



NRC NEWS

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Prepared Remarks for

The Honorable Gregory B. Jaczko
Commissioner
U.S. Nuclear Regulatory Commission

at the
Regulatory Information Conference
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“Being a Decisive Regulator”

Good afternoon.

This is my fourth RIC and it has certainly been an interesting journey at the NRC. I introduced my guiding principles of openness, transparency, communication, and safety and security culture, as a new Commissioner back in 2005 and I have endeavored to stay true to them since. In 2006 I talked about the importance of public confidence, an issue that continues to require our focus. We only have to look at the reaction to the recent grid outage in Florida to understand how sensitive the public continues to be about nuclear power plants. Even though nuclear reactors were not involved in initiating the grid issues, and indeed their safety functions operated as designed, the nuclear units received an abundance of coverage in the media. Last year I spoke about how a strong focus on the American people will continue to make us a successful regulator. This year, I would like to build on those themes by taking some time to engage you in a broad discussion of regulatory policy.

Before I do that, I would like to take a moment to note the absence of Commissioner Edward McGaffigan. As you know, he passed away last Fall. As Chairman Klein mentioned this morning, Ed had a deep and abiding moral courage and that moved him to fight tenaciously for what he thought was true and right. His NRC family deeply misses him.

I would also like to welcome two other former Commissioners I have served with - Chairman Diaz and Commissioner Merrifield who are here today. It is good to see you both.

After three years of working at the NRC, I have concluded that the best way to ensure the protection of the public is to concentrate on being a decisive regulator. I will pause for a moment

to offer credit to colleagues associated with the National Association of Regulatory Utility Commissioners for some productive work on this topic. Those of us with national responsibilities do well to share ideas with - and learn from - our colleagues at the State and local level.

I often hear a discussion of the notion of regulatory stability but I do not believe that is achievable in the dynamic environment in which we regulate. Instead, I believe it is more important for the regulator to make decisions. Being decisive does not mean being impulsive but rather actively seeking information, and then making the best decision possible to ensure public health and safety.

This is rarely, if ever, easy – which is why there are no television shows about regulators... There is always a natural tendency to proceed with caution on very complicated issues and it is difficult to get to the point where we have all the information before us, but this does not mean we should not act. I believe decisiveness is one of the most important traits the Commission should strive to embody.

The NRC staff, stakeholders, and licensees can all help us. To be decisive, we must understand the public interest and as much of a complicated issue as possible so we can make a policy decision that ensures public health and safety. Staff should continue to provide decision papers that detail the arguments in favor of and against a specific course of action, and include options developed through interaction with a wide range of stakeholders.

I would like to turn to an area that has caused confusion because of a lack of decisiveness – providing exemptions from our regulations. While there may be certain limited unanticipated situations where exemptions are appropriate, I do not believe it is in the public's interest to grant licensees exemptions in place of compliance with our safety and security regulations. If it is simply impossible for licensees to meet the regulatory standard, then a policy decision needs to be made that either enforcement action should be taken or our regulations need to be rewritten to be more effective and protective of public health and safety. Simply put, we should not regulate through exemptions.

Fire protection regulations are a good example of the failure of the regulator to be decisive. The NRC's technical analyses tell us that the risk of fire is a significant contributor to safety concerns at nuclear plants and this is an issue that must be resolved more than three decades after the Brown's Ferry fire. Much of the existing fleet was not built with modern fire protection standards in mind. The result is that a lack of decisive action to address this situation has led to an unwieldy and confusing patchwork of requirements frequently resulting in exemptions and manual operator actions.

The fire protection discussion segues nicely into my second example of indecisiveness – the development of risk informed and voluntary rules. It almost sounds like an oxymoron doesn't it? A voluntary rule? In some instances, the agency has allowed licensees to decide which regulatory framework would apply to them.

Going back to the fire protection example, the agency has provided licensees the option of a voluntary alternative regulatory regime - 10 CFR 48(c), the National Fire Protection

Association (NFPA) 805 fire protection rule. I do believe that NFPA 805 is a good example of a beneficial performance-based regulation that can use risk insights to enhance safety. One benefit of the program is that NRC and licensees must undertake a more comprehensive evaluation of a plant's entire fire protection program. Any problems discovered through this process must be resolved.

Because current Commission policy is that NFPA 805 is only voluntary, however, the best we can do is encourage licensees to invest resources and adopt it. NFPA 805 is a more beneficial and straight forward regulatory approach, and I believe it should be mandatory for nuclear power plants in this country.

