



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

COMEXM-06-0007/
COMPBL-06-0002

August 9, 2006

REQUEST REPLY BY

8/23

MEMORANDUM TO: Chairman Klein
Commissioner Merrifield
Commissioner Jaczko

Approved in part and dis-
approved in part. See attached
comments.

FROM: Commissioner McGaffigan
Commissioner Lyons

[Handwritten signatures]

[Handwritten signature]
Dale E. Klein

09/08/06

SUBJECT: EXPEDITING COMMISSION ADJUDICATORY REVIEW

We are sponsoring this joint COM for the purpose of emphasizing the importance the Commission places on resolving licensing adjudications promptly. The Commission is anticipating that in the near future applications for new reactor initiatives, such as combined operating licenses and early site permits, and ongoing applications for complex amendments to and renewals of existing reactor licenses will be received. In addition, we are faced with the potential for DOE's application for the licensing of the proposed Yucca Mountain repository. Our goal with respect to the hearings associated with these applications is to expedite the completion of adjudications without sacrificing fairness.

To further this goal, we have within the past two years instructed our licensing boards in certain cases to "expeditiously decide legal and policy issues," and we have repeatedly stated our intent to "avoid unnecessary delays" and "endeavor to identify efficiencies . . . to further reduce the time the agency needs to complete reviews and reach decisions." See e.g., *Exelon Generation Company, LLC* (Early Site Permit for Clinton ESP Site), et. al, CLI-05-17, 62 NRC 5, 35 (2005). In fact, just recently we articulated our expectation that boards in uncontested matters issue their final initial decisions generally within four months (or six at the most) of the staff's issuance of the SER and FEIS and that in "most cases, we expect that the time would be significantly shorter." See *Exelon Generation Company, LLC* (Early Site Permit for Clinton ESP Site) and *System Energy Resources, Inc.* (Early Site Permit for Grand Gulf ESP Site), CLI-06-20, dated July 26, 2006, slip op. at 15.

We as Commissioners need to do more on our part, too, in achieving timeliness goals. Delays in adjudicatory decision making at the Commission level could result in costs to licensees, applicants, intervenors, and - in the case of Yucca Mountain - the American taxpayers. Delays impede public resolution of potential health, safety and environmental issues. In addition, Commission delays can also have unintended internal impacts. For example, at the all hands meeting this year, we were asked about delays at the Commission level in reviewing staff papers. A participant asked, "[W]hen the papers get to the Commission, the Commission does not act on them for months. Does the Commission realize how demoralizing this is for staff?" Although we responded by recognizing the need for us to deliberate and the sheer magnitude of our workload, we recognize that this response could easily be echoed by anyone who works at the agency. Realistically, we can do a better job, and Commissioners should set an example by expediting our own process. Consequently, we believe that, at a minimum, the Commission review time for adjudications should be shortened from ten days to five days. The Internal Commission Procedures at page III-2 should include a statement that "Commissioners are

CHAIRMAN KLEIN'S COMMENTS ON COMEXM-06-0007/COMPBL-06-0002

I join Commissioners McGaffigan and Lyons in the view that the Commission should continue to emphasize the importance of prompt resolution of licensing adjudications without sacrificing a fair review. Moreover, as my colleagues suggest, the Commission may be required to decide increasing numbers of new licensing issues in coming years.

The adjudicatory function is one of the fundamental responsibilities of the Commission. Adequate review and sound decision-making are essential and must remain paramount over schedular goals. At the same time, the Commission has a responsibility to make decisions in a timely fashion. To that end, the Commission has taken a number of steps to assure timely action by its Licensing Boards and by the litigants in NRC adjudication. We have challenged others with aggressive goals. We should also challenge ourselves.

The proposed change in the normal voting period from 10 days to 5 days represents one approach to promoting expeditious action on adjudicatory matters that may not require extended analysis. Based on extensive deliberations on this issue, I believe that the objective of expeditious action can be achieved through scheduling weekly affirmations, noticing affirmations promptly, and requiring that a majority of the Commission approve requests to extend the time to vote on adjudicatory papers beyond the close of the 10-day voting period or requests to delay the affirmation of an adjudicatory matter. Thus, I recommend the attached draft language to institute these alternative changes to the Internal Commission Procedures.

This language would be placed on Page III-2 or III-3 of the Internal Commission Procedures:

"With respect to adjudicatory SECY papers, Commissioners are expected to vote no later than ten days after the issuance of the paper. When a majority of the Commission has voted, a request for extension of time to vote beyond the 10 day voting period or a request to delay the affirmation of the vote on a matter shall be granted only by a majority of the Commission."

"SECY shall schedule an affirmation session to be held every week. Within 48 hours of the issuance of adjudicatory SECY paper, SECY shall notice the affirmation of the paper so that the affirmation will be scheduled to be held at the earliest available affirmation session following the close of the 10 day voting period unless a majority of the Commission has advised that the affirmation should be set for a later date."

