

July 13, 2005

The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

The Commission welcomes this opportunity to comment on the differing versions of H.R. 6, the "Energy Policy Act of 2005," that have been passed by the Senate and the House of Representatives. These views expand upon, but are consistent with, the views that the Commission sent to the conferees on August 29, 2003, on the "Energy Policy Act of 2003."

On March 30, 2005, the Commission submitted legislative proposals to this Congress. Some of those provisions are included in the House-passed version, and the Commission supports their enactment. We would note, however, that the House provisions are based on our submissions in 2003, and we prefer the updated language contained in the March 30, 2005 submissions. As explained in our detailed comments in the enclosure, the Commission-preferred language on many provisions is now contained in S. 858, the "Nuclear Fees Reauthorization Act of 2005" or S. 864, the "Nuclear Security Act of 2005," as those bills were reported by the Senate Committee on Environment and Public Works, and the Commission requests that the conferees adopt the language contained in those bills. We further note that the House-passed bill does not contain a number of our legislative proposals that are included in S. 858 and S. 864, as reported, and the Commission asks that they be enacted into law.

Finally, we note that the House-passed bill contains a number of provisions that are objectionable. In particular, the Commission strongly opposes section 661 which would require the President, in consultation with the U.S. Nuclear Regulatory Commission (NRC) and executive branch agencies, to conduct a review of the type of threats that pose an appreciable risk to facilities regulated by the NRC. The NRC has already conducted a comprehensive review in consultation with numerous executive branch agencies and as a result directed and implemented significant changes to its commercial nuclear security requirements. Enactment of this section would not result in enhanced security, but instead would divert scarce resources from ongoing efforts to enhance security. For similar reasons, the Commission opposes enactment of section 666 pertaining to the secure transportation of nuclear materials. In addition, section 639 would impose meeting requirements on the Commission that would not be imposed on any other Federal agency and would be an impediment to the conduct of Commission business.

The Senate-passed version of H.R. 6 does not contain our legislative proposals, and, therefore, we have no comments on the nuclear provisions of that bill other than to emphasize that the NRC supports the reauthorization of the Price-Anderson Act. The Price-Anderson Act provisions are set forth in sections 601-612 of the House bill and sections 601-609 of the Senate bill.

The Commission is prepared to work with you on these important issues. Enactment of the desired legislation could substantially enhance the NRC's ability to protect the public health and safety and promote the common defense and security in the civilian use of radioactive materials and nuclear energy. It could also help the agency address the human capital challenges it faces.

Sincerely,

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Nils J. Diaz

Enclosure:  
Detailed NRC Views

Identical letters sent to:

The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable John D. Dingell, Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Pete Domenici, Chairman  
Committee on Energy and Natural Resources  
United States Senate  
Washington, D.C. 20510

The Honorable Larry Craig  
United States Senate  
Washington, D.C. 20510

The Honorable Craig Thomas  
United States Senate  
Washington, D.C. 20510

The Honorable Lamar Alexander  
United States Senate  
Washington, D.C. 20510

The Honorable Lisa Murkowski  
United States Senate  
Washington, D.C. 20510

The Honorable Richard Burr  
United States Senate  
Washington, D.C. 20510

The Honorable Jeff Bingaman, Ranking Member  
Committee on Energy and Natural Resources  
United States Senate  
Washington, D.C. 20510

The Honorable Daniel Akaka  
United States Senate  
Washington, D.C. 20510

The Honorable Byron Dorgan  
United States Senate  
Washington, D.C. 20510

The Honorable Ron Wyden  
United States Senate  
Washington, D.C. 20510

The Honorable Tim Johnson  
United States Senate  
Washington, D.C. 20510

The Honorable Charles Grassley, Chairman  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

The Honorable Orrin Hatch  
United States Senate  
Washington, D.C. 20510

The Honorable Max Baucus, Ranking Member  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

**NRC COMMENTS ON H.R. 6 AS PASSED  
BY THE SENATE AND THE HOUSE OF REPRESENTATIVES**

The NRC has no comments on the Senate-passed bill, other than comments on a provision that is also in the House-passed bill pertaining to electricity reliability standards. Therefore, all of the following comments are on the House-passed bill. You will note that in many instances the Commission prefers the language contained in S. 858, the "Nuclear Fees Reauthorization Act of 2005" or S. 864, the "Nuclear Security Act of 2005," as those bills were reported by the Senate Committee on Environment and Public Works. Those bills largely track the language that the NRC submitted on March 30, 2005 to Congress in legislative proposals that are supported by the Administration.

