

AFFIRMATION OF BOARD VOTING RECORD

SUBJECT: FY2017 OGC Work Plan

Doc Control#2016-300-033

The Board, with Board Member(s) Bruce Hamilton *approving*, Board Member(s) Joyce L. Connery, Jessie H. Roberson, Sean Sullivan, Daniel J. Santos *disapproving*, Board Member(s) none *abstaining*, and Board Member(s) none *recusing*, have voted to disapprove the above document on November 14, 2016.

The votes were recorded as:

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIPATING*	COMMENT	DATE
Joyce L. Connery	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/08/16
Jessie H. Roberson	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/07/16
Sean Sullivan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	11/09/16
Daniel J. Santos	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/14/16
Bruce Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	11/07/16

*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: FY2017 OGC Work Plan

Doc Control#2016-300-033

Approved _____

Disapproved _____

Abstain _____

Recusal - Not Participating _____

COMMENTS:

Below _____

Attached _____

None _____



Joyce L. Connery

Date

November 8, 2016

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Jessie H. Roberson

SUBJECT: FY2017 OGC Work Plan

Doc Control#2016-300-033

Approved _____

Disapproved _____

Abstain _____


Recusal - Not Participating _____

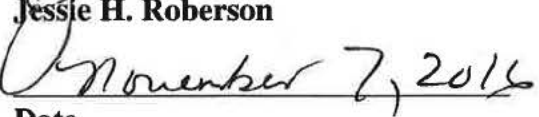
COMMENTS:

Below _____

Attached _____

None _____



Jessie H. Roberson


Date

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Sean Sullivan

SUBJECT: FY2017 OGC Work Plan

Doc Control#2016-300-033

Approved _____ **Disapproved** X **Abstain** _____

Recusal – Not Participating _____

COMMENTS: **Below** X **Attached** _____ **None** _____

The Office of the General Counsel work plan contains unnecessary work, including legal review of Department of Energy directives and contracts, while omitting important work such as a comprehensive review of Board jurisdiction over particular facilities. I therefore disapprove.

Further, I write to express disappointment over the fact that for the third consecutive year I have been unable to cause the agency to remove from 10 C.F.R. Part 1703 a requirement to have the General Counsel or his designee always be present at Board briefings. The Board imposed this requirement upon itself in 1991 when it first produced agency regulations on the Government in the Sunshine Act. There is no direction, nor has there ever been any, from either Congress or the President requiring or even suggesting such a measure. My research reveals that the Board in 1991 decided to implement this measure upon consideration of a 1988 recommendation of the American Bar Association (lawyers, suggesting additional government work for lawyers). There are scores of federal boards and commissions subject to the Government in the Sunshine Act, and to my knowledge only one other (the Chemical Safety Board) has adopted this measure. This self-imposed restriction is totally unnecessary.

Moreover, it is wasteful. This work plan estimates three man-hours per week of attorney time meeting the requirement. Based on my four years of experience on the Board, I believe that estimate to be below the historical average. Nevertheless, three man-hours per week translates into a full months' work for a government attorney simply to sit and listen as the Board is briefed. Over my four years, I can count on one hand the number of times an attorney felt compelled to warn that a developing discussion might be proceeding to the point of deliberations. On many more occasions I have witnessed a gathering of the Board with perhaps a dozen technical staff members delayed because no attorney was yet present. Five minutes of such delay for a dozen staff members equates to a full man-hour of lost staff time. Adding up all the unnecessary attorney time and technical staff delay time over twenty five years and I estimate this regulation has cost the taxpayers over half a million dollars.

Guarding against Sunshine Act violations is not a difficult task given that Board Members generally only speak at such briefings to inquire of the staff. The Board is generally accompanied at such briefings by one or more members of the Senior Executive Service responsible for the content of the briefing. Surely they could be trained to perform the minimal task now performed by an attorney.

The staffing plan that the Board will soon vote on says we need more attorneys. I disagree. We simply need to employ the ones we have more efficiently.



Sean Sullivan

11/9/16

Date

Shelby Qualls

From: Daniel J. Santos
Sent: Monday, November 14, 2016 4:23 PM
To: Shelby Qualls; Lotus Smith
Subject: Re: Notational Vote: Doc#2016-300-033, FY 2017 OGC Work Plan - BLUE FOLDER

Disapproved.

From: Shelby Qualls
Sent: Friday, November 4, 2016 2:26:14 PM
To: Bruce Hamilton; Daniel J. Santos; Jessie Roberson; Joyce Connery; Sean Sullivan
Cc: James Biggins; Katherine Herrera; ExSec
Subject: Notational Vote: Doc#2016-300-033, FY 2017 OGC Work Plan - BLUE FOLDER

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

All approved amendments have been incorporated in this final version. A RLSO version is also attached to clearly indicate changes made to the final document.

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

FROM: Members of the Board
SUBJECT: FY 2017 OGC Work Plan

DOC# 2016-300-033

Approved_____
Disapproved_____
Abstain_____
Recusal – Not Participating_____

COMMENTS:

Below_____
Attached_____
None_____

Shelby Qualls
Assistant Executive Secretary
Office of the Chairman

DEFENSE NUCLEAR FACILITIES SAFETY BOARD
NOTATIONAL VOTE RESPONSE SHEET

FROM: Bruce Hamilton

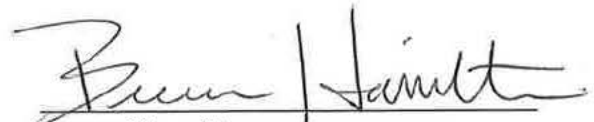
SUBJECT: FY2017 OGC Work Plan

Doc Control#2016-300-033

Approved **Disapproved** **Abstain**

Recusal - Not Participating

COMMENTS: **Below** **Attached** **None**


Bruce Hamilton

7 NOV 2016
Date