A conforming change should also be made to Page III-7 (Continuances and Extensions of Time). The could be done through a footnote or a new bullet noting that:

"With respect to adjudicatory SECY papers, if a Commissioner requests an extension of the voting time beyond the 10 day voting period or requests a delay in the affirmation of the vote on a matter, such requests shall be granted only by a majority of the Commission."



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FROM: Commissioner McGaffigan
Commissioner Lyons

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Commissioner Merrifield's Comments on COMEXM-06-0007/COMPBL-06-0002

I approve the COM subject to the changes proposed by Chairman Klein. While I fully believe in responding to adjudicatory matters as expeditiously as possible, I do not believe 5 days will provide an adequate review time in all cases. The Chairman's recommended approach offers a reasonable compromise by limiting the ability to extend review time past the normal 10-day period. I would go further, however, and extend this procedural change to all matters brought before the Commission for a vote. There is no obvious basis in my mind to limit an expeditious review time to adjudicatory matters, which often involve more complex analyses and policy discussions than the average issue paper from the staff. As the Agency is faced with an ever increasing workload, the Commission must improve its review time on all matters if we expect the staff to adhere to the rigorous schedules imposed on the majority of action items.



9/12/06

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Disapproved. See attached comments.

MEMORANDUM TO: Chairman Klein
Commissioner Merrifield
Commissioner Jaczko

Gregory B. Jaczko

9/12/06
Date

FROM: Commissioner McGaffigan
Commissioner Lyons

SUBJECT: EXPEDITING COMMISSION ADJUDICATORY REVIEW

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**Commissioner Jaczko's Comments on COMEXM-06-0007/COMPBL-06-0002
"Expediting Commission Adjudicatory Review"**

I disapprove of the change in Commission procedure recommended in this COM because I am unconvinced that the proposal outlined, which would reduce the Commission's review time of adjudicatory papers from ten to five days, would address the perceived problem. I am also concerned that the proposal would carry with it an unintended consequence – that of a costly erosion of the public's confidence in the NRC's adjudicatory process.

Instead, I approve of the option presented by Chairman Klein which would retain the currently established ten day voting period and slightly modify the manner in which requests for extensions beyond that time are granted. The Chairman's proposal would also establish a weekly affirmation session. I believe that this weekly affirmation session, perhaps more than any of the other changes, will actually have the most notable impact by providing applicants and intervenors with Commission decisions at the earliest available opportunity.



Gregory B. Jaczko

9/12/06

Date

**Commissioner McGaffigan's Additional Comments on
COMEXM-06-0007 / COMPBL-06-0002**

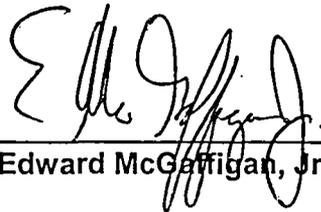
While I accept Chairman Klein's proposed alternative to the proposal originally made by Commissioner Lyons and me, I must respond to Commissioner Jaczko's comment that our original proposal would have resulted in "an unintended consequence -- that of a costly erosion of the public's confidence in the NRC's adjudicatory process." This is simply not true.

First, let me give the public some background on how the NRC's adjudicatory process works at the Commission level. The Commission, through our legal assistants, have access to all the briefs filed before and every decision issued by an Atomic Safety Licensing Board (the Board). We also have access to every appeal of any decision and motions in favor or in opposition to the appeal. The Office of Commission Appellate Adjudication (OCAA), acting on behalf of the Commission, typically over a 30 day period draws up a proposed draft order responding to the appeal. OCAA may routinely consult with Commission legal assistants while drafting the order. So there is absolutely no surprise when OCAA formally submits the draft order to the Commission and the formal voting process begins.

During my ten years on the Commission I have believed that the Commission's adjudicatory function is critically important and that parties deserve prompt Commission decisions. Having availed myself of the opportunity to know exactly what is coming from OCAA, I typically read the paper the day received, discuss it with my legal assistant, and endeavor to vote within twenty-four hours of receipt. Of course, on occasion an order may be more complex or may raise a nuance on an issue that I had not fully considered, thus necessitating more review time. But typically five days, a full working week, should be more than enough time to take a position on any OCAA draft order.

I personally intend to continue to deal with adjudicatory papers as I have for the past decade. Far from eroding public confidence. I would hope that such attentiveness to Boards' actions, to the appeals submitted, to the briefs submitted in favor of and in opposition to the appeals, and to the OCAA drafting efforts, and such commitment to prompt Commission decision-making should only enhance public confidence.

With regard to Commission Merrifield's suggestion that Chairman Klein's proposal be extended to non-adjudicatory matters, I share his desire for prompt Commission voting across the spectrum of Commission papers. But I could only wish that I had a small fraction of the visibility into what the staff may place on our doorstep as I have on what OCAA presents to the Commission. If the staff will share draft papers with the Commission before they are formally submitted, then I would be open to the same procedure applying.



Edward McGaffigan, Jr.

9/13/06
(Date)