

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Ostendorff

SUBJECT: SECY-16-0056: Recommendations for a Process to
Conduct Inimicality Review for the Licensing of Utilization
Facilities

Approved XX Disapproved XX Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached XX None _____

Entered in STARS

Yes _____

No _____



Signature

5/31/16

Date

**Commissioner Ostendorff's Comments on SECY-16-0056,
"Recommendations for a Process to Conduct Inimicality Reviews
for the Licensing of Utilization Facilities"**

In SECY-16-0056, the staff presents the Commission with a formal process for reviewing certain licensing actions for foreign interests that could potentially be inimical to the common defense and security. While I am not concerned that our current process has been insufficient up to this point, as I stated in my vote on SECY-14-0089, a formalized process will enhance transparency, consistency, and reliability of our reviews. With that in mind, several principles guided my decisionmaking on the options presented by the staff. First, as always, is the NRC's independence in its regulatory actions. Second is the dual objective of openness and reliability, which calls for the most simple, straightforward, and predictable process necessary to fulfill our mission. And finally, is the principle of efficiency, which calls for regulatory processes that are commensurate with the degree of risk reduction they achieve. With those principles in mind, I approve the staff's options 1A, 2A, and 3B, as further detailed below, which results in a four-step review process.

Option 1A – The Staff Performs a Detailed Corporate Analysis.

To start, I agree with the staff's characterization of inimicality—it either exists or doesn't; it can't be mitigated. I approve an inimicality assessment that is clear and straightforward. It would begin with an initial review of new license applications for the existence of any foreign interests or a review of license amendment requests for any changes in foreign interests. The staff would then progress to a detailed corporate review if new or changed foreign interests are identified. This review would be done in conjunction with the staff's review for foreign ownership, control, or domination. While the staff should look to the Defense Security Service (DSS) for its best practices in conducting detailed corporate analyses, I do not approve outsourcing the NRC's independent review to DSS. Considering that these will likely be infrequent exercises, they do not warrant a formal arrangement with DSS. Furthermore, I am concerned with the amount of time and effort that the staff's recommendation would entail. As our principles of good regulation dictate, the level of detail analyzed here should be commensurate with the degree of risk reduction that can be achieved with the exercise. There are several layers of safety and security assurance between the corporate or financial structure of a facility and the facility itself. In this case, a corporate review would not require turning over every rock and exhausting every lead. I completely agree with the staff, however, that this step of the process should include an intelligence inquiry.

Option 2A (Modified) – The Staff Uses a Screening Process to Quickly Identify Foreign Entities That Are Not Inimical to the Common Defense and Security of the U.S.

The screening step proposed by the staff promotes a predictable, efficient process, which I fully support. When it comes to nuclear utilization facilities, however, I disagree with the staff's recommendation that we should view as essential the combination of a 123 Agreement and a Defense Treaty in order to screen out a foreign interest as not inimical to the common defense and security. A 123 Agreement by itself is a sufficient demonstration that the Commission would not find a country's interest in a utilization facility (limited as it would be by our foreign

ownership, control, and domination requirements) inimical. Therefore, the staff's list of presumptively not-inimical foreign interests should include all countries with which the United States has a 123 Agreement. I agree with the staff's recommendation to include an analogous list of presumptively inimical foreign interests based on bans issued by the Executive Branch. These lists will change infrequently enough that it will not be challenging to keep them up to date. I expect that these screenings, which are separated as steps 3 and 4 in SECY-16-0056, are actually part of one, quick step. If the foreign interests do not "screen out" in this step, I agree with the staff's proposal to then assess the foreign interests and adjudicate any derogatory information before making an inimicality determination.

Option 3B – The Staff Would Not Obtain Input from the Executive Branch to Support This Inimicality Review Process.

Finally, I do not approve the staff's recommendation to provide the Executive Branch with the staff's assessment of inimicality as the final step of the proposed process. The intelligence inquiry as part of Option 1A is sufficient and will be significantly more valuable to the NRC in making its independent determination. Certainly, if additional information is discovered during the staff's review that warrants further intelligence inquiry, the staff should make the inquiry. But as a matter of course, the Executive Branch should not be asked to bless the staff's determinations on license applications.

Conclusion

It is the NRC's responsibility to independently license utilization facilities, which includes making the determination that issuance of a license is not inimical to the common defense and security or public health and safety. With some relatively simple borrowing of best practices for corporate reviews from DSS and with outreach to the intelligence community, I am confident that we will enhance our ability to fulfill our statutory mission in this regard. And of course, this process will not be a substitute for the NRC's continuing oversight of compliance with our safety and security requirements.

If these three options are directed by the Commission, I see the staff's review process simplified from the six steps proposed in SECY-16-0056 to the following four steps:

1. The staff performs an initial review of an application for new or changed foreign interests.
2. If new or changed foreign interests are identified, the staff performs a detailed corporate analysis.
3. The staff uses a screening process to check foreign interests against lists of Federal bans and a list of countries with a 123 Agreement.
4. If the foreign interest is not on one of the lists in step 3, the staff performs an assessment of foreign entities or interests, adjudicates derogatory information, and makes an inimicality determination.