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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 30, 1996

MEMORANDUM TO: Chairman Jackson
Commissioner Rogers

FROM: Dennis K. Rathbun, Director *DR*
Office of Congressional Affairs

SUBJECT: STATUS OF ISSUES IN THE 104TH CONGRESS

Attached for your information and use is the status of issues in the 104th Congress relevant to the NRC and being monitored by the Office of Congressional Affairs. We will keep you apprised of progress on these issues and any other significant new issues that may arise.

Attachment:
As Stated

- cc: EDO
- OGC/Cyr
- OGC
- SECY
- OPA
- OIP
- OIG
- ACRS
- ACNW
- ASLBP
- OCAA

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STATUS OF ISSUES IN THE 104TH CONGRESS

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I. NRC BUDGET

A. APPROPRIATIONS

The Nuclear Regulatory Commission requested a fiscal year 1996 budget of \$525.8 million, to be funded by two appropriations -- one is NRC's Salaries and Expenses appropriation for \$520.3 million and the other is NRC's Office of the Inspector General appropriation for \$5.5 million. The House approved \$473.3 million, which is \$52.5 million less than our request. Included in that amount is \$11 million for the high-level waste program (one half of the agency's request for high-level waste). The Senate agreed with the House reductions to NRC's Salaries and Expenses and the Office of the Inspector General, but restored \$6 million to the high-level waste program, thus, approving \$479.3 million for the NRC.

The House prevailed in conference, leaving the NRC appropriation for fiscal year 1996 at \$473.3 million. The President signed H. R. 1905 on November 3, 1995, becoming P.L. 104-46. Of particular interest, the House Appropriations Committee's Subcommittee on Energy and Water Development is currently planning to hold an **NRC Budget hearing on March 27, 1996.**

Although the Chairman's Strategic Assessment and Rebaselining initiative is not expected to directly affect NRC's FY 1997 budget request, the agency's appropriations and authorizing/oversight committees have expressed interest in its progress and status.

B. NRC FISCAL YEARS 1996-1997 AUTHORIZATION

Draft NRC authorization language was sent to Congress in March 1995 which would have authorized appropriations for FYs 1996-1997. The NRC included in this submission its proposal which would authorize the Commission to recover some of its costs through Part 171 annual fees rather than Part 170 license fees. At the Administration's request, the proposal also extended 100% user fee provisions through FY 2000. For a number of reasons, the Commission decided not to resubmit any of the legislative proposals that the Commission submitted to previous Congresses.

An authorization bill has not been introduced and no authorization hearings were held. The House Commerce Committee's Subcommittee on Energy and Power has informally indicated that they would be inclined to hold NRC hearings on high priority issues, but they are not, at this time, planning an NRC authorization hearing. Also, the Senate Environment and Public Works Committee's Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety has not indicated plans for an authorization hearing.

C. FISCAL 1996 BUDGET RECONCILIATION -- NRC USER FEES

H. R. 2491, the Fiscal 1996 Budget Reconciliation, passed the House of Representatives and Senate but was vetoed by President Clinton on December 6, 1995. The bill would have extended NRC 100% User Fees for five years through fiscal year 2002. The Congress and President have suspended negotiations on this legislation and it is unclear when they will resume. NRC's authority to collect approximately 100% of its budget through User Fees currently expires September 30, 1998.

II. NOMINATIONS

A. NRC COMMISSIONERS

On December 22, the Senate confirmed the nomination of Greta Dicus to be a Commissioner for a term expiring on June 30, 1998. The Administration has yet to nominate anyone for the terms ending June 30, 1996 or June 30, 2000.

Ms. Dicus is scheduled to be sworn in on February 15.

III. NRC-RELATED AND GOVERNMENT-WIDE ISSUES AND LEGISLATION

A. ADMINISTRATIVE CONFERENCE OF THE U.S. (ACUS)

Treasury/Postal Service Appropriations, P.L. 104-52, abolished ACUS, providing only shutdown funds for orderly termination by February 1, 1996.

B. ADMINISTRATIVE DISPUTE RESOLUTION ACT

In November, the NRC submitted written testimony for the record of a hearing held by Senate Governmental Affairs on the Administrative Dispute Resolution Act. The NRC described how it has utilized the Act to date. Congress is considering reauthorization of the Act in S. 1224.

C. CIVIL SERVICE REFORM HEARINGS

The Civil Service Subcommittee on the House Government Reform and Oversight Committee held a series of hearings last fall on civil service reform. The purpose of these hearings was to gather information on the issues; legislation has yet to be introduced on these topics.