**I. TITLE VI – NUCLEAR MATTERS**

**A. Provisions Opposed by the NRC**

**Section 661, Nuclear Facility Threats.** The NRC strongly opposes enactment of this section. NRC has already addressed the requirements contained in section 661. In the nearly four years following September 11, 2001, it has conducted a comprehensive review of its security policies and requirements in the new threat environment, and by order supplemented the design basis threats licensees must protect against. It has established a program of periodic force-on-force exercises, and security inspections and reviews are effectively coordinated in each NRC region. Enactment of section 661 could raise the question whether studies and evaluations that NRC has already completed will have to be repeated, wasting scarce resources that would be used better elsewhere. Most importantly, the requirements of section 661 do not promise greater security than the NRC is already achieving through its activities. The NRC also emphasizes that enactment of this section would require the expenditure of substantial resources by many Executive Branch agencies and the NRC.

**Section 639, Nuclear Regulatory Commission Meetings.** The NRC strongly opposes enactment of this section. This provision singles out the NRC for special treatment under the Government in the Sunshine Act. We are not aware that any other Federal agency headed by a collegial body has been made subject to expanded requirements such as those proposed by this section. Its enactment would be an impediment to the conduct of Commission business, and would detract from the implementation of the agency's mission. The NRC's approach to non-Sunshine Act Commission discussions is consistent with law, and has been upheld by the courts.

**Section 666, Secure Transfer of Nuclear Materials.** NRC opposes enactment of this section. The section is unnecessary, and fails to take into account existing statutory and regulatory requirements applicable to transportation of radioactive material, as well as NRC actions to enhance transportation security. A transportation regime is already in place that satisfies the objective of this legislation for nuclear material that warrants protection. The existing regime is implemented through Department of Transportation regulations, regulations of the Department of Homeland Security, provisions of the USA Patriot Act, and NRC regulations in 10 CFR Part 110.

Enclosure

In addition, the language of section 666 would capture all Atomic Energy Act material, even material that poses trivial risks to the public health and safety. This could have serious consequences, because the needless expansion of requirements could significantly impede transportation of radioisotopes used in medicine. Although the section permits the NRC to make exceptions to the type of material it lists, the exceptions can be made only through rulemaking, which would take some time to complete. The resources that would be required to implement this section are needed for other security activities.

**Section 667, Department of Homeland Security Consultation.** The NRC opposes this provision which would require the NRC to consult with the Department of Homeland Security prior to issuing a license for a proposed facility, to determine any vulnerabilities of that location to a terrorist attack. The Commission finds this provision to be unnecessary because of the NRC's stringent security requirements and existing extensive interactions with the Department of Homeland Security and other government agencies on security matters.

## **B. Provisions Supported by the NRC without Amendment**

**Section 621, Licenses.** This provision clarifies that in the case of combined construction and operating licenses the initial duration of the operating authorization runs from the time the Commission authorized operation.

**Section 623, Cost Recovery from Government Agencies.** This provision would authorize the NRC to charge fees to Federal agencies for licensing and inspection activities, rather than recovering these costs through the annual fees assessed to all NRC licensees.

**Section 625, Antitrust Review.** This provision would eliminate NRC's antitrust review authority over any license applications for a utilization facility under sections 103 or 104b. of the Atomic Energy Act that is filed after the date of enactment. The Commission supports this provision because it would eliminate redundant federal agency antitrust reviews.

**Section 626, Decommissioning.** This section would provide explicit statutory clarification that the NRC retains authority over decommissioning funds held by former licensees. This would assure that funds set aside for decommissioning will be used only for their intended purpose.

## **C. Provisions Supported by the NRC with Amendment**

**Section 622, NRC Training Program.** The NRC supports this section in concept. This section authorizes the NRC to carry out a training and fellowship program to address shortages of individuals with critical nuclear safety regulatory skills. However, this section does not address a number of issues that are best resolved by legislation, such as service agreements with awardees. The NRC prefers the language in section 304 of S. 858, as reported by the Senate Committee on Environment and Public Works.

