

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Ostendorff
SUBJECT: SECY-14-0147: Cyber Security for Fuel Cycle
Facilities

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____

W. Ostendorff
SIGNATURE

1/21/16
DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Ostendorff's Comments on SECY-14-0147, "Cyber Security for Fuel Cycle Facilities"

Having served in positions associated with national security policy prior to joining the Commission in 2010, I have paid close attention to the NRC's cyber security regulatory framework. I have seen significant evolution of guidance in implementation of the NRC's 2009 cyber security rule for commercial nuclear power plants (10 CFR 73.54) and have observed elements of an NRC cyber security inspection. Along with fellow Commissioners, I have received frequent classified updates on cyber threats from both the NRC staff and inter-agency partners, including members of the intelligence community. I have also visited a number of NRC regulated fuel cycle facilities-which are "one of a kind" in many if not most attributes-and have discussed cyber threat vulnerabilities with licensees. In agreement with the staff, I have concluded that the Option 3, "No Action," alternative presented in SECY-14-0147 does not constitute an appropriate regulatory path for the Commission in the context of the fuel cycle facilities regulated by the NRC.

However, I disapprove the staff's recommended approach Option 1, "Issue a Security Order," for cyber security at fuel cycle facilities followed by rulemaking. Instead, I approve staff's alternative approach of Option 2, "Rulemaking," for the reasons stated below. I do agree that all actions undertaken by the licensee to address cyber security should be legally binding, which will be accomplished by rulemaking. Further, staff should identify this rulemaking as a high-priority rule.

At the core of Commission decision-making on this policy matter is whether orders imposing cybersecurity requirements on fuel cycle facilities are necessary or appropriate based on "adequate protection" concerns. It is clear that the Commission and not the staff makes determinations of what is required for "adequate protection" of our licensed facilities. Such determinations are made on a case by case basis and do not lend themselves to a formulaic approach. Furthermore, it is well understood that "adequate protection" does not mean either absolute protection or zero risk.

From the information I have reviewed regarding credible threat, vulnerabilities, and consequences, and informed by visits to many of these facilities (which include two separate visits to each of the Category I fuel cycle facilities), I believe the staff has not provided a sufficient basis for the Commission to make a finding that the fuel cycle facilities regulatory required functions are not currently protected in a manner sufficient to adequately protect public health and safety and the common defense and security. Hence, I disapprove of issuing orders as proposed by Option 1.

For the sake of clarity of communications with the staff and external stakeholders, I offer the following advantages of rulemaking under Option 2.

- 1) The NRC chose rulemaking, not orders, for cybersecurity protection of nuclear power plants. That rulemaking process has resulted in significant lessons learned that have led to changes in guidance issued for implementation of the cybersecurity rule. And, it should be noted that in spite of this evolution of guidance, there is now pending a petition for rulemaking to further modify the approach. As the fuel cycle facilities are in many cases "one of a kind," and certainly

lack the uniformity of commercial nuclear power plants, rulemaking is a far more appropriate regulatory step as it provides the engagement opportunities that orders do not.

2) The NRC's Principles of Good Regulation for reliability would suggest rulemaking is the appropriate vehicle as regulations should "not unjustifiably" be in a state of transition. In instances when the staff identifies a justifiable need to enhance our regulatory basis and the Commission does not make an adequate protection finding as a basis for an Order, the rulemaking process should provide the preferred method to address the needed regulatory change.

I commend the staff for their work and communications with the Commission. The next step is to proceed with rulemaking.