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Statement of Jeffrey S. Merrifield, Commissioner  
U.S. Nuclear Regulatory Commission

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## **Introduction**

Good Afternoon. Having served only four months as a newly minted Commissioner, it is a pleasure to be here today. This afternoon, I would like to share with you some of my initial impressions of the NRC and its staff, as well as some of the priorities I have developed since I joined the agency last October.

As many of you know, since coming to Washington in 1986, I have spent my time working on and off Capitol Hill on a variety of issues associated with energy and the environment. My first assignment on Capitol Hill was as a legislative assistant for former Senator Gordon J. Humphrey of New Hampshire where I worked on issues associated with Seabrook Station nuclear power plant; later I worked as an environmental attorney in the D.C.-based law firm of McKenna and Cuneo; and, most recently, I was the counsel and staff director of the Senate Superfund Subcommittee.

As you can imagine, joining the NRC was quite a change for me in many ways, but never did I anticipate the level of change that I have been part of since I have joined the Agency. Looking back at my time in Washington, I cannot recollect a federal agency that has made such a significant commitment to reinvention as the NRC has undertaken over the last year. From the tasking memo to the new oversight and enforcement process, the NRC is aggressively pursuing a new, and I believe, more safety significant way of doing business.

Yet, at the same time the Agency is remaking its regulations and its way of doing business, it is also remaking itself. With input from outside consultants and tremendous effort on the part of our senior managers, we have made significant improvements in the management of the Agency. These changes have not only resulted in a reduction in the size of our workforce and in the number of management positions, but have also allowed us to submit a budget to OMB that is virtually unchanged from last year -- despite having given our staff a much deserved raise.

I know that there are some who will call for us to make further reductions in our staff -- indeed some who will call for dramatic cuts. While I am supportive of having the NRC evolve toward a smaller size as we move forward, I believe that given the level of activities that are currently underway, drastic cuts in the size of the Agency, or its budget, would be shortsighted and counterproductive, and could ultimately lead to regulatory failure.

In discussing the status of the NRC, I would be remiss if I did not share my observations of the NRC staff. Having worked on the Senate Environment Committee, I have always been well aware of the high caliber of individuals working at the NRC. Yet, until I had the opportunity to interview more than 50 NRC employees to fill my own staff, I did not fully appreciate the consistently high quality of the individuals at the NRC. During the last few days, you have heard many individuals talking about the progress we have made at the agency. While it would be easy to give the Commissioners the credit for those changes, I believe that we would not have been able to achieve these goals without the full commitment of our dedicated staff.

## **Priorities**

At this point, I would like to share with you some of the priorities that I have developed since the time I have joined the Commission. While I will briefly discuss each, I would like to focus on the risk-informed reactor oversight process and the challenges that remain with this effort.

### **First Priority -- LICENSE RENEWAL**

- As you know, the Commission has established a self-imposed deadline to complete the review of the Calvert Cliffs and Oconee license renewal applications within a 30-36 month time period.
- While we have some significant hurdles to grapple with in the coming 3-4 months -- most notably the Draft Environmental Statements and Safety Evaluation Reports -- it would appear that today, we should be able to complete the entire review process for Calvert Cliffs within a 25-month time frame.
- Regarding Oconee, we are on track to meet our established milestones. The Oconee license renewal application is currently the subject of an adjudicatory proceeding. Even if there is an adjudicatory hearing for Oconee, the Commission has issued a case-specific Order in which it set milestones and gave specific guidance on the scope of the proceeding to keep it properly focused. Therefore, I am confident that we will be successful in completing the review process within the established time frame.
- Although it is still early in the review of these applications, it is my impression that the staff is doing a commendable job and “working the plan” as the Chairman likes to say. I think the growing interest in license renewal within the industry is a recognition of a growing confidence that the NRC can “get the job done.”
- As we learn from going through the process with these two applications, it is incumbent upon the NRC to take stock of the lessons we have learned so that future applications are reviewed on an even more expedited schedule.
- Do I think we will ever achieve Corbin McNeil’s goal of a 6-month review cycle? No, I do not. However, I do believe that a 18-24 month time line is a realistic goal for future applications that do not involve an adjudicatory hearing. Even where there is an adjudicatory hearing, I believe that there are process efficiencies that may shorten the time it takes us to review an application.

