



UNITED STATES
NUCLEAR REGULATORY COMMISSION BY: 8/10
WASHINGTON, D.C. 20555-0001

July 19, 2004

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commission Merrifield

FROM: *for* Luis A. Reyes
Executive Director for Operations

COMSECY-04-0047

Approved, with attached
comments.

SUBJECT: STATUS OF SECURITY-RELATED RULEMAKING

Nils J. Diaz 06/17/04

The purpose of this memorandum is to inform the Commission of the staff's intent to close two longstanding security-related action items based on the large number of associated activities that the staff has completed since September 11, 2001. Additionally, the staff has received further direction from the Commission to replace some of these longstanding action items with new actions. The first of these action items originated in 1998 with a requirement to develop a staff position paper on radiological sabotage, but subsequently evolved into 10 CFR Part 73 rulemaking [refer to Work Item Tracking System (WITS) 199800188]. In part because of further Commission direction on this subject since 2001, this item will be replaced by a new action requiring the staff to prepare a comprehensive rulemaking plan to modify physical protection requirements for power reactors in 10 CFR 73.55 encompassing the current mandates. The second action item stemmed from a 2002 requirement for the staff to seek assistance from Nuclear Regulatory Commission's (NRC's) Operational Safeguards Response Evaluation contractors and Department of Energy security force personnel to aid in the development of new security training requirements [refer to WITS 200200086]. The staff completed this action during the development of the security training Order issued in April 2003.

On June 4, 2001, the staff issued SECY-01-0101 which proposed rulemaking to enhance the physical protection requirements for power reactors prescribed in 10 CFR 73.55. The rule revision was designed to implement the recommendations of the Safeguards Performance Assessment Task Force and would have factored risk insights and performance bases for many of the physical protection requirements. The staff had originally planned to issue a final rule by the end of March 2004.

The Commission was considering the proposed 10 CFR 73.55 revision when the terrorist attacks occurred in September 2001. After the attacks, the staff initiated a comprehensive review of all NRC security-related regulatory requirements to assess their adequacy given the current threat environment. As the Commission is well aware, the NRC imposed several additional security-related requirements on nuclear power plant licensees that improved guard force numbers and capabilities, training, fitness-for-duty, and access authorization. By April 2003, the staff had imposed all of these new requirements by Orders, including revision of the design basis threat (DBT) for radiological sabotage.

CONTACT: Scott Morris, NSIR/DNS
301-415-7083

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COMMUNICATIONS SECTION

Chairman Diaz's Comments on COMSECY-04-0047

I approve the closure of the two security-related action items. I also agree with Commissioner McGaffigan's comment, that staff should bypass the rulemaking plan phase and submit a rulemaking schedule for 10 CFR 73.55 and Part 73 Appendix B to the Commission by October 15, 2004.



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REQUEST REPLY BY: 8/10

July 19, 2004

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Commission Merrifield

COMSECY-04-0047

FROM: *for* Luis A. Reyes
Executive Director for Operations

Approved subject to
the attached comments.

SUBJECT: STATUS OF SECURITY-RELATED RULEMAKING

[Signature]
Jeffrey S. Merrifield

8/19/04
Date

The purpose of this memorandum is to inform the Commission of the staff's intent to close two longstanding security-related action items based on the large number of associated activities that the staff has completed since September 11, 2001. Additionally, the staff has received further direction from the Commission to replace some of these longstanding action items with new actions. The first of these action items originated in 1998 with a requirement to develop a staff position paper on radiological sabotage, but subsequently evolved into 10 CFR Part 73 rulemaking [refer to Work Item Tracking System (WITS) 199800188]. In part because of further Commission direction on this subject since 2001, this item will be replaced by a new action requiring the staff to prepare a comprehensive rulemaking plan to modify physical protection requirements for power reactors in 10 CFR 73.55 encompassing the current mandates. The second action item stemmed from a 2002 requirement for the staff to seek assistance from Nuclear Regulatory Commission's (NRC's) Operational Safeguards Response Evaluation contractors and Department of Energy security force personnel to aid in the development of new security training requirements [refer to WITS 200200086]. The staff completed this action during the development of the security training Order issued in April 2003.

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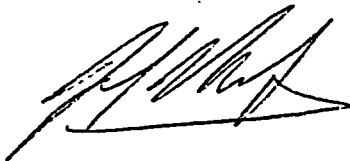
Commissioner Merrifield's Comments on COMSECY-04-0047

I approve the closure of the two security-related action items and agree with Commissioner McGaffigan's comment regarding the development of a rulemaking schedule for completing the 10 CFR 73.1 Design Basis Threat rulemaking(s), 10 CFR 73.55 and Appendix B to Part 73 for Commission review, but for the reasons below I believe the staff should provide a review schedule to the Commission by November 15, 2004.

First I want to commend the staff for their considerable effort throughout the past year on all of the security issues and most recently the past four months during the security plan reviews. The staff is guided by an aggressive review schedule, driven by the looming October 29, 2004 implementation date for the security Orders, and has been working diligently to complete this effort.

