

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: COMSECY-14-0014 – CUMULATIVE EFFECTS OF  
REGULATION AND RISK PRIORITIZATION  
INITIATIVE: UPDATE ON RECENT ACTIVITIES AND  
RECOMMENDATIONS FOR PATH FORWARD

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

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

COMMENTS: Below \_\_\_ Attached XX None \_\_\_

  
\_\_\_\_\_  
SIGNATURE

06/9/14  
\_\_\_\_\_  
DATE

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

**Commissioner Svinicki's Comments on COMSECY-14-0014  
Cumulative Effects of Regulation and Risk Prioritization Initiative: Update on Recent  
Activities and Recommendations for the Path Forward**

Let me state at the outset that I support the efforts by the NRC staff to address the cumulative impact of the agency's regulatory actions. At the risk of sounding self-congratulatory, I was in fact an early champion of these efforts, before others joined the scene. This will be forgotten by most readers by the time they read to the bottom of the page, but I assure you that I am in earnest. I acknowledge and support the significant efforts that have been and are being made to convince ourselves that the timeframes set for implementation of regulatory actions are both well-informed and risk-informed. We do this to reduce the chance that artificially set deadlines will crowd out activities that provide a more significant enhancement of safety but have been assigned – for whatever reason – a longer deadline or lower priority.

For those who are outcome driven, let me also get right to the point. The staff requests approval for something rather modest here: to replace the current cumulative effects of regulation (CER) and risk prioritization initiative (RPI) taskings with one Commission notation vote paper that responds to both taskings and to establish a due date of March 31, 2015. I approve this request. To the extent, however, that the scope of the new merged paper reflects primarily the RPI activities and is silent regarding the ongoing CER activities, I disapprove that proposal. The merged tasking should be just that – both efforts coming together. I also disapprove the request for the staff to engage the Advisory Committee on Reactor Safeguards (ACRS) only after presenting the notation vote paper to the Commission. The staff should present to the ACRS prior to finalizing its approach to the paper.

The rest of what follows is homily for anyone interested and has little to nothing to do with the paper.

I confess to finding myself a bit befuddled at how far down the field the ball has been carried in response to what I believed to be the Commission's modest direction in COMGEA-12-0001/COMWDM-12-0002, to allow further development of a concept, resulting in a voting paper on that concept and any potential activities beyond it. In voting on the joint COMM, I was pretty direct about my concerns and wrote the following:

"I do not interpose any objection to my colleagues' desire to have the staff develop this concept further and propose a method for its implementation and, in that spirit, I collegially support and approve this direction to the staff. I have deep misgivings, however, about the concept described in the COMM and express the following cautions and perspectives.

"If a new regulatory requirement is to be promulgated, it is the NRC's obligation to justify instituting this requirement through a regulatory analysis that provides a regulatory basis and complies with backfit requirements, as applicable. It is also the NRC staff's responsibility to propose an implementation period, and the Commission's duty to review that proposal, and adjust it, if appropriate. The duty to justify requirements and set timetables for their implementation belongs to the regulator. This burden cannot be fundamentally shifted to the regulated community. Although requirements are set, in most cases, after opportunity for review and comment by the public under the Administrative Procedure Act, the final decision is the regulator's."

I continue to believe this.

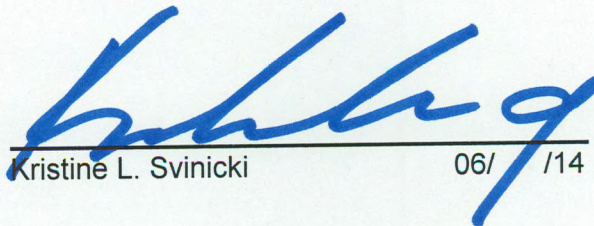
At bottom, my observation is no more complicated than this. If NRC is going to compel some action, it needs to have done its homework to justify that action. If NRC's regulatory requirements are so frivolous that their implementation can be deferred for long periods of time based on an analysis submitted back to us by a licensee, it is possible that the root of the issue is being overlooked as we hack at the branches.

Three of my colleagues, in their votes on this paper, appear to be far down the road in stipulating the design of the risk-prioritization process that is supposed to be proposed by the staff in the subsequent paper, which was to be based (I thought) on the demonstrations (yet to be conducted and for which I personally cannot find authorization in any previous Commission direction). In contrast, I am only a few strides out of the starting gate.

I note with relief that the staff acknowledges that implementation dates are currently set by the Commission as part of the rulemaking authority reserved to us under law and that the staff "will document the options considered and the staff's recommended approach for authorizing changes to schedules, if any, in a notation vote paper. Actual schedule changes would only be made after Commission endorsement of such an approach." This is no minor point.

I can be accused of many things, I suppose, one of which is being a bit of a traditionalist when it comes to such things as the law, regulation, agency process, precedent, scrutability, accountability, etc. It is a lonely feeling to stand in the way when everyone is waving the banner of progress and advancement. I will continue to stand on the sidelines and wish success to these efforts, the objective of which is important.

A contributor to Forbes Online, Eric Basu, in a piece entitled, "What World War Z Can Teach You About Critical Thinking" writes about the "Tenth Man" concept. He writes, "The Tenth Man strategy essentially says that if nine people agree on a particular course, the tenth person must, in the context of this strategy, take a contrary approach so that all alternatives can be considered. In business, this process can help break 'groupthink' and ensure that a business considers all options." It is intended to encourage diverse thinking. In this spirit, rather than feeling on the outside, I will cast myself as the Tenth Man (or, in this case, the Fifth) and maintain a posture of watchful waiting for the results of these efforts. Until that time, I reserve judgment.

  
Kristine L. Svinicki 06/ /14