- Having said that, let me reiterate that the Commission has tasked the staff with maintaining a disciplined license renewal process. They have not been tasked with making the process easy. The NRC will review applications in a thorough and comprehensive manner as mandated by our mission to protect public health, safety and the environment. Thus, it is incumbent upon licensees to submit complete and technically sound applications.
- As I have told staff and a number of industry representative who have visited me recently, if we are doing our job correctly, our reviews should be thorough, complete and prompt. In the end, a utility's decision whether it should relicense a plant or not, should not be based on an uncertainty with the NRC's process but should be merely based on the issue of economics.

### **Second Priority -- LICENSE TRANSFERS**

- As the electric industry proceeds down the road toward deregulation, license transfers will become a way of life. Indeed, I believe that over the next few months, we are likely to see a dramatic shift in the ownership of nuclear generating facilities across the nation.
- In order to play its appropriate part in this process, the Commission has recently promulgated regulations establishing an informal Subpart M hearing process and is currently addressing the issues of foreign ownership and technical qualifications through the development of Standard Review Plans.
- As I stated in my comments regarding license renewal, I believe that it is imperative that the NRC has a license transfer process that is predictable, disciplined and prompt.
- I believe that the staff has done a good job in the review of the TMI-1 license transfer, and I know that the staff intends to develop a lessons learned document associated that effort. This paper is scheduled to be issued in June. Hopefully, we can incorporate these lessons into our review process so that future applications are reviewed in an even more effective manner.

### **Third Priority - HIGH LEVEL WASTE**

- I will preface my thoughts on High Level Waste by saying the NRC stands ready to fulfill its role associated with the repository. I want to briefly discuss two related issues I feel strongly about: 1) dry cask storage and 2) NRC-EPA interface in the development of radiation standards.
- The Commission recognizes the scheduling pressures associated with filling spent fuel pools and the need for certified casks. As it is clear from the Tasking Memo, the Commission takes cask certification very seriously and is committed to ensuring that technically sound casks are certified in a prompt and thorough manner.
- As you may know, there is a continuing debate between the NRC and our sister agency the EPA regarding the appropriate standards for protection of human health at Yucca Mountain. Although Congress gave EPA the responsibility for setting these standards, I and the other Commissioners were convinced that we needed to share our view on this matter as well, and recently we testified before the House Commerce Committee.

- While the NRC believes that a 25 millirem all pathways standard is appropriate, the EPA disagrees stating that it should be 15 millirem with a separate standard for groundwater. Although logical people can disagree on these issues, the EPA is the only regulatory agency in the WORLD, that believes there should be a separate groundwater standard. I think that fact speaks volumes.

#### **Fourth Priority -- RISK-INFORMED REACTOR OVERSIGHT PROCESS**

- I want to spend my remaining time this afternoon talking about the NRC's efforts to develop a risk-informed reactor oversight process.
- I am sure you are all familiar with the new oversight process that was included in SECY-99-007, so I'm not going to take the time to recap the content of that paper. In my opinion, the process that we used to put together this paper -- particularly the use of an active dialogue with stakeholders -- was a model for how we should do business in the future.
- I believe the staff has done an effective job of integrating objective performance indicators with risk-informed baseline inspections to form a thorough and more-disciplined oversight process. However, SECY-99-007 is really just the beginning. As they say, "the devil is in the details." To me, the real challenge we face is building the infrastructure necessary to consistently and effectively implement the new process. Undeniably, the pilot plant process will be critical to this success.

#### **Concerns with Risk-Informed Reactor Oversight Process**

- Rather than simply tout what I believe are the advantages of this proposal, I would like to outline for you some of the areas where I have lingering concerns and where I believe we will need to have further work:

##### **1. Risk Significant**

My first concern is that I believe there are significant weaknesses in the characterization of performance indicators. Let me use an example. There was a performance indicator titled "risk significant scrams per three years" for which a plant could have 20 such "risk significant" events before the NRC would view such performance as unacceptable.

How can the NRC or industry defend that indicator to our stakeholders? Let me assure you, if there is **ONE** risk significant scram, the NRC will respond. The bottom line is this: if it is not risk significant, don't call it risk significant. How we communicate about these events and characterize these indicators will be critical to the success of this reform effort.

##### **2. Pseudo Watch List**

My second concern was that as part of the new assessment process, the EDO would give the Commission an annual briefing to convey the assessment results for all plants, with a focus on plants that require approval of agency-level actions. I am very concerned that if the staff focuses on plants requiring agency-level actions, this will evolve into a defacto Watch List.

I do not believe that a Watch List has a place in the new oversight process. The performance indicators and baseline inspection results should speak for themselves, and our engagement with the utilities should be done in a disciplined and predictable manner.