The hearings were: **Performance and Accountability** examined new methods to appraise performance, challenging the current system in which large numbers of federal employees received fully successful ratings or better; **Private Sector Compensation**

Practices reviewed ways to improve the flexibility of federal benefits so that they could fluctuate depending upon the federal government's work force needs and could move from "federal compensation strategies caught somewhere between the 1930's and 40's with their focus on job and benefit security;" **Government Shutdown: What's Essential?**, examined flaws in the planning and execution of this year's furloughs; **Streamlining Federal Appeals Procedures** reviewed a GAO report stating that the current system is "inefficient, expensive, and time-consuming." Treasury/Postal Service Appropriations, P.L. 104-52, directed the Administration to submit legislation by February 1, 1996, to restructure all federal employee adjudicatory functions.

D. CLEAN AIR

Hearings have been held in both the House Commerce and Senate Environment and Public Works Committees. The primary issue remains implementation of automobile emissions standards. Radionuclide emissions have not been discussed.

E. CLEAN WATER

In May, the House passed H.R. 961, a bill which would significantly alter the 1972 Clean Water Act. The most controversial part of the bill is Section 104 which would ease the restrictions on developing wetlands. Of interest to NRC is Section 316 which would exempt NRC licensees' radiological activities (but not NRC certificate holders such as the United States Enrichment Corporation for its gaseous diffusion facilities) from being regulated by the Environmental Protection Agency or otherwise treated as a federal facility.

In the Senate, the Environment and Public Works Committee has had internal staff disagreements on how to proceed. Subcommittee hearings are expected to be held. Prospects for a Committee bill are less likely.

F. DEBT LIMIT

Rep. Mica stated that he is watching closely Treasury Secretary Rubin's "raid on government retirement funds," and a hearing may be held on the disinvestment of government pension funds.

The Republicans are working with the President on an agenda for extending the Treasury's ability to borrow money and signaled their willingness to approve an increase in the debt limit.

G. DEPARTMENT OF ENERGY

The House Science Committee held a hearing on September 7, 1995 on proposed legislation to shift a portion of regulatory responsibilities for the National Laboratories away from DOE.

The NRC submitted testimony which provides views on H.R. 2142, the Department of Energy Laboratory Missions Act, and H. R. 1510, the Department of Energy Laboratories Efficiency Improvement Act. No subsequent action has occurred in the Committee and no comparable legislation has been introduced in the Senate.

The Federal Advisory Committee on External Regulation of DOE Nuclear Safety recently presented its Final Report to the Hill. The Secretary of Energy is forming an interagency group, led by Acting Under Secretary Thomas Grumbly, to respond to the Report's recommendations and develop a detailed plan to move the Department to external regulation. She has asked that the group report back to her in March. We expect that the group will include a plan of action for bringing the issue before the Congress since most of the Report's recommendations require Congressional action for implementation. However, given other Congressional priorities, it would not be surprising if Congress did not act on this issue during the 104th Congress.

H. EARLY RETIREMENT/REEMPLOYMENT TRAINING

In December, Rep. Morella introduced H. R. 2825, the Early Retirement Incentive Act and H. R. 2826, the Strategic and Reemployment Training Act. These bills would revamp the 2% penalty for those employees retiring before age 55 in the following manner: the 2% penalty would be reduced by 2% every year as one gets closer to age 55. For example, at age 53 there would be a 4% reduction, at 54 a 2% reduction, and at 55 retirees would receive the annuity they would have received had they been age 55 when they retired. Recognizing that many RIFed employees will not be able to find jobs within the government, her second bill would allow agencies to pay for retraining for private sector job placement. No action has occurred on these bills, but they may receive renewed attention as Congress' efforts to downsize the federal government continue.

I. ELECTRICITY COMPETITION ACT

Senator J. Bennett Johnston (D-LA) introduced S. 1526, Electricity Competition Act, in January 1996. In order to facilitate utilities' transition to a competitive environment, his bill mandates that nuclear decommissioning costs are fully recoverable. The prospects for consideration of S. 1526 are uncertain because neither Senate Energy and Natural Resources Committee Chair Frank Murkowski (R-AK) nor the pertinent Subcommittee Chair Don Nickles (R-OK) have expressed interest in the legislation.

The House Commerce Committee's Subcommittee on Energy and Power has informally expressed interest in this issue and expects to schedule information-gathering hearings this session; possibly proposing legislation after the hearings.

J. ENRICHMENT

Both the House and the Senate have passed versions of legislation that would privatize the United States Enrichment Corporation. The House passed enrichment language (H.R. 1216) within the context of H.R. 1215, The Tax Fairness and Deficit Reduction Act, but the bill has been bogged down in the Senate Finance Committee. The House also passed the same enrichment language in H.R. 2491, the Budget Reconciliation package. The Senate version (S. 755) was also passed within its Budget Reconciliation package (S. 1357). The differences between the House and Senate versions have been largely worked out. (See General Counsel's October 30, 1995 memorandum on the Budget Reconciliation legislation.)

