

February 28, 2001

The Vice President
United States Senate
Washington, D.C. 20510

Dear Mr. Vice President:

I understand that Congress and the Administration are considering legislation or other initiatives to address energy policy issues. I am writing on behalf of the Nuclear Regulatory Commission (NRC) to bring some matters to your attention in this context.

The NRC's focus is on ensuring the adequate protection of public health and safety, the common defense and security, and the environment in the application of nuclear technology for civilian use. The NRC does not have a promotional role and thus we seek only to ensure the safe application of nuclear technology if society elects to pursue the nuclear option. We recognize, however, that our regulatory system should not establish inappropriate impediments to the application of nuclear technology.

Streamline the Legal Framework

We believe that there are legislative opportunities to reduce unnecessary barriers to the consideration of nuclear power. Some of the changes would eliminate artificial restrictions, while others would reduce the uncertainty in the licensing process. These changes would both increase flexibility in decision-making and maintain safety. All of the matters, with the exception perhaps of the extension of the Price-Anderson Act, would not have any immediate impact on electrical supply. Nonetheless, such changes could facilitate consideration of nuclear power by the private sector without any compromise to public health and safety or the environment. These actions include the following.

- Extend the Price-Anderson Act. The Price-Anderson Act, which expires on August 1, 2002, establishes a framework that provides assurance that adequate funds are available in the event of a nuclear accident and establishes the framework for consideration of nuclear claims. Without the framework provided by the Act, private-sector participation in nuclear power would be discouraged by risks of large liabilities.
- Solidify the NRC Role to Protect Public Health and Safety. The NRC has demonstrated that it has the expertise to regulate radioactive materials in order to protect the public health and safety. Congress should consider amending Reorganization Plan No. 3 of 1970 so as to provide that the NRC will have sole responsibility to establish all generally applicable standards related to Atomic Energy Act (AEA) materials, thereby avoiding dual regulation of such matters by other agencies. At the least, the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA) could be amended to provide that

standards issued by the Commission govern the cleanup of AEA materials. And the Nuclear Waste Policy Act of 1982 could be amended to provide the NRC with the sole authority to establish standards for high-level radioactive waste disposal. These actions would serve to provide full protection of public health and safety, while avoiding needless and duplicative regulatory burden.

- Eliminate NRC Antitrust Review. With the growth of Federal antitrust law since the passage of the AEA, the NRC's antitrust reviews have come to duplicate the reviews of other agencies. The requirement for Commission review of such matters, which is distant from the Commission's central expertise, should be eliminated.
- Eliminate the Ban on Foreign Ownership. Commercial use of nuclear power is common in many countries and the underlying technology is widely known. Given the international nature of the entities that are involved in electrical generation, the ban on foreign ownership is increasingly anachronistic. The Commission has authority to bar foreign ownership that would be inimical to the common defense and security, and thus an outright ban on all foreign ownership is unnecessary.
- Correct the 1992 Energy Policy Act (EPACT). EPACT should be amended to allow full 40-year operating licensees for those using the streamlined combined license process for advanced reactors. EPACT inadvertently limited a combined construction and operating license to a 40-year term, which means the operating term is 40 years minus the construction period.
- Limit Scope of NEPA Review for New Power Plants. NEPA requires the review of matters that are distant from NRC's mission. For example, the evaluation of the need for power and of the alternative means of generating such power are required by NEPA, but are fundamentally market decisions in deregulated markets and are the business of state public utility commissions in regulated markets. In neither case does the NRC possess the information and experience of the public utility commissions or the markets and accordingly, this NRC review should be eliminated. Similarly, the NRC's review of an application for a new plant at an already licensed site should consider only those matters that must be considered to provide reasonable assurance that the site is acceptable for the additional incremental impact of the new unit. NRC's review under NEPA should be limited so that the NRC spends resources and devotes time only to the consideration of matters related to the Commission's public health and safety mission.

New Construction

Over the long term there will be a substantial and growing national need for new electrical generating capacity that could include nuclear power and new nuclear plant construction. The Commission, working with the industry and other stakeholders, has put in place a more efficient licensing procedure, which could be utilized in the event that society should decide to construct new nuclear power plants. This licensing process provides for

advance approval for standardized plant designs and for potential nuclear sites. The NRC has already certified three designs using this process. We are engaged in interactions with our stakeholders to determine how the regulatory process might be further improved.

