

APPENDIX 4

REQUEST FOR BOARD ACTION BY A BOARD MEMBER

Requester: Jessie Roberson

Brief description of Requested Action: I am requesting that the Board approve posting of the attached redacted Closed Meeting Transcript (04/08/2016)

Attachments (init) jhr (included clean version of any proposed document or modified document)

Summarize any time sensitive considerations: None

Requestor signature Jessie R. 8/18/16 Click here to enter a date.

Executive secretary [Signature] 8/18/16 Click here to enter a date.

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICPATING	COMMENT	DATE
Joyce L. Connery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Jessie H. Roberson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Sean Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Daniel J. Santos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Bruce Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Final Disposition Summary

Executive Secretary signature _____ Click here to enter a date.

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: Request for Board Action by Vice Chairman Jessie H. Roberson, Requesting that the Board approve posting of the attached redacted Closed Meeting Transcript, April 8, 2016

Doc Control#2016-300-034

The Board, with Board Member(s) Joyce L. Connery, Jessie H. Roberson, Daniel J. Santos, Bruce Hamilton *approving*, Board Member(s) Sean Sullivan *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *recusing*, have voted to approve the above document on August 22, 2016.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Joyce L. Connery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	08/18/16
Jessie H. Roberson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	08/18/16
Sean Sullivan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	08/22/16
Daniel J. Santos	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	08/19/16
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	08/22/16

*Reason for Not Participating:

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Board Members.


Assistant Executive Secretary to the Board

Attachments:

1. Voting Summary
2. Board Member Vote Sheets

cc: Board Members
OGC
OGM Records Officer
OTD

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Joyce L. Connery

SUBJECT: Request for Board Action by Vice Chairman, Jessie H. Roberson; Requesting
that the Board approve posting of the attached redacted Closed Meeting
Transcript, April 8, 2016

Doc Control#2016-300-034

Approved

Disapproved

Abstain

Recusal - Not Participating

COMMENTS:

Below

Attached

None



Joyce L. Connery

Date

8/18/16

8/18/16

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: Request for Board Action by Vice Chairman, Jessie H. Roberson; Requesting
that the Board approve posting of the attached redacted Closed Meeting
Transcript, April 8, 2016

Doc Control#2016-300-034

~~Approved~~

Disapproved _____

Abstain _____

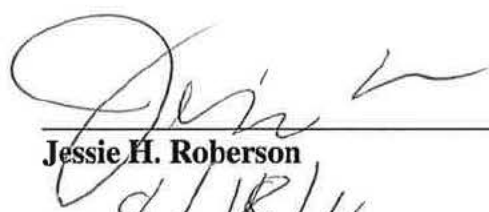
Recusal - Not Participating _____

COMMENTS:

Below _____

Attached _____

None ~~_____~~



Jessie H. Roberson
8/18/16

Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: Request for Board Action by Vice Chairman, Jessie H. Roberson; Requesting that the Board approve posting of the attached redacted Closed Meeting Transcript, April 8, 2016

Doc Control#2016-300-034

Approved _____ Disapproved X Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

The attached transcript contains several redactions that are not permitted by law. I therefore disapprove. The transcript should be posted without redactions.

The applicable law, the Government in the Sunshine Act, provides, “The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript ... except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c).”

Subsection (c) of the law lists permissible exemptions. Exemption 3 provides for withholding information specifically exempted by a statute other than the Government in the Sunshine Act. We have provided in 10 C.F.R. Part 1704.4 that information in a transcript may be withheld if it “involve(es) deliberations regarding recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.”

The information that has been redacted from the attached transcripts does not involve ‘deliberations regarding recommendations.’ The information is so general – it is not specific to any particular safety issue, nor does it suggest any particular recommendation – that to consider it as qualifying under Exemption 3 is akin to creating a loophole so large as to swallow the Sunshine Act. In other words, if the herein redacted material qualifies for withholding, then we can close any meeting, discuss any topic, and withhold any information that we please. I do not support such an approach. Accordingly, I disapprove.


Sean Sullivan

8/22/16
Date

Shelby Qualls

From: Daniel J. Santos
Sent: Friday, August 19, 2016 11:08 AM
To: Lotus Smith; Shelby Qualls
Subject: RE: Notational Vote: Doc#2016-300-034 Request for Board Action by Vice Chairman, Jessie H. Roberson; Requesting that the Board approve posting of the attached redacted Closed Meeting Transcript, April 8, 2016

Approved without comments.

From: Lotus Smith
Sent: Thursday, August 18, 2016 11:51 AM
To: Bruce Hamilton [REDACTED]; Daniel J. Santos [REDACTED]; Jessie Roberson [REDACTED]; Joyce Connery [REDACTED]; Sean Sullivan [REDACTED]
Cc: ExSec [REDACTED]
Subject: Notational Vote: Doc#2016-300-034 Request for Board Action by Vice Chairman, Jessie H. Roberson; Requesting that the Board approve posting of the attached redacted Closed Meeting Transcript, April 8, 2016

This email is an electronic record of Notational Vote. Voting ballot will follow shortly. Also, accepting electronic votes.

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET**

FROM: Members of the Board
SUBJECT: Request for Board Action by Vice Chairman, Jessie H. Roberson; Requesting that the Board approve posting of the attached redacted Closed Meeting Transcript, April 8, 2016

DOC# 2016-300-034

Approved _____
Disapproved _____
Abstain _____
Recusal – Not Participating _____

COMMENTS:

Below _____
Attached _____
None _____

Lotus Smith
Executive Secretary
Office of the Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Ave, NW, STE 700
Washington, DC 20004

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

SUBJECT: Request for Board Action by Vice Chairman, Jessie H. Roberson; Requesting
that the Board approve posting of the attached redacted Closed Meeting
Transcript, April 8, 2016

Doc Control#2016-300-034

Approved X Disapproved _____ Abstain _____

Recusal – Not Participating _____

COMMENTS: Below X Attached _____ None _____

The fact that I approve of posting this redacted Closed Meeting Transcript does not mean I support the redactions themselves. Indeed, I hold the opposite view. The Closed Meeting Transcript should be placed in the public domain in its unredacted form.

The only justification for redaction would be under Exemption 3 of the Government in the Sunshine Act (5 U.S.C. 552b), which allows redaction of information specifically exempted from disclosure by statute. The implicated statute is the Atomic Energy Act, which as interpreted by the court in *Natural Resources Defense Council, Inc. v. Defense Nuclear Facilities Safety Bd.*, 969 F.2d 1248, prohibits the public release of draft Recommendations prior to their transmittal to the Secretary of Energy or the President. That case upheld the Board's regulation at 10 C.F.R. § 1704.4(c)(2) specifying that Exemption 3 applied to "deliberations regarding recommendations."

The Closed Meeting Transcript does not identify any Board concern which would indicate the need for development of a draft Recommendation. Consequently, Exemption 3 does not apply, and none of the transcript should be withheld from the public.

By law, the public should have access to the unredacted transcript Closed Meeting Transcript. That fact, however, does not preclude posting a redacted subset of the transcript.

I therefore approve.


Bruce Hamilton

22 Aug 2016
Date