The Administration's proposal was submitted but not introduced.

K. FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP)

The House version of H.R. 2491, Budget Reconciliation, recommended that the government's contribution to FEHBP change from the current 75% of premium costs to a fixed dollar amount indexed to the CPI. Senator Stevens, Chair of the Senate Governmental Affairs Committee, argued that, with broad health care reform inevitable, FEHBP should not get ahead of the curve and be in danger of being "reformed" twice: once with the above proposal and again when Congress tackles broad reform. Subsequently, these provisions were not retained in the bill.

The House Government Reform and Oversight Committee held a hearing in December on establishing medical savings accounts (i.e. savings accounts for uninsured medical expenses to which employers or employees may contribute and roll over unused funds each year) for federal employees. Concerns arose that MSAs were better suited for younger, healthier employees, with higher premiums resulting for older and retired employees.

L. FEDERAL INFORMATION TECHNOLOGY REFORM ACT

The purpose of the legislation is to improve the federal technology acquisition process, with chief information officers being created at agencies to oversee such improvements. These provisions were attached to DOD Authorization, H. R. 1530. For reasons unrelated to the information technology provisions, the President vetoed H. R. 1530 in December. Most of the DOD provisions which drew the veto have since been dropped, and Congress approved the revised H.R. 1530 in January. The President has indicated that he will sign the Bill.

M. FEDERAL LOBBYING DISCLOSURE ACT, P.L. 104-65

Under this law, NRC employees contacted by a lobbyist must, upon request, indicate whether they are "covered officials" under the

Act; NRC covered officials are commissioners, commissioner assistants, the EDO, GC, IG, and the Directors of NMSS, NRR, and RES. Additionally, OPM is required to issue regulations in two years to ensure that individuals outside the competitive service (including NRC employees) are treated appropriately in applying for competitive service positions.

N. FEDERAL REPORTS ELIMINATION AND SUNSET ACT, P.L. 104-66

Signed in December, this law immediately eliminates some statutorily-required congressional reports. In four years, most remaining reporting requirements will terminate unless Congress acts. At NRC's recommendation, the quarterly abnormal occurrences report was changed to an annual report. Also of interest to the NRC, other government-wide reports, such as Program Fraud and Civil Remedies and metric system conversion, were eliminated.

O. FEDERAL THRIFT SAVINGS PLAN

Senator Stevens and Rep. Morella have introduced legislation (S. 1080 and H.R. 2306) to add a Small Capitalization Stock Index Investment Fund and International Stock Index Fund to the investments available under the Federal Thrift Savings Plan. Rep. Morella's bill would also allow federal workers to increase the amount they can contribute to the TSP without altering the current matching formula.

P. HIGH-LEVEL WASTE

Despite a flurry of activity at the end of the first session, the House Commerce Committee and other supporters of H.R. 1020, The Nuclear Waste Policy Act of 1995, were unable to iron out differences with House Budget Chairman John Kasich (R-OH). At issue are the user fee provisions which would limit the amount of money ratepayers pay into the Nuclear Waste Fund each year to the amount spent from the Fund the previous year. Chairman Kasich argues that the fee change would result in a loss of about \$600 million a year in offsetting revenues for a total of \$4.2 billion from FY 1996 - FY 2000. A compromise is expected.

In the Senate, Senator Larry Craig has introduced S. 1271, which is very similar to H.R. 1020. The bill currently has 20 cosponsors. A hearing held by the Senate Energy Committee on December 14 pointed up that there are divisions within the Senate on how to proceed with waste legislation. Some Committee members support S. 1271, others support it with modifications, one opposes it and Chairman Frank Murkowski (R-AK) would still like to explore alternatives such as reprocessing and/or extended storage at Savannah River and Hanford. The Committee is expected to hold another hearing; it may occur in March.

So far the Administration has been reluctant to either support an existing proposal or to introduce one of its own. The one definitive statement by the Administration is that the President would veto any legislation which sites an interim storage facility at Yucca Mountain, Nevada, until DOE can make a decision on whether the site is "practically viable" to proceed toward submitting a license application and construction of a permanent repository. That decision could probably be made in 1998.

Q. INTERNATIONAL

On May 11, 1995, the White House sent the Convention on Nuclear Safety to the Senate for ratification by a concurrence of two-thirds of the Senators present. The Treaty (104-6) was referred to the Committee on Foreign Relations. No committee action has occurred.

The NRC briefed the majority and minority staffers on the Committee on Environment and Public Works, Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety. It is anticipated that the Committee on Foreign Relations staff will receive a briefing in the coming weeks.

R. LOW-LEVEL WASTE

Two potential low-level waste facilities could be affected by pending legislation. The land for the Southwest Compact's Ward Valley, California, site would be released to the State by the Interior Department's Bureau of Land Management under language contained in the House and Senate versions of the Budget Reconciliation package.