Indeed, in the area of fire protection, or any other safety or security issue, it is inefficient to maintain two separate regulatory infrastructures. We need to closely examine if instituting voluntary regulations is the appropriate approach. The decisive regulator works with the public to decide what regime is protective and requires that it be implemented. Licensees have a tendency to want to stick with deterministic regulations if risk informed efforts indicate a relative need to be more protective or expend more resources such as in the area of fire protection. On the other hand, licensees may want to risk-inform when methodology seems to indicate they can maintain or even reduce safety margins and expend fewer resources.

I also believe that we must be cautious when we employ modeling and probabilistic risk analysis to provide risk information. Being more decisive does not mean becoming more risk based. Analyzing probabilities is important but they are to inform our decision making, not define it. This is because modeling and sampling is still somewhat limited and subjective in areas. Yet we have a tendency to want to use probability as a surrogate for risk. An example of the challenge this presents is detailed in a recent Advisory Committee on Reactor Safeguards letter on the State of the Art Reactor Consequence Analyses. I think ACRS had it right when they said staff should look at the consequences and not focus on probabilities as a cut off for determining which accident sequences to analyze.

I would like to turn to an issue involving new reactors where the agency can be more decisive. The agency is considering a proposed rule to require new plants be designed to withstand the impact of an aircraft crash. I strongly believe that the key to the successful completion of this aircraft impact rulemaking will be twofold – changing the text to ensure the rule applies to any new plant built in this country, and that it includes clear criteria for how the NRC will determine whether a plant design can withstand an aircraft impact.

The current language with its vague notion of “practicability” would only cause confusion. Such an ill-defined ‘standard’ is difficult to implement and explain. It also sets unclear requirements for licensees and non-transparent expectations for the public. Aircraft protection for the new fleet is either something that is important to do or it is not, and the agency should act as a decisive regulator one way or the other.

One other area where we can be more decisive involves our allegations process. Discovering potential safety problems and violations in a timely fashion is the job of our safety inspectors, but it is also the job of the individual employees who work at nuclear power plants.

Without the trust and dedication of the thousands of licensee employees who see every part of every plant, the NRC's job would be much more difficult and require many more resources. That is why I believe the agency must continue to improve the process by which we handle allegations – to preserve that trust.

We must therefore be more decisive in taking responsibility for this program. We must change the way we talk about, think about, and process allegations we receive. We should not be viewed as simply 'referring' allegations of potential wrong doing to those accused of the misdeeds to do the investigating of themselves on their own.

It does make logical sense for the NRC to ask licensees for information but the responsibility for adjudicating claims must always clearly lay with the agency. This change calls for increasingly active involvement from start to finish in more of the allegations we receive to ensure that all of the proper steps are being taken to get to the bottom of a potential safety issue as expeditiously as possible. This will likely require additional resources, and I am dedicated to continuing to support additional resources for our allegations and our overall enforcement programs. I am glad the staff is moving forward with improvements and believe this will strengthen public confidence in the NRC.

Finally, I would like to turn for a moment to the issue of safety culture. Everyone acknowledges that safety culture is crucial but the NRC has never established a formal regulatory infrastructure for it. We have made strides in this area over the last several years - attributes of safety culture have been incorporated into the reactor oversight process and an order has been issued to a fuel cycle facility requiring a comprehensive safety culture assessment. Now that the reactor safety culture program is maturing, and as the staff focuses more attention on fuel cycle facilities, it will be necessary to be decisive and make sure that safety culture is expanded to include all NRC licensees, along with security personnel.

The Commission has just recently approved a proposal to direct the staff to develop a Policy Statement on Safety Culture. This statement will complement the 1996 policy statement on a safety conscious work environment and the 1989 policy statement on the safe conduct of nuclear power plant operations, and will provide a broad statement on the Commission's expectations for a healthy safety and security culture at all NRC licensees.

If we want to continue to improve on safety, we must look beyond just engineered controls. It is possible that bad decisions or a lack of a sufficient focus on safety, not technological failures, will ultimately cause problems in the future. Perhaps the greatest additional safety benefits are to be found in a renewed and deeper focus on the safety culture of NRC licensees.

This policy statement development process will include significant stakeholder involvement modeled on the Reactor Oversight Program safety culture effort, and I look forward to watching and supporting the staff's efforts. To be decisive, the NRC must use this vehicle to decide once and for all if this is fundamentally an area we should regulate. It would be difficult to regulate safety culture and I do not know if that is the right answer, but we know that a strong safety culture is important and we should resolve the issue of how it can be best ensured.

In conclusion, while I believe that we will never be able to achieve the concept of regulatory stability, we can promise to be decisive regulators. Decisiveness provides clear direction to the NRC staff, certainty to licensees, and transparency to the public. Ultimately, it will ensure public health and safety. I appreciate the opportunity to speak to you today, I hope you enjoy our conference this week, and I look forward to answering any questions you may have.