**Section 624, Elimination of Pension Offset.** The NRC supports this section, but prefers the language in section 306 of S. 858, as reported by the Senate Committee on Environment and Public Works. That version would authorize the NRC to employ a former Federal employee annuitant as a consultant without having to deduct the amount the retiree receives as a pension from the retiree's pay. H.R. 6 would only authorize the NRC to use the provision for former NRC employees.

**Section 663, Use of Firearms by Security Personnel of Licensees and Certificate Holders of the Commission.** The NRC supports this section, but prefers the language set forth in section 102 of S. 864, as reported by the Senate Committee on Environment and Public Works. The language in H.R. 6 fails to reflect the Congressional decision not to extend the assault weapons ban. As a result, some changes to section 663 are required to reflect the current state of the law.

**Section 665, Sabotage of Nuclear Facilities or Fuel.** The NRC supports this section, but prefers the language in section 106 of S. 864, as reported by the Senate Committee on Environment and Public Works. The language in S. 864 contains revised standards governing the requisite intent required for an act of attempted sabotage to constitute a crime.

#### **D. Provisions that the NRC Requests Be Added to the Legislation**

The bills do not contain a number of NRC legislative proposals submitted to Congress on March 30, 2005. All of these provisions are incorporated in either S. 858 or S. 864, as reported by the Senate Committee on Environment and Public Works. The NRC requests that these provisions be enacted:

1. Augment NRC's regulatory authority to include accelerator-produced material and discrete sources of radium-226. This would result in the establishment of uniform national standards to protect and control these materials and would facilitate United States' implementation of the International Atomic Energy Agency Code of Conduct for the Safety and Security of Radioactive Sources. This provision is set forth in section 202 of S. 864, as reported by the Senate Committee on Environment and Public Works.
2. Clarify that the existence of an organizational conflict of interest does not bar the NRC from entering into a contract or other arrangement for work to be performed by a Department of Energy Laboratory. This provision is found in section 206 of S. 858, as reported by the Senate Committee on Environment and Public Works.
3. Authorize the NRC to provide financial assistance to institutions of higher learning to promote the development of academic offerings in subject areas that relate to matters that fall under NRC's jurisdiction. This provision is found in section 301 of S. 858, as reported by the Senate Committee on Environment and Public Works.
4. Authorize the NRC to purchase promotional items of nominal value for use in recruitment of individuals for employment with the NRC. This provision is found in section 302 of S. 858, as reported by the Senate Committee on Environment and Public Works.
5. Authorize the NRC to provide lodging, transportation, and subsistence allowance to student interns hired by the NRC for summer and other short periods of employment. This provision is found in section 303 of S. 858, as reported by the Senate Committee on Environment and Public Works.
6. Authorize the NRC to pay the costs of medical care provided to NRC staff serving in foreign countries and their accompanying dependents. This provision is found in section 303 of S. 858, as reported by the Senate Committee on Environment and Public Works.

7. Authorize the NRC to establish and participate in partnership programs with institutions of higher education, including Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges, to enhance their capacity to train personnel and students in fields that the Commission determines to be important to its regulatory mission. This provision is found in section 305 of S. 858, as reported by the Senate Committee on Environment and Public Works.

8. Extension of NRC's 90 percent user fee collection requirement. This provision is set forth in section 101 of S. 858, as reported by the Senate Committee on Environment and Public Works.

## **II. TITLE XII – ELECTRICITY**

### **Subtitle A–Reliability Standards**

#### **NRC Recommended Amendment**

**Section 1211, Electric Reliability Standards.** Grid reliability has an important impact on nuclear reactor safety and this should be taken into consideration in the proposed new section 215 that would be added to Part II of the Federal Power Act by section 1211 of H.R. 6, as passed by both the Senate and the House of Representatives. We recommend that the first sentence of subsection (d)(2) of proposed section 215 be amended to read as follows (new language is underlined):

“The [Federal Energy Regulatory] Commission may approve, by rule or order, a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest, and will not adversely affect the safe operation of critical infrastructure.”