While I agree with Commissioner McGaffigan's comment regarding the development of a rulemaking schedule, I am concerned about the impact this may have on the security plan review effort. I understand that many of the same resources would also be called upon to develop the rulemaking schedule. The staff recently informed the Commission that they are slightly behind schedule with these reviews, but indicated that because there does not appear to be any significant issues remaining, they will still meet the schedule. Nonetheless, a further diversion of these resources to support the rulemaking schedule development should be limited. Thus, I believe an additional month should be provided to the staff for development of the rulemaking schedule.

In developing the schedule, the staff should engage the Commission Technical Assistants before the schedule is finalized to discuss the communications and other strategies for this rulemaking effort.

A handwritten signature in black ink, appearing to be "M. Merrifield", written in a cursive style.



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FROM: *for* Luis A. Reyes
Executive Director for Operations

SUBJECT: STATUS OF SECURITY-RELATED RULEMAKING

COMSECY-04-0047

*Approved subject to
attached comments
E. McInnes
8/13/04*

The purpose of this memorandum is to inform the Commission of the staff's intent to close two longstanding security-related action items based on the large number of associated activities that the staff has completed since September 11, 2001. Additionally, the staff has received further direction from the Commission to replace some of these longstanding action items with new actions. The first of these action items originated in 1998 with a requirement to develop a staff position paper on radiological sabotage, but subsequently evolved into 10 CFR Part 73 rulemaking [refer to Work Item Tracking System (WITS) 199800188]. In part because of further Commission direction on this subject since 2001, this item will be replaced by a new action requiring the staff to prepare a comprehensive rulemaking plan to modify physical protection requirements for power reactors in 10 CFR 73.55 encompassing the current mandates. The second action item stemmed from a 2002 requirement for the staff to seek assistance from Nuclear Regulatory Commission's (NRC's) Operational Safeguards Response Evaluation contractors and Department of Energy security force personnel to aid in the development of new security training requirements [refer to WITS 200200086]. The staff completed this action during the development of the security training Order issued in April 2003.

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The Commission was considering the proposed 10 CFR 73.55 revision when the terrorist attacks occurred in September 2001. After the attacks, the staff initiated a comprehensive review of all NRC security-related regulatory requirements to assess their adequacy given the current threat environment. As the Commission is well aware, the NRC imposed several additional security-related requirements on nuclear power plant licensees that improved guard force numbers and capabilities, training, fitness-for-duty, and access authorization. By April 2003, the staff had imposed all of these new requirements by Orders, including revision of the design basis threat (DBT) for radiological sabotage.

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Commissioner McGaffigan's Comments on COMSECY-04-0047

I strongly support the initiative to codify the requirements contained in the April 29, 2003 Security Orders as a matter of sound public policy and ensuring regulatory stability. For the same reasons underlying the Commission's recent guidance to the staff to accelerate the schedule for codifying the DBT Order¹, I believe the staff's proposal to codify the other requirements in various Orders (and possible additional requirements consistent with the recent Staff Requirements Memorandum (SRM) on SECY-04-0083, "Final Report on the Pilot Expanded Force-on-Force Exercise Program With Lessons Learned and Recommendations For Future Activities (U)," dated August 13, 2004) should proceed at a faster pace than proposed by the staff in COMSECY-04-0047 and in the staff's June 21 response to Question #3 from Chairman Diaz on the FY 2006 budget proposal.

In its response to the Chairman's budget question, the staff listed a March 2007 estimated completion date for the reactor DBT rulemaking, and a September 2007 estimated completion date for the 10 CFR 73.55 and Part 73 Appendix B rulemaking. The Commission's July 7 SRM urged the staff to do better on the schedule for the DBT rulemaking. I believe the staff can also shorten the schedule for codifying the 73.55 and Appendix B changes by eliminating the rulemaking plan, and proceeding directly to developing proposed rule language.

A typical rulemaking plan consists of three options: no rulemaking, a modest rulemaking, and an elaborate rulemaking. In this case, the Commission has clearly decided against the no rulemaking option. Beyond clarifying the existing set of Orders and implementing the guidance contained in the SRM for SECY-04-0083, the Commission is not really looking for this process to produce new, yet to be defined security enhancements for operating power reactors. If we have not thought of that requirement yet, it should not delay this rulemaking. So there really is only one viable option, and therefore no need for a rulemaking plan. Moreover, the staff should be well on the way to being able to develop the proposed rule package because supporting information was laid out at the time the reactor Orders were drafted (albeit often at the Safeguards Information level). Much of the training and access authorization Orders may be able to be discussed at the unclassified level by the time of this rulemaking, because the gaps those Orders were intended to close will have been long since closed.

While this rulemaking should be considered a priority, I do not believe that its development should adversely impact the staff's effort to complete the timely review of the 192 security plan submittals or the 10 CFR 73.1 rulemaking(s) to codify the radiological sabotage and theft and diversion DBT Orders, which are clearly higher priorities. But to the extent that resources are going to be expended between now and April 2005, they should be devoted to a proposed rule package, not a rulemaking plan. The staff, in conjunction with OGC, should provide the Commission with a schedule for completing the 73.1 DBT rulemaking(s) and the 10 CFR 73.55/Part 73 Appendix B rulemaking by October 15, 2004.

EMC

¹See the SRM on SECY-04-0099, "Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2), Order on the Board's Certified Questions on Admissibility of a Security Contention," dated July 7, 2004 (M040707).