### **3. NRC Manual Chapter 0350**

My third concern is that in the paper staff indicated that, "When a plant is in an extended shutdown to address significant performance concerns, the plant will be removed from the normal performance assessment process and NRC Manual Chapter 0350 will be used to monitor plant activities." In my opinion, the 0350 process, while being a good checklist, has contributed to what I will call "regulatory creep."

There have been instances in the past where a plant has shut down for an extended period to address particular performance concerns, the staff has invoked the 0350 process, and the scope of regulatory scrutiny expanded well beyond the areas that were of concern. Rather than having a separate 0350 process for plants in an extended shutdown, I believe our new assessment process must be disciplined and capable of addressing the entire spectrum of plant performance.

### **4. Event Follow-up**

My final concern is associated with event follow-up. The paper indicated that the decision to follow-up on non routine events would be made on a case-by-case basis by NRC regional management. I believe that our Regional Administrators are extremely capable individuals with a wealth of regulatory experience; and thus, should be empowered to respond to events as they deem appropriate.

Nonetheless, I believe that the NRC must ensure that the regions respond to events in a consistent and disciplined manner. We cannot afford to have one region respond to an event with an Augmented Inspection Team and a Confirmatory Action Letter, while another region responds to a similar event merely with Resident Inspector follow-up. I believe the development of the new oversight process brings with it great opportunity for improving the consistency of our response to events.

## **Communication & Stakeholder Confidence**

I would like to complete my talk today with my thoughts about what I see are some ongoing issues that will need to be addressed by the Commission as it pursues this opportunity to remake the way it is doing business. This involves communication and stakeholder confidence.

Regarding the issue of communications, I go back to the Chairman's comments regarding "Managing the Message." I believe it is important for the public to recognize that we are not reinventing the reactor oversight process for the purpose of reducing regulatory burden, nor are we doing so merely because Congress has increased its scrutiny of the NRC.

We are reinventing the way we regulate so that our processes are risk-informed and so we can utilize our resources more effectively by focusing our inspection efforts on the most-risk significant aspects of the plant. As we reinvent this process, we want to make sure that the licensees are focusing on the risk significant issues at the plants, and are not distracted by non-risk significant regulatory matters.

In my opinion this new oversight process in no way constitutes a reduction in our commitment to safety. In fact, I think the new process should be viewed as an even greater commitment to safety.

Having said that, I have recently traveled to several plants around the country, I have discussed these issues with NRC regional staff, and I have met with members of the public. I continue to hear concerns that the new oversight process amounts to a relaxation of NRC requirements.

Let me first address my impressions from discussing this matter with NRC staff. Clearly, at the senior and middle management level, I am confident there is a clear understanding of why change is necessary. Even at the staff level, I feel confident that many have the same understanding. However, we have a very difficult challenge ahead of us getting buy-in throughout the agency.

We have inspectors that have been part of the current process for years, are comfortable with it, and believe it has been effective at maintaining plant safety. They are not resistant to change, but they still do not understand why we are making these changes. Convincing them that the changes are prudent will not be easy. We have to convince them that we are not saying the current process is ineffective, what we are saying is that the new process will enhance safety even further. Our mission as Commissioners, both within and outside the agency, is to overcome the cynicism that suggests these changes amount to caving in to the industry and Congressional pressure.

At our most recent stakeholder meeting I think it was Earl Nye who said that the nuclear industry needs a strong, credible regulator. The litmus test for this new oversight process will be demonstrating to the public that they should continue to have confidence in the NRC's ability to effectively protect public health, safety, and the environment.

To accomplish this, we must convince the public, and ultimately Congress, that this new oversight process will allow the NRC and licensees to focus on the most risk-significant aspects of plant operation, and in no way reflects less of a commitment to safety. In fact, as I have said previously, I believe it reflects a greater commitment to safety.

Yet the NRC is not alone in this effort. For us to succeed, utilities must continue to operate their plants as safely and effectively as possible. You must continue to share insights and best practices even as the electric industry enters an era of increased competition. As history has proven, this industry is judged by its weakest link. Significant events at one plant will ultimately have an effect at each and every one of your plants. You must ensure that market pressures do not lead to budget cuts that adversely affect plant performance. This would simply be false economics.

I believe that it is critical that utilities communicate to their stakeholders and staff why the NRC is reinventing its reactor oversight process. It has little to do with regulatory burden and a lot more to do with enhancing safety through a risk-informed approach.

While I am willing to give my commitment that I will do all that I can to ensure that the Commission will hold up its part of the new reactor oversight process, I hope that I can count on the commitment of NEI and its members to hold up their part as well.

Thank you very much. I would be pleased to use my remaining time this afternoon to answer any questions you may have.