Serious industry interest in new construction in the U.S. has only recently emerged. In addition to the three already certified advanced reactor designs, there are new nuclear power plant technologies, which some believe can provide enhanced safety, improved efficiency, lower costs, as well as other benefits. To ensure that the NRC is prepared to evaluate any applications to introduce these advanced nuclear reactors, the NRC is assessing its regulatory infrastructure to identify where enhancements to the regulations, if any, are necessary. Particular emphasis is being placed on the early identification of regulatory issues and potential process improvements. Additionally, the staff is assessing its technical, licensing, and inspection capabilities in order to identify enhancements that would be necessary to ensure that the agency can effectively carry out its responsibilities associated with an early site permit application, a license application, or the construction of a new nuclear power plant. If an application for new construction were to be filed, additional resources might be required.

In order to confirm the safety of new concepts, the Commission believes that a strong nuclear research program should be maintained. A comprehensive evaluation of the NRC's research program is underway with assistance from a group of outside experts and from the Advisory Committee on Reactor Safeguards. With the benefit of these insights, the Commission expects to undertake steps to strengthen our research program over the coming months.

Human Capital

The NRC's ability to fulfill its mission is critically dependent upon the expertise of its staff and contractors. As with many Federal agencies, it is becoming increasingly difficult for NRC to hire personnel with the knowledge, skills, and abilities to conduct the safety reviews, licensing, and oversight actions that are essential to our safety mission. In some important offices, nearly 25 percent of the staff are eligible to retire today. Moreover, the number of individuals with the technical skills critical to the achievement of our safety mission is rapidly declining in our Nation and our educational system is not replacing them. We suggest a number of steps to address our human capital needs:

- Eliminate the Pension Offset for Persons with Critical Skills. Retired former NRC employees are reluctant to work for the NRC because the pay for such activities is reduced by the amount received from the Federal government in the form of pension payments. By allowing retirees with critical skills to receive full pay from the NRC for their consulting services without reduction in pension payments, the NRC could more readily obtain critical skills to sustain high-quality regulatory efforts.
- Allow the NRC to Match Salaries in Critical Areas. Competition for first-rate expertise is fierce. To enable the NRC to compete with the private sector, NRC should be allowed to compensate individuals with critical skills at rates competitive with rates paid to persons with similar skills in the private sector.

- Modify Organizational Conflict-of-Interest Provisions. The NRC's ability to engage outside contractors is limited by the conflict of interest provisions in the AEA (section 170a), which bar the NRC from engaging valuable expertise at a national lab that also performs work for the nuclear industry. For example, important NRC research at the Idaho National Engineering Laboratory had to be terminated because of conflict of interest concerns arising from Bechtel's management of the laboratory. The statutory provision could be modified to alleviate this situation, while still requiring the NRC to take all reasonable steps to mitigate conflicts.
- Fund Training Programs. A recent blue-ribbon engineering panel reporting to the Department of Energy has identified a significant decline in the number of nuclear-related academic programs. Moreover, many universities are contemplating the shut-down of research reactors, limiting the opportunities for students and researchers. Congress could help to reverse this trend by funding academic fellowships to attract engineering students, by sustaining important research facilities, and by enabling the NRC to establish a training program to address shortages of individuals with critical safety skills. The Commission is following with interest proposed legislation in this area associated with the introduction of S.242, the Department of Energy University Nuclear Science and Engineering Act.

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The Commission is aware that actions relating to nuclear matters can raise significant public concerns. We believe that any such concerns must be openly acknowledged and directly confronted. To this end, the Commission has strived to maintain open communication with all its stakeholders and seeks to ensure the full and fair consideration of issues that are brought to our attention from whatever the source. Indeed, we believe that public confidence in any increased reliance on nuclear power will not be achieved unless the NRC both acts to ensure safety and is seen to act responsibly for this purpose. As a result, this letter should not be seen to reflect any prejudgment of safety matters that may be brought before us.

I hope that this information is helpful to you. I and my fellow Commissioners would welcome the opportunity to discuss these important matters with you.

Sincerely,

/RA/

Richard A. Meserve

cc: Mr. Andrew Lundquist

IDENTICAL LETTER SENT TO:

The Honorable Joe Barton, Chairman
Subcommittee on Energy and Air Quality
Committee on Energy and Commerce
United States House of Representatives
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cc: Representative Rick Boucher

The Honorable Sonny Callahan, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

cc: Representative Peter J. Visclosky

The Honorable Pete V. Domenici, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
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cc: Senator Harry Reid

The Honorable Bob Smith, Chairman
Committee on Environment and Public Works
United States Senate
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cc: Senator Harry Reid

The Honorable Frank Murkowski, Chairman
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cc: Senator Jeff Bingaman

The Honorable Joseph I. Lieberman
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The Vice President
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cc: Mr. Andrew Lundquist

The Honorable Donald L. Evans
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The Honorable Ann M. Veneman
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The Honorable Norman Y Mineta
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The Honorable Spencer Abraham
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The Honorable Paul H. O'Neill
Secretary of the Treasury
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