

**AFFIRMATION ITEM**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

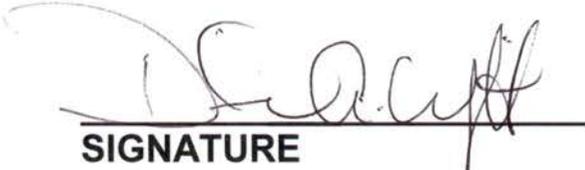
FROM: Commissioner Wright

SUBJECT: SECY-16-0142: DRAFT FINAL RULE—MITIGATION  
OF BEYOND-DESIGN-BASIS EVENTS (RIN 3150-AJ49)

Approved X Disapproved \_\_\_ Abstain \_\_\_ Not Participating \_\_\_

COMMENTS: Below \_\_\_ Attached X None \_\_\_

Entered in "STARS"  
Yes ✓ No \_\_\_

  
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SIGNATURE

11/8/18  
\_\_\_\_\_  
DATE

**Commissioner Wright's Comments on SECY-16-0142,**

**Draft Final Rule—Mitigation of Beyond-Design-Basis Events (RIN 3150-AJ49)**

I commend the staff on its remarkable effort to prepare this draft final rule package. This rule represents a tremendous accomplishment and stands as the culmination of significant efforts by the NRC to address the lessons learned from the March 2011 accident at Fukushima Dai-ichi. While these efforts predate my time at the NRC, I appreciate the countless hours and the resolute commitment by the staff and the industry to ensure the safety of our nation's nuclear fleet and the fleet's ability to withstand beyond-design-basis events. It is also important to acknowledge that significant safety enhancements have already been realized by the industry's implementation of the NRC's post-Fukushima requirements in response to the accident.

After careful review of the record, including the staff's supplements to the rule package, I approve the publication of the draft final rule and notice in the *Federal Register*, as edited by Chairman Svinicki. I also approve Chairman Svinicki's edits to Enclosure 4 to SECY-16-0142, "Backfitting and Issue Finality Assessment." The staff should make the necessary conforming changes in other rulemaking documents to reflect these modifications.

These changes to the draft final rule align the rule with the requirements of 10 CFR 50.109, "Backfitting," and 10 CFR 52.98, "Finality of combined licenses; information requests." Specifically, as edited, the final rule makes generically applicable the requirements in the Mitigation Strategies and Spent Fuel Pool Instrumentation Orders. These requirements, imposed by order or license conditions on current licensees, do not constitute backfitting.

I agree with Chairman Svinicki that the record does not provide sufficient basis for approval of many of the changes in requirements that go beyond making generically applicable the post-Fukushima orders for mitigation strategies and spent fuel pool instrumentation. These potential requirements include staffing, communications, integrated response capabilities, drills and exercises, and additional training requirements that were addressed in guidance during implementation of the orders. All power reactor licensees are in compliance with the orders, and the NRC has completed both its review of the licensees' compliance plans and its inspections at the majority of operating power reactor sites to verify licensees' compliance. The staff's reviews and inspections continue to indicate that the requirements imposed by the orders were sufficient to provide reasonable assurance of adequate protection of public health and safety. Additionally, I am not aware of any information from the staff's reviews or inspections or from the development of this rule that demonstrates that imposing the additional requirements in the final rule would provide a substantial increase in the overall protection of the public health and safety or the common defense and security. Therefore, I support continuing to address the treatment of staffing, communications, integrated response capabilities, drills and exercises, and additional training details in regulatory guidance, consistent with the approach for implementing the orders. This performance-based approach for compliance with the requirements of the rule would also continue to provide licensees with appropriate flexibility in addressing beyond-design-basis events.

The proposed rule included a requirement for operating power reactor licensees to address within their mitigation strategies the reevaluated seismic and flooding hazards stemming out of the request for information issued under 10 CFR 50.54(f). The revised version of the draft final rule that I support removes the generic imposition of this proposed requirement because it does not meet backfitting and issue finality requirements. I have heard from some colleagues and

staff that this approach could be viewed as a change in Commission direction. While I carefully reviewed the record, I cannot speak definitively to the intricacies of the Commission's prior direction as I was not on the Commission when SRM-COMSECY-14-0037 or SRM-SECY-15-0065 were issued. However, I can say definitively that the Commission has the authority to change direction and that adequate protection decisions are the sole province of the Commission. Further, the D.C. Circuit Court of Appeals and the NRC Solicitor have since provided clarifications on the backfit rule. These clarifications were incorporated into a backfit refresher training, offered across the agency, which I took in July of this year. It is through this lens that I cast my vote here, which I believe is consistent with current Commission policy direction on backfit and adequate protection. My vote also recognizes and accounts for the considerable efforts in response to the Fukushima accident by the agency and the industry. As the Commission has told Congress and the public, most of the safety benefits to operating plants from the post-Fukushima response were in place at the end of 2016. For ongoing reevaluated hazard assessments, the 10 CFR 50.54(f) process remains in place to ensure that the agency and the licensee will take the needed actions, if any, to ensure that the plant is able to withstand the effects of the reevaluated flooding and seismic hazards. These efforts utilize existing agency processes to determine whether an operating power reactor license should be modified, suspended, or revoked in light of the reevaluated hazard. In addition, staff and industry approaches for the 10 CFR 50.54(f) assessments have matured, increasing the realism of these assessments and enhancing their focus on the sites with the greatest opportunity for safety enhancements. Therefore, I am satisfied that this approach continues to ensure safety and that every nuclear power plant will adequately address the reevaluated hazard.

Finally, I would like to address the staff's proposals in the draft final rule to: (1) withdraw post-9/11 Order EA-06-137 and its associated license conditions and (2) provide all boiling water reactors (BWRs) with Mark I and Mark II containments an extra year to comply with the requirements of this rule. First, I join my colleagues in disapproving the withdrawal of Order EA-06-137 and its associated license conditions at this time. My approved edits remove the related provisions from this rule. The staff did not provide a compelling reason for this change from the proposed rule requirements and, as indicated by Chairman Svinicki in her vote, this action fits better within the Commission's consideration of SECY-18-0055, "Proposed Rule on Regulatory Improvements for Facilities Transitioning to Decommissioning."

Although the concept was not included in the proposed rule, the staff proposes to provide BWR licensees with Mark I and Mark II containments an additional year for compliance in order to address the cumulative effect of regulations on this group of licensees. I find the staff's proposal reasonable because, as compared to other operating power reactor licensees, this group of licensees received an additional order (Order EA-13-109) to install Severe Accident Capable Hardened Vents. In addition, the agency issued Order EA-13-109 a year later than the Mitigation Strategies and Spent Fuel Pool Instrumentation Orders that were issued to all power reactor licensees. These BWR licensees also rely on the vents as part of their mitigation strategies. Consequently, I agree with commenters on the proposed rule that this group of licensees, as compared to the rest of the fleet, will have less time to comply with this rule given their need to address additional regulatory requirements unless their compliance schedule is adjusted. That said, I am also satisfied with the staff's proposal because this group of licensees has already enhanced their ability to cope with beyond-design-basis events through compliance with the Mitigation Strategies and Spent Fuel Pool Instrumentation Orders as well as the installation of wet well vents (the first phase of Order EA-103-109).

I would like to close by reiterating my appreciation for the staff's hard work in preparing this rule and thoughtfully addressing the extensive stakeholder comments. I am proud of the agency's comprehensive response to the lessons learned from the Fukushima accident and believe the response has enhanced the safety of our nuclear plants.