMATION SESSION

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PUBLIC MEETING

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Nuclear Regulatory Commission  
Commission Hearing Room  
11555 Rockville Pike  
Rockville, Maryland  
January 24, 2019

The Commission met in open session, pursuant to notice at 9:55 AM,  
Kristine L. Svinicki, Chairman, presiding.

COMMISSIONERS PRESENT:

KRISTINE L. SVINICKI, Chairman of the Commission

JEFF BARAN, Member of the Commission

STEPHEN G. BURNS, Member of the Commission

ANNIE CAPUTO, Member of the Commission

DAVID A. WRIGHT, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

ANNETTE VIETTI-COOK, Secretary of the Commission

## DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission on January 24, 2019, in the Commission's office at One White Flint North, Rockville, Maryland. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected or edited, and it may contain inaccuracies.

The transcript is intended solely for general information purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record and decision of the matters discussed. Expressions of opinion in the transcript do not necessarily reflect final determination or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of, or addressed to, any statement or argument contained herein, except as the Commission may authorize.

[9:57 AM]

## P R O C E E D I N G S

CHAIRMAN SVINICKI: Well good morning everyone before we begin this morning's meeting we will have one item for affirmation and these go fairly quick if you're not acquainted with them but Madam Secretary understand the Commission has one matter before it for affirmation this morning. Would you please step the Commission through the affirmation item.

ANNETTE VIETTI-COOK: This is on SECY-16-0142. The Commission is being asked to act on a final rule that amends Parts 50 and 52 of Title 10 of the *Code of Federal Regulations*. The final rule establishes regulatory requirements for nuclear power reactor applicants and licensees to mitigate beyond-design-basis events. The NRC is making generically applicable the requirements in NRC orders for mitigation of beyond-design-basis events and for reliable spent fuel pool instrumentation. This rule also addresses a number of petitions for rulemaking submitted to the NRC following the March 2011 Fukushima Dai-ichi event. This rule is applicable to power reactor licensees and power reactor license applicants. The Commission has voted to approve the publication and implementation of this final rule subject to the changes noted in the attachment. Additionally, the Commission has certified, under the Regulatory Flexibility Act that this rule will not have significant economic impact on a substantial number of small entities.

Would you please affirm your votes?

CHAIRMAN SVINICKI: Aye.

COMMISSIONER BARAN: Aye.

COMMISSIONER BURNS: Aye.

COMMISSIONER CAPUTO: Aye.

COMMISSIONER WRIGHT: Aye.

CHAIRMAN SVINICKI: Thank you Madam Secretary. And now I would invite any member of the Commission that has comments if anyone would like to proceed. Commissioner Baran.

COMMISSIONER BARAN: Chairman I think you know that I respect you and I respect Commissioner Caputo and Commission Wright, and I respect your views. But I strongly disagree with this policy decision. This rule was meant to be the capstone of the agency's response to the Fukushima accident in Japan. The draft final rule presented to the Commission by the NRC staff in December 2016 was the culmination of years of work to establish new requirements for the mitigation of beyond-design-basis events at nuclear power plants.

I strongly support requiring the updated standards and critical safety improvements contained in the draft final rule, which are necessary to provide adequate protection of public health and safety. But with the decision affirmed today, the majority of the Commission guts this key post-Fukushima safety rule.

In the aftermath of Fukushima, licensees and the NRC staff spent years using the latest science and modern methods to determine the present-day flooding and earthquake hazards for the nation's nuclear power plants. Now, the majority of the Commission has decided that licensees can ignore these reevaluated hazards with their strategies to mitigate beyond-design-basis events. Instead of requiring nuclear power plants to be prepared for the actual flooding and earthquake hazards that could occur at their sites, NRC will allow them to be prepared only for the old, outdated hazards typically calculated decades ago when the science of seismology and hydrology was far less advanced than it is today. That makes no sense.

The requirement for licensees to develop and maintain mitigating strategies for beyond-design-basis events based on the modern, reevaluated hazards was at the core of this rulemaking, and the majority of the Commission has voted to jettison it. Under the final rule

written by the majority, the FLEX equipment at nuclear power plants is not required to be reasonably protected from the up-to-date flooding and earthquake hazards. Other vital safety protections were also excised from the rule. Licensees will not be required to have sufficient staffing or communications capabilities to implement the mitigating strategies. And there will be no requirement for drills or exercises to test a licensees' ability to respond to these kinds of extreme events. Instead of establishing these commonsense and non-controversial safety standards, the majority of the Commission has opted to require only what was already required in the Commission's March 2012 mitigating strategies Order. That order was supposed to be a first step towards improved safety, not the last. But the majority's version of this rule does nothing to enhance the safety of nuclear power plants.

This outcome is a complete U-turn for NRC. The majority of the Commission has voted for a final rule that bears no resemblance to the proposed rule or to any of the public comments submitted to the agency in response to the proposed rule. Despite the fact that the Commission had repeatedly and unanimously found that updated safety standards were necessary to adequately protect the public, those safety standards have now been abruptly dropped from the final rule at the very end of the process, without any warning or notice to stakeholders.