The Texas Compact between Texas, Maine and Vermont is also moving through Congress. In the House, H.R. 558 was approved by the Commerce Committee, however, an attempt to have the House pass it failed under a suspension of the rules because some members of the Texas delegation who oppose it would have been unable to offer amendments. A second attempt to bring the bill to the floor is being made with an opportunity for opponents to offer amendments. The Senate companion bill, S. 419, was approved by the Judiciary Committee. Negotiators are working to remove a hold placed on the bill by Senator Paul Wellstone (D-MN) by allowing the Senator to offer an amendment to address environmental justice concerns.

S. NONPROLIFERATION/EXPORT ISSUES

On November 29, 1995, the White House sent the U.S.-Euratom Agreement to Congress where it was referred to the Senate Committee on Foreign Relations and the House Committee on International Relations. The Agreement must sit before Congress

for 90 days of continuous session; therefore, the accord expired on December 31, 1995. The committees with jurisdiction may have hearings this spring.

It does not appear that there will be significant problems for the new Agreement in Congress. The Agreement does not require an affirmative vote to enter into force. Blocking the Agreement requires passage of a joint resolution of disapproval. If no one does anything, it goes into effect automatically.

T. PENSIONS

The question of whether the federal pension system is overly generous, too burdensome on federal taxpayers, and constitutes an unfunded liability continues to resonate in the House Government Reform and Oversight Committee; the issue is likely to be renewed in the second session. The Senate Governmental Affairs Committee, although less critical, has considered revamping the current system in order to make it less vulnerable to future congressional reforms. Congress agreed in Budget Reconciliation, H.R. 2491, to increase employees' pension contributions by .25% in 1996, .15% in 1997, and .10% in 1998. However, President Clinton vetoed H.R. 2491 in December, so the pension contribution increase was not enacted.

H.R. 2491 would also establish a Federal Retirement Security Commission which within 7 months must submit a report on the financial soundness of the federal retirement systems, including a comparison of costs and benefits of the systems with those in the private sector and recommendations on the appropriate level and design of benefits of an alternative retirement system or modifications to the current systems. The Commission was encouraged to emphasize portability of benefits, cafeteria plans, financial soundness, and benefits representative of those received by most Americans. Since H.R. 2491 was vetoed, the Commission was not created, but this proposal may reemerge this year.

U. RADIATION IN MEDICINE

The NRC contracted with the National Academy of Sciences' Institute of Medicine to develop a report as part of an external review of the agency's program for the regulation of medical uses of nuclear material. The report provides recommendations to Congress, the NRC, the States, and the Conference of Radiation Control Program Directors. The NRC is currently reviewing and analyzing the report and is seeking comments.

Senator Glenn has discussed legislation to change the way NRC regulates the medical uses of nuclear material. It is still too early to forecast Congressional developments in this area.

V. REGULATORY REFORM

Regulatory reform remains at a stalemate in the Senate. Debate on S. 343 consumed many days this summer, but without the 60 votes needed to cut off debate and vote on the bill (only a simple majority is needed to pass the bill, but 60 votes are needed to invoke cloture), S. 343 was pulled from the Floor. Majority Leader Dole (R-KS) has listed S. 343 as a priority, and it is possible that the two votes needed for cloture will be found.

The purpose of the legislation is to mandate the use of risk and cost-benefit analysis in federal rulemaking; however, numerous concerns have been raised about the prescriptive nature, increased judicial review, and resource impact of implementation. Of key concern to the NRC is the loss of independence from OMB that would result.

The House passed its version, H.R. 9 last spring, which rolled into one bill a risk-assessment procedure, a cost-benefit measure and a private property compensation bill.

W. REGULATORY SUNSET AND REVIEW ACT, H.R. 994

This bill requires agencies to periodically review existing regulations and it sunsets those regulations that are not reviewed. In a letter to House Committees, the NRC expressed strong concerns about the loss of independence from OMB (OMB could determine which NRC rules should be retained) and about the bill's unintended effect of creating regulatory instability and costing significant agency resources. H.R. 994 has been on the House calendar for floor consideration since November; no further action has occurred.

X. URANIUM MILL TAILINGS

Under Section 112 (a) of the Uranium Mill Tailings Radiation Control Act of 1978, the Department of Energy's authority to perform remedial action at Title I sites expires on September 30, 1996. Since DOE's (and NRC's) actions will not be completed by this date, an extension is necessary. DOE believes an additional two years will be needed to complete the program. Senator Hank Brown (R-CO) introduced S. 341, to extend the program until September 30, 1998. No action has been taken on this bill in the Senate. In the House, Representative Dan Schaefer (R-CO) is working on legislation which will likely be more than a simple extension of the expiration date.