This rule was always intended to be the agency's response to several key Near-Term Task Force recommendations. Instead of following through on these planned safety improvements, critical aspects of those recommendations to enhance mitigation and strengthen emergency preparedness are simply left unaddressed. As a result, the rule affirmed today fails to confront a fundamental lesson of the Fukushima accident – that nuclear power plants must be fully prepared for the natural hazards that could threaten their safe operation. The majority of the Commission has chosen to leave this important safety work for a future Commission. The unfortunate reality is that this hollow shell of a rule does nothing beyond what the Commission

already did more than almost 7 years ago. Nuclear power plants will be no safer with this rule than they are today. Thank you.

CHAIRMAN SVINICKI: Thank you very much, Commission Baran. Would anyone else like to make comments? Commissioner Burns.

COMMISSIONER BURNS: Thank you Chairman. I align myself with the comments expressed by Commissioner Baran. He and I both dissent from the shape of the final rule, but I want to recognize the extraordinary effort that has been applied by the NRC staff and the industry in response to the accident at Fukushima Dai-Ichi plant. And I believe that through the implementation of various safety enhancements plants are better prepared for extreme events today than they were in 2011. Nonetheless, the final rule in my view fall short of the coherent and comprehensive rule the Commission initially proposed and as modified in the vote that was taken today. It significantly softens what would have been the agency's most enduring action as a result of the lessons learned from the accident.

I am chiefly concerned with the position the majority has taken with respect to the reevaluated seismic and flooding hazard analyses performed by licensees. The final rule today turns away from the Commission's past position on this issue, and in so doing it has undone the Commission's carefully crafted strategy that would have dealt with this situation appropriately and effectively by requiring that mitigation strategies for all sites be able to address the reevaluated hazards.

Although rationalized on the basis of some procedure fly specking and blind adherence to the backfit rule, I think the outcome blanks the reality that the proposed rule was issued in accordance with proper procedure, did not receive adverse comment on those issues and is consistent with the objectives of the rule and the efforts made to address the lessons learned from Fukushima Daiichi, and it's for those reasons I dissent from the approach in the final rule on those issues. Thank you.

CHAIRMAN SVINICKI: Thank you Commissioner Burns. Because we are a five-member Commission it is now evident that although we all say “Aye” in an affirmation session, what we’re affirming in that moment is that the decision about to be issued is an accurate reflection of the deliberative and voting process that we’ve had, and so I stand on the other side of the question with Commissioners Caputo and Wright and I do appreciate, I don’t take as just an off-hand side comment Commissioner Baran’s respect for this process, respect for his colleagues which I know is shared by Commission Burns as well. And we are a very collegial Commission. You know I’ve remarked publicly— I think a number of times since I began service on this Commission— that the service I’ve had here has only fortified my view; Commissions and Boards are established by the Congress as a reflection of the nature of the complexity of the work that is done by certain Boards and Commissions and ours is no different.

This was a complex, substantive, matter. I don’t really have pointed disagreements with members of this Commission very often so I think what we are speaking about today is thankfully and somewhat rare from this Commission to have a truly, truly sharp departure so something that I think members of the public will note is that in addition to issuing the decision of the final form of the rule they will find that it is accompanied by statements from members of the Commission individually and jointly, depending on which they elected to do. And the views of the Commission is represented by the majority which is again myself, Commissioners Caputo, and Wright. I’ll just summarize but we note as our colleagues have just pointed out the final rule, amidst many provisions of the draft rule, and we did not arrive at that conclusion lightly. After carefully considering whether imposition of the underlying requirements would comply with our existing regulations, specifically the backfit rule, we supported in the final rule only those provisions for which such compliance was substantiated by the staff’s analysis. As a result of this in general, we concluded that the requirements already imposed by the Commission by the mitigating strategies order following the Fukushima Dai-ichi accident are sufficient. To the extent our colleagues have suggested that the Commissions previous

decisions that have been taken in the years since the Fukushima accident redefined the requirements needed for adequate protection, we found that suggestion inconsistent with the agencies long-standing practice and with applicable procedural and safety requirements. So our colleagues have expressed concerns this morning that the outcome ignores the actual flooding and earthquake hazards that our licensees have determined could occur at our nation's nuclear power plants. In the view of the Commission majority this is not the case. We are simply choosing to complete the Commission-directed site-specific processes that are already underway rather than enacting additional requirements on a generic basis.

So again this is a very collegial and respectful Commission. It's my personal observation working with each of you that every single member, both the continuing Commission and the new members, gave extreme care and thoughtful consideration of this record. It is why there has been substantial time taken on the matter certainly since the five-member Commission began. I know our new colleagues dove right into this thing and it was a massive decision record, so I thank you for your hard work and again I share the views expressed by Commissioner Burns but I think felt by all members of the Commission that the agency and the staff have done, in the years since 2011, tremendous, tremendous work. It has resulted in my view in very tangible safety improvements at every U.S. nuclear power plant in the country. As I've traveled there I can't help but be confronted with very physical evidence of the changes that have been made and I appreciate the acknowledgement of Commissioner Burns of that there has been a significant enhancement to safety to nuclear safety in the United States. If there are no further comments, then I would close the affirmation session and begin our Commission meeting. Thank you all and the affirmation session is concluded.



## CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Affirmation Session  
(PUBLIC MEETING)  
PLACE OF MEETING: Rockville, Maryland  
DATE OF MEETING: January 24, 2019

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company.

Transcriber: Wendy Moore

Reporter: (TAPE RECORDING)